

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**

When used herein, unless otherwise distinctly expressed, the terms:

1.1 "Addenda" shall mean written or graphic instruments issued by CAWCD prior to the execution of the Contract Documents which modify or interpret the Contract Documents by additions, deletions, clarifications or corrections.

1.2 "Attachment" shall mean any item the Contract Documents require the Contractor to submit.

1.3 "CAWCD" shall mean the Central Arizona Water Conservation District.

1.4 "Contract" shall mean the agreement between CAWCD and the Contractor as expressed by the Contract Documents.

1.5 "Contractor" shall mean the company that is awarded the Contract for the supply of the specified Goods or Services.

1.6 "Contract Documents" shall mean and consist of the Invitation for Bids, Request for Proposals, Request for Quotations, Request for Statements of Qualifications, the Purchase Order or any other offer accepted by CAWCD, and all Addenda issued prior to and all Modifications agreed to after the execution of the Contract.

1.7 "Goods" shall mean any or all of the goods, products, materials, supplies, and equipment to be provided as a part of the Contract Documents whether or not specifically identified in the Contract Documents.

1.8 "Modification" shall mean (1) a written amendment to the Contract signed by both parties, or (2) a Change Order.

1.9 "Services" shall mean all labor and equipment furnished or utilized in the performance of the Work required herein.

1.10 "Subcontractor" means a person who contracts to perform work or render service to Contractor or to another subcontractor as a part of this Contract.

1.11 "Work" shall mean all demolition and construction services, supervision, administration services, coordination of all subcontractors, tests, inspections, and other Goods that are necessary to and appropriate for the finishing, equipping and functioning of the facilities and structures required for completion of the Contract.

1.12 "Uncontrollable Forces" shall mean any cause beyond the control of the party affected, including but not limited to the failure or threatened failure of facilities, flood, earthquake, storm, lightning, epidemic, war, act of terrorism, riot, civil disturbance or

disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority not a party to this Contract, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a party to settle any strike or labor dispute in which it is involved.

2. **AMENDMENTS AND MODIFICATIONS**

CAWCD may, at any time, make changes in the drawings, designs, specifications, quantities, schedule, or the manner, method, or place of performance. All changes must be in writing and provided to Contractor prior to performance of Work or shipment of Goods. If such change increases or decreases the cost or the time required for performance under this Contract, an equitable adjustment shall be made in the price and delivery schedule, as applicable, by mutual agreement between the parties. Any claim for price or schedule adjustment under this section must be asserted within thirty (30) calendar days from written notice of the change or such claim shall be considered waived.

3. **TIME IS OF THE ESSENCE**

Time is of the essence respecting performance under this Contract.

4. **FORCE MAJEURE**

Contractor shall be excused from delay in performance if such delay is due to Uncontrollable Forces. Failure to notify CAWCD within thirty (30) calendar days of the occurrence of Uncontrollable Forces will be deemed a waiver of any claim for an extension of time for performance by Contractor.

5. **WAIVER; REMEDIES**

The waiver by CAWCD of any breach or failure to provide full performance under any of the terms and conditions of this Contract shall not be construed as a waiver of any other terms or conditions, or of any subsequent breach of the same or any other terms or conditions. CAWCD's acceptance of any Goods or Services performed under this Contract, shall not be construed as a waiver of any rights of CAWCD arising out of any prior or subsequent failure of Contractor to comply with any of the terms or conditions of this Contract. The remedies reserved to CAWCD shall be cumulative and shall be in addition to all other remedies at law or equity available to CAWCD.

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6. CANCELLATION

CAWCD may cancel all or any part of this Contract if CAWCD determines that cancellation is in the best interest of CAWCD. CAWCD may cancel all or any part of this Contract upon Contractor's default or any breach of performance due under the terms and conditions of this Contract or failure to meet or comply with any specifications, schedules or exhibits attached hereto, or upon the happening of any of the following: 1) insolvency of Contractor, 2) filing of a voluntary or involuntary petition in bankruptcy by Contractor, 3) appointment of a receiver or trustee for Contractor, or 4) execution by Contractor of any assignment for benefit of creditors. In the event of cancellation occasioned by a breach, default, insolvency, petition or assignment, CAWCD shall only be liable for delivered Goods or Work in progress which have been accepted at the time of notice of cancellation.

7. INDEMNITY

7.1 To the extent permitted by law, Contractor shall indemnify and hold harmless the United States of America, CAWCD and its directors, officers, other agents and employees against all liability, losses, damages, costs, charges, expenses, including reasonable attorneys' fees, claims, demands and causes of action, based upon or arising out of any injury (including death) or damage to any persons or property, which the United States of America, CAWCD or its directors, officers, agents or employees may incur or be subjected to as a result of any negligent acts by the Contractor in connection with the project. The indemnity provided herein shall survive the termination of the Contract.

7.2 To the extent permitted by law, CAWCD shall indemnify and hold harmless the Contractor and its directors, officers, other agents and employees against all liability, losses, damages, costs, charges, expenses, including reasonable attorneys' fees, claims, demands and causes of action, based upon or arising out of any injury (including death) or damage to any persons or property, which the Contractor or its directors, officers, agents or employees may incur or be subjected to as a result of any negligent acts by CAWCD in connection with the project. The indemnity provided herein shall survive the termination of the Contract.

8. TAXES

All federal, state or local taxes which are billed to CAWCD by the Contractor on account of the Services performed or Goods furnished by this Contract, including taxes based upon or measured by the gross receipts shall be separately stated in Contractor's invoice.

9. GOVERNING LAW

This Contract shall be formed, construed and governed by the laws of the state of Arizona, both as to interpretation and performance.

10. NOTICES

Unless otherwise provided, all notices required to be given shall be in writing and may be given in person, by facsimile transmission, electronic mail or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the party to whom notice is given, delivery to the designated address of the party, or if mailed, three (3) business days after deposit in the United States mail addressed as shown below or to such other address as such party may from time to time designate in writing.

To CAWCD:
Central Arizona Water Conservation District
P.O. Box 43020
Phoenix, Arizona 85080-3020
Attn: Purchasing Supervisor

To Contractor:
At the address shown on the face of the purchase order or as otherwise noted in the Contract Documents

11. SEVERABILITY

In the event any provision hereof shall be declared invalid, such provision shall be deemed severable from the remaining provisions of this Contract, which shall remain in full force and effect.

12. WEAPON FREE WORKPLACE

12.1 It is the intention of CAWCD to maintain a safe and productive work environment free from threats or acts of violence. CAWCD is committed to maintaining a workplace free from violence for all employees, contractors, vendors, customers, and visitors. All CAWCD employees, third-party contract workers, contractors, vendors, and visitors are prohibited from bringing or possessing firearms, explosives, or dangerous or offensive weapons on CAP property or in CAWCD vehicles. Only public law enforcement officials or CAWCD Protective Services employees with proper and documented training are authorized to carry firearms. This provision shall not create an obligation on the part of CAWCD to take any action beyond what is required by law.

12.2 Contractors shall notify CAWCD's Purchasing Supervisor when a contract requires explosives, nail guns, or similar Goods be brought on to CAWCD property.

13. DISPUTE RESOLUTION /ARBITRATION

13.1 Any dispute between CAWCD and the Contractor shall be referred to a designated

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senior representative of CAWCD and a designated senior representative of the Contractor for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) calendar days or such other period as the parties may mutually agree, the dispute shall be submitted to arbitration for resolution.

13.2 Any arbitration initiated pursuant to the Contract shall be brought in Phoenix, Arizona and conducted before a single neutral arbitrator agreed to by the parties. If the parties fail to agree upon a single arbitrator within ten (10) calendar days of the referral of the dispute to arbitration, each party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall, within twenty (20) calendar days, select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in the subject matter of the Contract, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the parties an opportunity to be heard and, except as otherwise provided, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

13.3 Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) calendar days of appointment and shall notify the parties in writing of the decision and the reasons for the decision. The arbitrator(s) are authorized only to interpret and apply the provisions of the Contract and any amendments entered into under the Contract and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act.

13.4 Each party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable:

One half the cost of the single arbitrator jointly chosen by the parties; or the cost of the arbitrator chosen by the party to sit on the three member panel and one half of the cost of the third arbitrator chosen.

14. SUCCESSORS AND ASSIGNS

14.1 The Contract shall be binding upon and inure to the benefit of the parties hereto and

their respective successors and permitted assigns. The Contractor shall not assign or otherwise transfer the Contract or delegate its duties hereunder to any other person or entity without the prior written consent of CAWCD.

14.2 The Contractor shall not subcontract the Services specified herein to any third party without the prior written consent of CAWCD. All subcontracts entered into by the Contractor shall be subject to all the terms and conditions of this Contract. All subcontracts shall bind the subcontractor to any and all obligations, terms, covenants, and conditions contained in this Contract.

15. PRICE, PAYMENT, INVOICES

15.1 Any price specified in this Contract is exclusive of all sales, use and transaction privilege taxes, and taxes based on the gross receipts of the Contractor, unless expressly stated otherwise. Any price specified in this Contract includes all charges for packing and loading.

15.2 The original invoice shall be mailed to CAWCD's Accounts Payable at the time of delivery of the Goods. The invoice shall reference the purchase order number, describe the Goods as shown on this Contract, and state all transportation charges and taxes separately. CAWCD may make adjustments in Contractor's invoices, either before or after payment due to shortage, late delivery, rejection, or other failure to comply with the performance requirements of this Contract. The time for payment of invoices, or for accepting any prompt payment discounts offered, shall run from the date correct invoices are received by CAWCD.

15.3 If CAWCD requests a refund, it shall be paid to CAWCD within fifteen (15) calendar days after Contractor's receipt of CAWCD's notice of rejection. CAWCD reserves the right to use monies owed, but unpaid, to Contractor for rejected Goods as a credit against future or existing obligations of CAWCD to Contractor.

16. COMPLIANCE WITH LAWS

Contractor warrants that all Goods and Services supplied hereunder have been sold, produced, delivered and furnished in strict compliance with all applicable laws and regulations to which the Contractor is subject, including but not limited to the Civil Rights Act of 1964, Executive Order 11246, the Walsh-Healy Act and the Occupational Safety and Health Act. To the extent applicable, the Equal Opportunity Clause provided for in the Regulations issued pursuant to Executive Order 11246; the Affirmative Action Clause for Handicapped Workers provided for in the Regulations issued pursuant to the Rehabilitation Act of 1973; and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam era provided for in the Regulations issued pursuant to the Vietnam Veterans Adjustment Act of 1974, are hereby

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incorporated by reference as though fully written herein. The provisions of this Section shall be included in every subcontract unless exempted. Contractor shall execute and deliver to CAWCD such documents as may be required to effect or evidence compliance with such laws, rules, regulations, executive orders, permits and other authorizations.

17. **ENTIRE AGREEMENT; MODIFICATION**

This Contract, including any schedules, exhibits, riders or attachments incorporated herein, and any Addenda or Modifications hereto constitute the entire agreement between the parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. No modification, amendment, or alteration of this Contract shall be valid unless it is in writing and signed by the Contractor and CAWCD. The Contract shall not be modified, amended or altered by Contractor's preprinted forms. No verbal agreements with any officer, agent or employee of CAWCD or Contractor shall affect or modify any of the terms or obligations set forth in the Contract.

18. **PERMITS AND RESPONSIBILITIES**

The Contractor shall, without additional expense to CAWCD, be responsible for obtaining any and all licenses and permits, and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the Contract.

19. **CONTRACT ORDER OF PRECEDENCE; DRAWINGS**

19.1 In the event of a conflict in the provisions of the Contract, as accepted by CAWCD and as they may be amended, the following shall prevail in the order set forth: 1) Special Terms and Conditions, 2) General Terms and Conditions, 3) Specifications, Drawings, or Scope of Work, 4) Attachments, 5) Exhibits, 6) Contract Documents.

19.2 Any drawings included with the Contract shall be considered to supplement the specifications regardless of where they may appear. Any inconsistency between the drawings and the specifications shall be resolved by giving precedence to the specifications.

20. **COMPLIANCE WITH ARIZONA EMPLOYERS SANCTIONS LAW**

Pursuant to Arizona Revised Statute ("ARS") Section 41-4401 Contractor shall comply with and ensure that each subcontractor complies with the federal immigration laws and regulations that relate to their employees and the provisions of ARS Section 23-214, subsection A. By submitting an offer or accepting a purchase order, the Contractor agrees that it shall comply and ensure that

each subcontractor complies with all of the following provisions:

a) Contractor and each and every subcontractor warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with ARS Section 23-214, subsection A.

b) A breach of a warranty under this Section shall be deemed a material breach of this Contract that is subject to penalties up to and including termination of this Contract.

c) CAWCD retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that Contractor or any subcontractor is complying with the warranty under this section.

d) The Contractor will cooperate with CAWCD to develop a process to verify the Contractor's and subcontractors' employment records to comply with this provision. CAWCD, at its sole discretion, will determine the method of verification. Contractor shall comply and cooperate with any procedures established by CAWCD to conduct random verification of the employment records of Contractor and any subcontractor to ensure that the Contractor and subcontractors are complying with their warranties. If Contractor or any of its subcontractors employs any subcontractor(s) in performance of this Contract, Contractor shall notify CAWCD in writing and shall provide evidence of each subcontractor's agreement to the requirements of this Section by providing a certification satisfactory to CAWCD.

e) CAWCD shall not deem Contractor or any of its subcontractors in material breach of this Contract if Contractor or any affected subcontractor(s) establishes that it has complied with the E-verify program prescribed by sections 274a and 274b of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by Arizona Revised Statutes Section 23-214, subsection A.

f) All costs necessary to verify compliance with this Section are the responsibility of the Contractor.

g) For the purposes of this Section:

(1) "E-verify program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

(2) "Services" means the furnishing of labor time or effort in this state by a Contractor or Subcontractor.