

EL TORO WATER DISTRICT PURCHASE ORDER

GENERAL TERMS AND CONDITIONS

MATERIALS AND SERVICES

ARTICLE 1 - GENERAL: The materials or services set forth in this Agreement shall be furnished by CONTRACTOR subject to all the terms and conditions listed herein which CONTRACTOR in accepting this Agreement / Purchase Order (P.O.) agrees to be bound by and comply with all particulars. No other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing.

ARTICLE 2 - DEFINITIONS: The term "DISTRICT" as used in this Agreement means the EL TORO WATER DISTRICT, and the term "CONTRACTOR" means any person, firm, or corporation; including, related sub-suppliers/contractors at any level or tier from whom the commodity or service described in the P.O. is ordered. The term "Goods, Material, and/or Services" includes materials, supplies, equipment, drawings, data and other property to be furnished and all services including; design, delivery, installation, inspection, maintenance, public works, and testing specified or required to furnish any material, equipment, and/or services.

ARTICLE 3 - PURCHASE ORDER REQUIRED: The DISTRICT will not be responsible for services rendered or materials delivered without a system generated purchase order issued and properly signed by the District's authorized Purchasing Agent. When the P.O. covers a continuing service rendered over a stated period of time, CONTRACTOR must obtain a new P.O. or request an amendment to the original P.O. upon expiration of the time period to authorize the continuance of the service for an additional period of time.

ARTICLE 4 - ACCEPTANCE OF THE P.O.: The initiation of performance under the P.O. by the CONTRACTOR shall constitute acceptance of the P.O. by the CONTRACTOR, including all of the terms and conditions herein. Acceptance is limited to the terms stated herein. Any additional or different terms and conditions proposed by the CONTRACTOR are rejected unless expressly agreed to in writing by an authorized representative of the DISTRICT's Purchasing Department. This is an integrated Agreement and may not be modified except in writing signed by both parties or as otherwise expressly provided herein.

ARTICLE 5 - STANDARD OF CARE: The CONTRACTOR shall perform all services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing under similar conditions. CONTRACTOR shall also comply with State and Federal Environmental and Safety Regulations as they apply to the scope of work.

ARTICLE 6 - OWNERSHIP/USE OF CONTRACT MATERIALS AND PRODUCTS: The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by DISTRICT pursuant to this Agreement shall be the sole property of the DISTRICT. The material, reports or products may be used by the DISTRICT for any purpose the DISTRICT deems to be appropriate, including, but not limited to, duplication and/or distribution within the DISTRICT or to third parties. CONTRACTOR agrees not to release or circulate in whole or in part such materials, reports, or products without prior written authorization of the DISTRICT.

ARTICLE 7 - INDEPENDENT CONTRACTOR: The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the District. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which DISTRICT employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold DISTRICT harmless from any and all claims that may be made against DISTRICT based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of DISTRICT merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

ARTICLE 8 - SUBCONTRACT FOR WORK OR SERVICES: No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the DISTRICT; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

ARTICLE 9 - CONDUCT OF CONTRACTOR: The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement. The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to DISTRICT elected officials, officers, employees, and agents

ARTICLE 10 - CHANGES: DISTRICT may direct in writing changes, including additions to or deletions from the quantities originally ordered, or in the specifications or drawings. If any such change causes a material increase or decrease in the cost of, or the time required for, performance hereunder, an equitable adjustment shall be made in the price or schedule. Any claims for adjustment which CONTRACTOR believes result from any change directed by DISTRICT shall be asserted in writing by CONTRACTOR no later than ten (10) days from the date of CONTRACTOR's receipt of any such direction. Equitable adjustments for any claims or changes under this Agreement, including claims arising from terminations or suspensions directed under ARTICLE 26 and 27 of this Agreement, will be made by written Amendment. Nothing contained herein shall excuse CONTRACTOR from proceeding with the change as directed prior to negotiation of any adjustment. Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon the DISTRICT, except when confirmed in writing by a member of the District's Purchasing Department.

ARTICLE 11 - INVOICES: Unless otherwise specified in the P.O., CONTRACTOR shall send DISTRICT a single invoice to ap@etwd.com upon completion of performance. Invoices(s) shall be paid net 45 day upon submittal of a proper invoice. All invoices shall include the proper PO number. Payment shall not be made prior to receipt and acceptance of items and an invoice. Any additional request for funds over and above the contracted price must be obtained through written request for an amendment to the Agreement. This amendment requires approval by both parties prior to approval of additional funds.

ARTICLE 12 - PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provisions is not inserted, or is not correctly inserted then upon application of either party the contract shall forthwith be physically amended to make such insertion or correct.

ARTICLE 13 - RIGHT TO AUDIT: DISTRICT reserves the right to access and audit the CONTRACTOR's records for a period of five (5) years after payment of any invoice. CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or District representative, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five (5) years following termination of this Agreement and be available for audit by the DISTRICT. CONTRACTOR shall provide to the DISTRICT reports and information related to this Agreement as requested by DISTRICT.

ARTICLE 14 - TITLE AND RISK OF LOSS: All prices shall be F.O.B. Destination unless otherwise agreed to in writing. The CONTRACTOR shall be responsible for safe and adequate packing of the items, which shall conform to the carriers' requirements. The CONTRACTOR shall separately number all cases and packages, showing the corresponding numbers on the invoices. An itemized packing slip bearing the P.O. number shall be placed in each container. No extra charge shall be made for packaging or packing materials unless authority therefor is set forth in the P.O. CONTRACTOR shall assume and pay for any and all loss or damage to the merchandise from any cause whatsoever until delivered to Buyer at the specified destination.

ARTICLE 15 - DELIVERY: Timely performance and deliveries are essential to the Agreement. The DISTRICT reserves the right to refuse deliveries made in advance of the delivery schedule. Over shipment allowances, if authorized, will be applied to the entire order. If the DISTRICT agrees to accept deliveries after the date of delivery has passed, the DISTRICT shall have the right to direct the CONTRACTOR to make shipment to the delivery point set forth in the P.O. by the most expeditious means, and the total cost of such expedited shipment and handling shall be borne by the CONTRACTOR. Acceptance of late deliveries shall not be deemed a waiver of the CONTRACTOR's right to hold the CONTRACTOR liable for any loss or damage resulting therefrom, nor shall it act as a modification of the CONTRACTOR's obligation to make future deliveries in accordance with the delivery schedule.

ARTICLE 16 - DELAYS: CONTRACTOR will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition which is beyond CONTRACTOR's reasonable control and without CONTRACTOR's fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot are examples of events which will be excusable for being beyond CONTRACTOR's reasonable control, only upon fulfillment of the following conditions: (a) within seven (7) days of the commencement of any excusable delay, CONTRACTOR shall provide DISTRICT with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof, and (b) within seven (7) days of the cessation of the event causing delay CONTRACTOR shall provide DISTRICT with written notice of the actual delay incurred, upon receipt of which, the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

ARTICLE 17 - INSPECTION AND ACCEPTANCE MATERIALS: All items are subject to final inspection and approval after delivery to DISTRICT. If any items are defective in material or workmanship or otherwise not in conformity with the requirements of the P.O., the DISTRICT shall have the right to require CONTRACTOR to correct or replace them. Final acceptance or rejection shall be made by the DISTRICT as promptly as practicable after delivery. Final acceptance shall be conclusive except with respect to latent defects, fraud or such gross mistakes as amount to fraud, or with respect to the DISTRICT's rights under Article 19 – Warranties Materials clause.

ARTICLE 18 - INSPECTION OF SERVICE; QUALITY CONTROL/ASSURANCE: All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this agreement) shall be subject to inspection and test by the DISTRICT or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other DISTRICT representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the DISTRICT shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the DISTRICT. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected; the DISTRICT shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The DISTRICT may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the DISTRICT because of the CONTRACTOR's failure to perform. CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this agreement; and shall permit a DISTRICT representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this agreement at any time, upon reasonable notice to the CONTRACTOR.

ARTICLE 19 - WARRANTIES MATERIALS: The CONTRACTOR warrants that the items, at time of delivery, shall conform to the DISTRICT's specifications, the requirements of the P.O., approved sample or samples, if any, and are free from defects in design, material and workmanship. Unless otherwise specified in the P.O., this warranty shall remain in effect for a one (1) year period after delivery or for such period of time as the item is normally warranted. At the DISTRICT's option, the CONTRACTOR shall promptly either repair or replace defective items after receipt of the DISTRICT's written notice of a defect. Transportation charges for the return and redelivery of defective items shall be borne by the CONTRACTOR. CONTRACTOR also warrants that said merchandise is free and clear of all liens and encumbrances whatsoever and the CONTRACTOR has good and marketable title to same, and CONTRACTOR agrees to indemnify, defend and hold the DISTRICT, its officers, agents and employees free and harmless against any and all claimants to said merchandise.

EL TORO WATER DISTRICT PURCHASE ORDER

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MATERIALS AND SERVICES

ARTICLE 20 - WARRANTIES SERVICES: The CONTRACTOR warrants that all services and documents provided as part of the services shall conform to the DISTRICT's specifications, the requirements of this contract and approved sample(s), if any, and are free from defects in design and workmanship. All services and/or documents provided as part of the services are subject to final inspection and approval within a reasonable time after completion. If the services and/or documents provided are not in conformity with the specifications herein, the DISTRICT shall have the right to reject them and require the Consultant to correct or replace them without additional charge, or require delivery at a reduced price which is equitable under the circumstances. Final acceptance shall be conclusive except with respect to latent defects, fraud or such gross mistakes as amount to fraud. Unless otherwise specified in the purchase order, this warranty shall remain in effect for a one (1) year period after delivery or for such period of time as the item is normally warranted.

ARTICLE 21 - PREVAILING WAGE: CONTRACTOR is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 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, if applicable. CONTRACTOR shall defend, indemnify, and hold the DISTRICT, its elected officials, officers, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the CONTRACTOR and any subcontractor to comply with all California Labor Code provisions, which include but are not limited to payment of prevailing wages, employment of apprentices, hours of labor, retention of payroll records, and debarment of contractors, to the extent applicable. If the performance of this P.O. is 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, the CONTRACTOR and any subcontractors must be registered with the Department of Industrial Relations ("DIR"), unless this P.O. is exempt pursuant to Labor Code § 1725.5(f). CONTRACTOR shall maintain registration for the duration of the P.O. and require the same of any subcontractors. The CONTRACTOR's services may also be subject to compliance monitoring and enforcement by the DIR. It shall be the CONTRACTOR's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

ARTICLE 22 - NON-DISCRIMINATION: CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code § 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and all other applicable laws or regulations.

ARTICLE 23 - PERMITS OR LICENSES: CONTRACTOR and all of its employees or agents shall secure and maintain in force such licenses and permits as are required by law in connection with the furnishing of Material, Equipment, and/or Services herein requested. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

ARTICLE 24 - INDEMNITY: CONTRACTOR assumes all risk in connection with performance or non-performance of the P.O. To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold DISTRICT and its elected officials, officers and employees, free and harmless from any and all liabilities, obligations, orders, claims, demands, actual damages, governmental fines or penalties, costs, expenses, 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 acts, errors or omissions, or willful misconduct of CONTRACTOR, its officials, officers, employees, subcontractors, consultants or agents in connection with CONTRACTOR's services or this P.O., including without limitation payment of all damages, expert witness fees, attorneys' fees and other related costs and expenses. CONTRACTOR's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by CONTRACTOR, DISTRICT, its officials, officers, employees, agents, or volunteers.

ARTICLE 25 - ASSUMPTION OF RISK: To the extent required by Civil Code § 2782.8, which is fully incorporated herein, CONTRACTOR's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, but shall not otherwise be reduced. If CONTRACTOR's obligations to defend, indemnify, and/or hold harmless arise out of CONTRACTOR's performance of services as a "design professional" (as defined under Civil Code § 2782.8), then upon CONTRACTOR obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of DISTRICT, CONTRACTOR's obligations shall be reduced in proportion to the established comparative liability of DISTRICT and shall not exceed CONTRACTOR's proportionate percentage of fault.

ARTICLE 26 - TERMINATION FOR CONVENIENCE: DISTRICT shall have the right to terminate the P.O. in whole or in part at any time, and from time to time, by written or telegraphic notice effective upon receipt by CONTRACTOR of such notice, even though CONTRACTOR is not in breach of any obligation hereunder. Upon receipt of notice of termination, CONTRACTOR shall immediately discontinue performance and shall comply with DISTRICT's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to the P.O. Upon termination, CONTRACTOR shall be compensated only for those services or goods which have been adequately rendered and delivered to the DISTRICT through the effective date of such termination. CONTRACTOR shall be entitled to no further compensation. However, said payment shall not exceed the price specified herein for such items. CONTRACTOR shall advise the DISTRICT, in writing, of CONTRACTOR's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination. Termination in accordance with this article shall not affect DISTRICT's obligation to pay for items accepted by DISTRICT prior to such termination.

ARTICLE 27 - TERMINATION FOR DEFAULT: The DISTRICT may terminate the whole or any part of CONTRACTOR's work in any one of the following circumstances: (1) If the CONTRACTOR fails to make delivery or fails to perform within the time specified herein or any authorized extension thereof; or (2) If CONTRACTOR delivers nonconforming goods; or (3) If CONTRACTOR fails to perform in accordance with the material provisions of the P.O., or so fails to make progress as to endanger performance of the P.O. in accordance with its terms. In the event of any such failure DISTRICT will provide CONTRACTOR with written notice of the default and DISTRICT's intention to terminate for default if CONTRACTOR fails to cure the default to DISTRICT's satisfaction within seven (7) calendar days of DISTRICT's notice. If CONTRACTOR fails to cure or correct the default to DISTRICT's satisfaction within seven (7) days, DISTRICT may, without further notice to CONTRACTOR, procure upon such terms and in such manner as the DISTRICT may deem appropriate, items and services similar to those terminated, and the CONTRACTOR shall be liable to the DISTRICT for any excess costs of such similar items or services; however, the CONTRACTOR shall continue the performance of the P.O. to the extent not terminated. The rights and remedies of the DISTRICT provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under the P.O.

ARTICLE 28 - COMPLIANCE WITH ALL APPLICABLE LAWS: CONTRACTOR's performance shall in all ways strictly conform with all applicable State, Federal and local laws, regulations, safety orders, and working conditions to which it is subject including, but not limited to, safety rules and regulations prevailing wages under the California Labor Code. CONTRACTOR shall execute and deliver any and all documents as may be required to effect or evidence compliance.

ARTICLE 29 - GOVERNING LAW; VENUE; DEFINITIONS: The definition of terms used, interpretation of the P.O. and rights of all parties hereunder shall be construed under and governed by the laws of the State of California. Any litigation with respect to the P.O. shall be brought and conducted in Orange County, California.

ARTICLE 30 - EXCUSE; WAIVER: Any act or omission of DISTRICT which CONTRACTOR might claim as an excuse for its own failure to perform shall be deemed waived by CONTRACTOR unless it shall notify DISTRICT of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. No action or failure to act by DISTRICT shall constitute a waiver of a right or duty afforded it under the P.O., nor shall such action or failure to act constitute approval of or acquiescence in a breach, except as may be specifically agreed in writing. CONTRACTOR expressly waives the effect of any statutory or common law provision which construes ambiguities in a contract against the party who drafted the contract.

ARTICLE 31 - CONFIDENTIALITY: The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; DISTRICT information or data which is not subject to public disclosure; DISTRICT operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

ARTICLE 32 - INSURANCE: If CONTRACTOR or its employees or agents come onto DISTRICT's property in connection with the Purchase Order, CONTRACTOR agrees to provide current proof of insurance that meets minimal limits, from an insurer with a rating of A-VII or better per Best Insurance Guide and additionally insure El Toro Water District (ETWD).

General Liability
\$2,000,000.00 each occurrence / \$4,000,000.00 general aggregate. In addition to a current certificate of liability insurance, ETWD requires a General Liability Additional Insured endorsement to be named as "Additional Insured" in regards to General Liability. The endorsement should name ETWD as follows: *El Toro Water District, its Board of Directors, each member of its Board of Directors, its officers, employees and agents.*

Automobile Liability
Combined Single Limit \$1,000,000.00

Worker's Compensation and Employers' Liability Each Accident - \$1,000,000.00;
Disease - Policy Limit \$1,000,000.00;
Disease - Each Employee \$1,000,000.00

Certificate of Insurance and General Liability Additional Insured endorsement shall be provided prior to start of service and Mailed, or E-Mailed to:
El Toro Water District Insurance Compliance
24251 Los Alisos Blvd, Lake Forest, CA 92630

E-Mail Address: ap@etwd.com

ARTICLE 33 - CONTRACTOR'S TERMS AND CONDITIONS: CONTRACTOR's pre-printed terms and conditions or restrictions commonly appearing on the reverse side of submitted correspondence and/or CONTRACTOR's specifications, material and contract documents will be disregarded in the absence of a positive written statement from both parties that all or a particular portion of such writings are in addition to or supersede DISTRICT's General Terms contained herein.

ARTICLE 34 - COMPLETE AGREEMENT: The Agreement/P.O., including all applicable terms, conditions and specifications, shall constitute the sole and exclusive agreement between the parties. The Agreement/P.O. supersedes all other writings and negotiations written or oral. DISTRICT will not be responsible for goods delivered or services rendered without a P.O. generated via the DISTRICT's purchasing system and properly signed by the DISTRICT's authorized Purchasing Agent.