

THE FOLLOWING TERMS AND CONDITIONS ARE MADE A PART OF THIS PURCHASE ORDER ISSUED BY JOSHUA BASIN WATER DISTRICT (JBWD).

1. **Entire Agreement:** This CONTRACT contains the entire agreement with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein. Except for any section or subsection lined out and initialed by the DISTRICT and the CONSULTANT, each provision of the terms and conditions applies to the CONTRACT. Any other terms, conditions, or limitations shall not form a part of this CONTRACT, unless accepted in writing by DISTRICT. The term CONSULTANT includes vendors and contractors.
2. **Governing Law and Venue:** This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. Any action or proceeding for dispute resolution arising out of this CONTRACT shall be brought and tried in the County of San Bernardino, State of California, and the prevailing party shall be entitled to reasonable attorney fees.
3. **Amendments:** This CONTRACT may be modified or amended upon mutual agreement, in writing, between DISTRICT and CONSULTANT.
4. **Delivery:** CONSULTANT shall deliver the goods or perform services in accordance with the schedule in CONTRACT with the number of days meaning calendar days, unless otherwise stated. No partial deliveries shall be accepted. All transportation and delivery charges must be prepaid in full to destination, and the prepaid freight bill must be submitted to DISTRICT with invoice, FOB Destination. Goods shall not be accepted if shipped C.O.D.
5. **Acceptance/Payment:** Unless otherwise agreed to in writing by DISTRICT, a) acceptance shall not be deemed complete unless in writing and until all the goods or services have actually been received, inspected, and tested to the satisfaction of DISTRICT, and b) payment shall be made in arrears after satisfactory acceptance. DISTRICT reserves the right to reject any good or service which does not comply with the specifications and/or terms of this CONTRACT.
6. **Payment Terms:**
 - 6.1 **Standard:** Net 30 days unless otherwise stated in CONTRACT.
 - 6.2 **Invoices:** CONSULTANT shall submit itemized invoices to DISTRICT, Attn. Accounts Payable at the address shown on this CONTRACT. Each invoice must show DISTRICT's Purchase Order number, item number description of supplies or services, sizes, units of measure, quantity, unit price and extended totals, and shall cover only goods delivered or services performed. Invoices shall include supporting documentation including but not limited to, paid receipts and invoices to validate the charges for each invoiced item. Progress reports in the attached DISTRICT formats are required for Professional Services Contracts. Incomplete invoices (including missing formats) shall be returned to the CONSULTANT.
7. **Warranty:** CONSULTANT expressly warrants that the goods/services covered by this CONTRACT are a) free of liens or encumbrances, b) all goods, materials, and equipment supplied will be new, conform to DISTRICT specifications, are of first class material and workmanship and are free from defects, and c) that all services will be of good quality, performed to the standard of care customary of CONSULTANT's trade or profession. Warranty shall be effective for one year after the date of DISTRICT's final payment.

Neither DISTRICT's inspection nor failure to inspect shall relieve CONSULTANT of any obligation hereunder, if in DISTRICT's opinion, any article, material or work fails to conform to specifications or is otherwise defective, CONSULTANT shall promptly replace same at CONSULTANT's expense. No acceptance or payment by DISTRICT shall constitute a waiver of the forgoing, and nothing herein shall exclude or limit any warranties implied by law.
8. **Assignment or Sub-contracting:** CONSULTANT may neither assign a right under or an interest in this CONTRACT, nor delegate or subcontract an obligation under this CONTRACT without the written consent of DISTRICT. Any attempts to do so without DISTRICT consent, in writing, will be void.
9. **Independent Contractor:** CONSULTANT is acting as an independent Contractor, not an agent or employee of DISTRICT.
10. **Non-Discrimination:** CONSULTANT shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment due to race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or other

prohibited basis. All non-discrimination rules or regulations required by law are included in this CONTRACT by this reference.

11. **Termination:** In addition to any other remedies or rights it may have by law, DISTRICT may in its sole and absolute discretion terminate this CONTRACT with or without cause. In such cases, CONSULTANT shall be entitled to payment only for goods, materials, or services performed that are acceptable to the DISTRICT.
12. **Consent to Breach Not Waiver:** No provision of this CONTRACT shall be deemed waived and no breach shall be deemed excused, unless such waiver or excuse is in writing and signed by the party making the waiver or excusing the breach. No such waiver shall constitute a waiver of another provision or an excuse of another breach.
13. **CONSULTANT's Remedies:** If DISTRICT defaults under this CONTRACT, CONSULTANT may file a claim with DISTRICT, in accordance with applicable provisions of law.
14. **Performance:** CONSULTANT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to DISTRICT's satisfaction. Services performed are subject to, and must conform to DISTRICT's standard specifications. CONSULTANT shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the CONSULTANT under this CONTRACT. CONSULTANT shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore. CONSULTANT shall be fully responsible for all work performed by subcontractors and shall refrain from utilizing unlicensed or uninsured subcontractors.
15. **Force Majeure:** If the performance of any act required of DISTRICT or CONSULTANT is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event DISTRICT or CONSULTANT claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of that fact within ten (10) calendar days after the beginning of any such claimed delay.
16. **Compliance with Laws:** CONSULTANT represents and warrants that services to be provided under this CONTRACT shall fully comply, at CONSULTANT's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws") applicable to the services at the time services are provided to and accepted by DISTRICT.
17. **Pricing:** The CONTRACT bid price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.
18. **Indemnification and Insurance:** To the extent permitted by law, CONSULTANT shall hold harmless, defend at its own expense, and indemnify Joshua Basin Water District, its directors, officers, employees, and authorized volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees and costs, arising from all acts or omissions of CONSULTANT or its officers, agents, or employees in rendering services under this CONTRACT; excluding, however, such liability, claims, losses, damages or expenses arising from Joshua Basin Water District's sole negligence or willful acts.

Labor Code: By its signature hereunder, CONSULTANT certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this CONTRACT. CONSULTANT and subcontractors will keep workers' compensation insurance for their employees in effect during all work covered by this CONTRACT.

Minimum Insurance Requirements:
CONSULTANT shall procure and maintain for the duration of the CONTRACT insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors.

CONSULTANT shall have its insurer provide the DISTRICT a Certificate of Insurance (COI) with endorsements verifying coverage. Coverage shall be at least as broad as the following:

18.1 Commercial General Liability (CGL): Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least **two million dollars (\$2,000,000)** per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Joshua Basin Water District) or the general aggregate limit shall be **twice** the required occurrence limit.

18.2 Automobile Liability: Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if CONSULTANT has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of at least **one million dollars (\$1,000,000)** (or the full per occurrence limits of the policies available, whichever is greater) for bodily injury and property damage each accident. Auto coverage naming Joshua Basin Water District, as additional insured using ISO additional insured.

18.3 Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **one million dollars (\$1,000,000)** per accident for bodily injury or disease.

Waiver of Subrogation: The insurer(s) agrees to waive all rights of subrogation against Joshua Basin Water District, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for Joshua Basin Water District; but this provision applies regardless of whether or not the District has received a waiver of subrogation from the insurer.

18.4 Professional Liability: (Also known as Errors & Omission) Insurance appropriate to the CONSULTANT profession, with limits no less than **one million dollars (\$1,000,000)** per occurrence or claim, and **two million dollars (\$2,000,000)** policy aggregate.

If the CONSULTANT maintains broader coverage and/or higher limits than the minimums shown above, Joshua Basin Water District requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available Joshua Basin Water District.

Other required provisions:

The CGL policy must contain, or be endorsed to contain, the following:

Additional Insured Status: Joshua Basin Water District, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 10 01), with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage: For any claims related to this project, the CONSULTANT's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Joshua Basin Water District, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Joshua Basin Water District its directors, officers, employees and authorized volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

Notice of Cancellation: If any of the required coverages expire during the term of this CONTRACT, the CONSULTANT shall deliver the renewal certificate(s) including the general liability additional insured endorsement(s) to JBWD at least 10 days prior to the expiration date.

Self-Insured Retentions: Self-insured retentions must be declared to and approved by JBWD. The DISTRICT may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Joshua Basin Water District.

Acceptability of Insurers: Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by JBWD. Insurance must be licensed to do business in California.

Verification of Coverage: CONSULTANT shall furnish Joshua Basin Water District with certificates and amendatory endorsements or copies of

the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by JBWD before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. JBWD reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages.

Subcontractors: CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONSULTANT shall ensure that Joshua Basin Water District its directors, officers, employees, and authorized volunteers are an additional insured on CGL Coverage.

19. Miscellaneous Terms and Conditions: CONSULTANT acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.

A. Headings: The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

B. Severability: If any term, covenant, condition or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

C. Attorney Fees: In any action or proceeding to enforce or interpret any provisions of this CONTRACT, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

D. Interpretation: This CONTRACT represents the entire and integrated CONTRACT between DISTRICT and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral, including any sales agreements or contracts to the extent the same are inconsistent with the terms hereof.

E. Authority: The parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

F. Notice: Notice shall be given by first class mail, facsimile, or other electronic/telecommunications transmission with a date and time receipt acknowledgement or personal delivery. Notice shall be effective upon receipt. The Parties hereby covenant and agree that each party may rely on a telefax signature of the other with respect to matter pertaining to this CONTRACT and the confirmation of delivery of fax shall be sufficient evidence of any notice required hereunder.

20. Signature: Each party represents and warrants that this CONTRACT is valid and binding, is duly authorized by appropriate authority and approving action, and that the person signing this CONTRACT has the authority to bind the respective party to this CONTRACT. Time is of the essence with respect to performance of this CONTRACT.

20.1 Cancellation of Purchase Order: If CONSULTANT does not execute & return this Purchase Order to District within seven (7) working days of the date of this Purchase Order, this Purchase Order shall be deemed null and void.