

**Service Contract Terms and Conditions
Professional Services
Joint Regional Water Supply System**

1. Entire Contract: This CONTRACT, when accepted by the CONSULTANT either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. The term CONSULTANT includes contractors and consultants.

Except as otherwise provided in subsection 1.1 below, the entire CONTRACT consists of a) JRWSS' solicitation/request for bids or proposals, together with plans and specifications, if any, b) CONSULTANTs bid or proposal, if any, c) the Service Contract form, and d) these terms and conditions. Except for any section or subsection marked "WAIVED", each provision of the terms and conditions applies to the CONTRACT.

1.1 Any other terms, conditions, or limitations suggested by CONSULTANT shall not form a part of this CONTRACT, unless accepted in writing by JRWSS. In no event, shall e-mail, voice-mail or electronic communication of any type be construed as a writing for purposes of obligating the JRWSS.

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 Orange, 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 JRWSS and CONSULTANT subject to any required JRWSS approval.

4. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

5. 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 JRWSS with invoice, FOB Destination. Goods shall not be accepted if shipped C.O.D.

6. Acceptance/Payment: Unless otherwise agreed to in writing by JRWSS, 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 JRWSS, and b) payment shall be made in arrears after satisfactory acceptance. JRWSS reserves the right to reject any good or service which does not comply with the specifications and/or terms of this CONTRACT.

7. Payment Terms:

7.1 Standard: Net 30 days unless otherwise stated in CONTRACT.

7.2 Invoices: CONSULTANT shall submit itemized invoices to JRWSS, Attn. Accounts Payable at the address shown on this CONTRACT. Each invoice must show JRWSS' Service Contract 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 JRWSS formats are required for Professional Services Contracts. Incomplete invoices (including missing formats) shall be returned to the CONSULTANT.

8. 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 JRWSS 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 JRWSS' final payment.

Neither JRWSS' inspection nor failure to inspect shall relieve CONSULTANT of any obligation hereunder, if in JRWSS' 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 JRWSS shall

constitute a waiver of the forgoing, and nothing herein shall exclude or limit any warranties implied by law.

9. 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 JRWSS. Any attempts to do so without JRWSS consent, in writing, will be void.

10. Independent CONSULTANT: CONSULTANT is acting as an independent CONSULTANT, not an agent or employee of JRWSS.

11. 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.

12. Termination: In addition to any other remedies or rights it may have by law, JRWSS may in its sole and absolute discretion, terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. In such cases, CONSULTANT shall be entitled to payment only for goods, materials or Services performed that JRWSS has accepted.

13. 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 or 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.

14. CONSULTANTs Remedies: If JRWSS defaults under this CONTRACT, CONSULTANT may file a claim with JRWSS, in accordance with applicable provisions of law.

15. Performance: CONSULTANT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to JRWSS' satisfaction. Services performed are subject to, and must conform to JRWSS' 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.

16. Force Majeure: If the performance of any act required of JRWSS 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 JRWSS 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.

17. 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 JRWSS.

Safety. The CONSULTANT shall execute and maintain CONSULTANT's work so as to avoid injury or damage to any person or property. In carrying out CONSULTANT's work, the CONSULTANT shall at all times exercise necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state, and local statutory and regulatory requirements including, but not limited to, California Department of Industrial Relations (CALOSHA) regulations; and the US Department of Transportation Omnibus Transportation Employee Test.

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18. 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 (the "Services"), and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

19. Indemnification and Insurance:

When the law establishes a professional standard of care for Consultant's professional Services, Consultant will defend, indemnify and hold harmless JRWSS, its directors, officers, engineers, employees or agents from all claims and demands of all persons to the extent arising out of, pertaining to, or relating to the Consultant's negligence, recklessness, or willful misconduct whether by act or omission to act, in failure to meet a professional standard for performance, or for actual or alleged non-performance of the work under this agreement. Consultant shall defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of Consultant's performance or non-performance of the work hereunder, and shall not tender such claims to Joint Regional Water Supply System nor to its directors, officers, engineers, employees, or agents, for defense or indemnity.

Other than in the performance of professional Services, to the fullest extent permitted by law, CONSULTANT will defend, indemnify and hold harmless the JRWSS, its directors, officers, engineers, employees and agents from all claims and demands of all persons arising out of the performance of the work, or actual or alleged non-performance, or the furnishing of materials; including but not limited to, claims by the CONSULTANT or CONSULTANT's employees for damages to persons or property except for the sole negligence or willful misconduct or active negligence of the JRWSS, its directors, officers, engineers, employees, or agents.

Consultant's duty to defend and indemnify JRWSS includes, but is not limited to, defense and indemnity against claims and liability arising from disputes as to the payment of prevailing wages for Services under this Agreement.

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 agreement. CONSULTANT and subcontractors will keep workers' compensation insurance for their employees in effect during all work covered by this agreement.

Insurance Provisions:

A. If requested by JRWSS, CONSULTANT will file with the JRWSS before beginning Services, certificates of insurance satisfactory to the JRWSS evidencing general liability coverage, of not less than \$2,000,000 per occurrence (\$4,000,000 general and products-completed operations aggregate (if used) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring 30 days (10 days for non-payment of premium) notice of cancellation to the JRWSS.

A.1 The General Liability coverage is to state or be endorsed to state "such insurance shall be primary and any insurance, self-insurance or other coverage maintained by the JRWSS, its directors, officers, employees, engineers, or authorized volunteers shall not contribute to it.

A.2 General Liability coverage shall give the JRWSS, its directors, officers, engineers, employees, and agents additional insured status as least as broad as ISO endorsement CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 04 13 or equivalent.

B. For General Liability and Worker's Compensation the insurer shall waive its rights of subrogation against JRWSS, its officers, engineers, employees, and agents and shall issue an endorsement to the policy evidencing the same.

C. If requested by JRWSS, CONSULTANT will file with JRWSS before beginning professional Services, a certificate of insurance satisfactory to the JRWSS evidencing professional liability coverage of not less than \$1,000,000 per claim and annual aggregate, requiring 30 days notice of cancellation (10 days for non-payment of premium) to the JRWSS. Coverage is to be placed with a carrier with an A.M. Best rating of no less

than A-:VII, or equivalent, or as otherwise approved by the JRWSS. The retroactive date (if any) is to be no later than the effective date of this Agreement. CONSULTANT shall maintain such coverage continuously for a period of at least three years after the completion of the contract work. CONSULTANT shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. In the event that the CONSULTANT employs other CONSULTANTS (sub-contractor) as part of the work covered by this agreement, it shall be the CONSULTANT's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

D. Insurance coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by the JRWSS. In the event the CONSULTANT employs other CONSULTANTS (subcontractors) as part of the work covered by this agreement, it shall be the CONSULTANT's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above.

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

Prevailing Wages: The Services may constitute "public work" under Section 1720(a) of the Labor Code, which requires payment of prevailing wages for "public work". For public works project greater than \$1000, the CONSULTANT shall pay the general prevailing rate of per diem wages to all workers employed on contracted projects as established by the California Department of Industrial Relations.

20. Miscellaneous Terms and Conditions: CONSULTANT acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT. In the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in any proposal, quote or other document relating to the transactions contemplated by this CONTRACT, the terms and conditions set forth in this CONTRACT shall prevail.

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 JRWSS 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.

21. Counterparts: This Service Contract may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.