



COACHELLA VALLEY WATER DISTRICT PURCHASE ORDER TERMS AND CONDITIONS

Where incorporated by reference, the following terms and conditions are made a part of each Purchase Order issued by the Coachella Valley Water District (CVWD). In accepting the Purchase Order, Seller acknowledges and agrees:

1. Binding Contract. Execution of this Purchase Order or commencement of performance pursuant to this Purchase Order constitutes acceptance by Seller. If delivery dates cannot be met, Seller shall immediately inform CVWD in writing.

2. Delivery. CVWD's work plans are based upon the agreement that materials will be delivered to CVWD by the date specified on the Purchase Order. If deliveries are not made at the time agreed upon, CVWD reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefore.

All sales are F.O.B. to the location specified in the Purchase Order. Seller shall be fully responsible and bear all risk of loss or damage until delivered.

3. Quantities. Shipments must be equal to the exact quantities specified in the Purchase Order unless otherwise agreed to in writing by CVWD.

4. Compensation. CVWD shall compensate Seller in the amount specified in the Purchase Order. All prices include, unless otherwise specified, all Federal, State or local taxes that may be levied or assessed, or are otherwise applicable. CVWD may withhold payment or a portion thereof because of defective items not remedied or unsatisfactory performance by the Seller. CVWD will release any withheld funds upon Seller satisfactorily remedying the issue that resulted in the withholding. CVWD will not pay late fees to the Seller.

5. Shipment. All items shall be packed, marked and shipped in suitable containers and in accordance with all regulatory and carrier-specific requirements and in accordance with good commercial practice to ensure against damage from weather and/or transportation. Any items not shipped by Seller or received by CVWD in accordance with those terms may be rejected by CVWD without liability. No charge shall be made for packing, crating, drayage or other similar costs. CVWD may, from time to time, change shipping schedules or direct that Seller temporarily suspend any shipments.

6. Notification. In the event of a problem or potential problem that could impact the quality or quantity of work, services or the level of performance, the Seller shall, within one (1) business day of actual knowledge of the problem or potential problem, notify CVWD in writing and by telephone.

7. Acceptance. The items shall be received subject to CVWD's inspection and right of rejection. The items shall not be considered accepted until inspection, testing and/or use is found to be in accordance with CVWD specifications. Final inspection shall be at CVWD's premises, unless otherwise agreed in writing. If the items are found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, CVWD shall have the

right, in addition to any other rights which it may have under warranties or otherwise, to reject the items in whole or in part. Rejected items shall be held at Seller's risk for a reasonable time thereafter and shall be returned or disposed of at Seller's expense. No rejected items shall be replaced by Seller without written instruction or authorization from CVWD.

8. Warranty. In addition to all warranties which may be provided by law, Seller warrants that the items delivered shall (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by CVWD; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty, or as agreed to by Seller and CVWD, from the date of final written acceptance by CVWD. This warranty shall survive any inspection, delivery, acceptance, or payment by CVWD. Seller, at its own expense, shall repair or replace, at the option of CVWD, any defective items within two (2) business days after receipt of notice from CVWD or within four (4) hours in case of emergency, as determined by CVWD. Seller also warrants that the items are free and clear of all liens and encumbrances whatsoever, that Seller is conveying good and marketable title to same, and that Seller owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the items. Seller agrees to indemnify, defend and hold CVWD harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

9. Termination. CVWD may terminate the contract, in whole or in part, with or without cause, upon ten (10) days written notice to Seller. Upon receipt of the termination notice, Seller shall promptly stop work unless the notice directs to the contrary. In the event CVWD renders such written notice to Seller, Seller shall be entitled to compensation for all services properly rendered prior to the effective date of the notice and all further services set forth in the notice. CVWD shall be entitled to reimbursement for any compensation paid in excess of services rendered and shall be entitled to withhold compensation for defective work or other damages caused by Seller. Seller acknowledges CVWD's right to terminate this contract and hereby waives any and all claims for damages that might arise from CVWD's termination of this contract. Seller shall deliver to CVWD and transfer title (if necessary) to all completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. CVWD shall not be



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liable for any costs other than the charges or portions thereof which are specified herein. Seller shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

10. Duty to Indemnify. To the fullest extent permitted by law, Seller shall indemnify and hold CVWD, its Board, members of the Board, employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Seller, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Seller's services, or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

In addition, Seller shall defend, with counsel of CVWD's choosing and at Seller's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by this section that may be brought or instituted against CVWD or its Board, members of the Board, employees, and authorized volunteers. Seller shall pay and satisfy any judgment, award or decree that may be rendered against CVWD or its Board, members of the Board, employees, and authorized volunteers as part of any such claim, suit, action or other proceeding. Seller shall also reimburse CVWD for the cost of any settlement paid by CVWD or its Board, members of the Board, employees, or authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for CVWD's attorneys' fees and costs, including expert witness fees. Seller shall reimburse CVWD and its Board, members of the Board, employees, and/or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Seller's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by CVWD, its Board, members of the Board, employees, or authorized volunteers.

11. Insurance. Seller shall carry and maintain, at its sole cost and expense, at all times while the Purchase Order is in effect, with a reputable company or companies reasonably acceptable to CVWD:

(a) Commercial General Liability Insurance, Insurance Services Office (ISO) Form CG 00 01, written on an occurrence basis of at least \$1,000,000 per occurrence, for bodily injury, property damage, personal & advertising injury, and ongoing and products and completed operations.

(b) Commercial Automobile Liability Insurance written

on a per occurrence basis with a single limit of liability in the amount of \$1,000,000 for bodily injury and property damage. Said policy shall include coverage for owned, non-owned, leased and hired cars. If Contractor is carrying pollutants, the automobile policy must provide pollution liability for transporting/carrying pollutants to cover clean-up cost, bodily injury, property damage, and expenses related to such. In addition it is required that the automobile policy endorse a Motor Carrier Policies of Insurance for Public Liability under sections 29 and 30 of the Motor Carrier Act of 1980 (MCS-90).

(c) Workers' Compensation Insurance as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq. along with Employer's Liability limits of \$1,000,000.

(d) Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, including transporting/carrying pollutants and site location to cover clean-up cost, bodily injury, property damage, and expenses related to such. with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

(e) All Coverages. Each insurance policy shall contain the following provisions and endorsement forms that:

(i) Names CVWD, its employees, directors, officers, and agents as additional insureds (Except workers' compensation); and,

(ii) The insurer waives all right of subrogation against CVWD, its employees, directors, officers and agents; and,

(iii) Written notice shall be given to CVWD at least 30 days prior to termination, cancellation or reduction of coverage in the policy; and,

(iv) Such insurance is primary insurance as respects to the interests of the additional insured and that any other insurance maintained by the additional insured is excess and not contributing insurance with the insurance required by Contractor; and,

(v) Apply a "Cross Liability" or "Severability of Interest" clause to CVWD; and,

(vi) Have deductibles which are not greater than those normally maintained for similar projects in the State of California.

(vii) Such insurance, subject to all of its other terms and conditions, applies to the liability assumed by Contractor under the Agreement.

(f) Prior to commencement of any work, Contractor shall deliver to CVWD, the certificates of insurance and endorsements covering all policies providing the required insurance referred to above, and shall be signed on behalf of the insurer by its authorized representative. Contractor shall, upon written request by CVWD, furnish copies of such policies, certified by an authorized representative of the insurer.

(g) Contractor shall not allow any subcontractors to



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commence work on any subcontract relating to the work until Contractor has verified that all subcontractors maintain insurance meeting all requirements under this Section and Contractor shall ensure that subcontractors and CVWD is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

(h) The foregoing requirements as to the types, limits and CVWD's approval of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Agreement.

Labor. Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000, et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. A copy of the prevailing rates are on file and available at CVWD or may be obtained online at <http://www.dir.ca.gov/dlsr>. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site.

12. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. If the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, Contractor and all subcontractors must be registered with the Department of Industrial Relations ("DIR"). Contractor shall maintain registration for the duration of the project and require the same of any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of Contractor to comply with the Prevailing Wage Laws is subject to the Contractor's duty to indemnify set forth herein. It shall be mandatory upon

the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

13. **No Waiver.** The fact that CVWD has made payment shall not be interpreted to imply CVWD has inspected, approved or accepted the work which has been performed by Seller. No delay or omission in the exercise of any right or remedy by the non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default.

14. **Setoffs and Counterclaims.** All claims for moneys due or to become due to Seller shall be subject to deduction by CVWD for any setoff or counterclaim arising out of this or any other of CVWD's agreements with Seller.

15. **Assignment.** Seller shall not assign any portion of the work to be performed or any of the rights or obligations, without the prior written consent of CVWD, which consent may be withheld in CVWD's sole and absolute discretion. Any attempted assignment in violation of the provisions of this paragraph shall be void.

16. **Independent Contractor.** Seller shall act as an independent contractor in the performance of this Agreement and in no respect shall Seller be considered an agent or employee of CVWD. No provisions of this Agreement shall be intended to create a partnership or joint venture between Seller and CVWD and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

17. **Compliance with Applicable Laws.** Seller shall, in the performance of this Agreement, comply with all federal, state and local laws and regulations and orders issued under any applicable law.

18. **Governing Law, Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in Riverside County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

19. **Third Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CVWD and the Seller.



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