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NTMWD TERMS AND CONDITIONS

All purchase orders are subject to the terms and conditions contained within this document, which the parties agree are incorporated herein by reference for all purposes.

1. **ADDITIONAL TERMS:** Notwithstanding acceptance by North Texas Municipal Water District (District) of the goods or services ordered hereby, any additional terms or conditions of contractor, or modifications of these terms and conditions, whether contained within contractor's invoice or otherwise, are rejected by the District unless mutually agreed upon in writing. In the event there are multiple sets of terms and conditions signed by both parties, in the event of a conflict, NTMWD's Terms and Conditions will apply.
2. **CONFLICTS:** In the event the terms and conditions herein express conflict with the terms and/or conditions of any specifications issued by the District in conjunction with this purchase, the specifications shall supersede these terms and conditions to the extent of the conflict.
3. **AUTHORIZATION:** The District will not accept or pay for articles delivered or services performed without a specific written purchase order.
4. **INDEPENDENT CONTRACTOR:** The purchase order shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The contractor's services shall be those of an independent contractor. The contractor agrees and understands that the purchase order does not grant any rights or privileges established for employees of the District.
5. **CONFORMITY OF GOODS/SERVICES:** All goods to be delivered or services to be performed shall confirm in every respect to the specifications issued by the District. In the event no such specifications were issued, the goods or services shall strictly conform to the quote/bid/proposal submitted by the contractor.
6. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By acceptance of this purchase order, in addition to the guarantees and warranties provided by law, contractor expressly guarantees and warrants as follows:
 - a. that the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the contractor will bear the cost of inspecting and/or testing articles rejected,
 - b. **that the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the contractor will, at contractor's own expense, defend any and all claims, actions or suits charging such infringement and will defend with counsel of District's choosing, save, indemnify, and hold harmless the District, its officers, employees, agents, and representatives from any and all claims, losses, liabilities and suits arising therefrom,**
 - c. that the articles to be delivered hereunder will be manufactured, sold and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations,
 - d. that nothing contained herein shall exclude, affect, or otherwise limit the operation of any implied warranties otherwise arising in favor of the District.
7. **PRICING:** Unit pricing shall be in strict conformity with the quote/bid/proposal submitted by contractor.
8. **TAXES:** The District is exempt from federal manufacturer's excise and state sales and use tax. Tax exemption certificates will be executed by the District and furnished upon request.



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9. **PACKAGING:** Unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
10. **F.O.B./DAMAGE:** All orders shall be F.O.B. destination, and shall include all delivery and packaging costs. The District assumes no liability for goods delivered in damaged or unacceptable condition. The contractor shall handle all claims with carriers, and in case of damaged goods, shall provide and deliver replacement goods at no cost to District immediately upon notification by the District of damage.
11. **DELIVERY TIMES:** Deliveries will be acceptable only during normal working hours at the designated location(s).
12. **INSPECTION, REJECTION AND EXCESS SHIPMENT:** In addition to other rights provided by law, the District reserves the right (a) to inspect articles delivered and to return those which do not meet specifications or reasonable standards of quality, (b) to reject articles shipped contrary to instructions or in containers which do not meet recognized standards, and (c) to cancel the order if not filled within the time specified. The District may return rejected articles or excess shipment on this order, or may hold the articles subject to the contractor's order and at contractor's risk and expense, and may in either event charge the contractor with the cost of shipping, unpacking, inspecting, repacking, reshipping and other like expenses.
13. **INVOICES:** Invoices must be submitted by the contractor to the North Texas Municipal Water District, Attention: Accounts Payable, P.O. Box 2408, Wylie, Texas 75098 or via email to payables@ntmwd.com. The District's Purchase Order or Contract Number MUST appear on all invoices, delivery memoranda, bills of lading, packaging, and correspondence.
14. **PAYMENT TERMS:** Payment terms are Net 30 for invoices submitted to and approved by the District. The District utilizes a 3rd party payment provider. Contractors will be required to complete a vendor profile upon award notification to select your preferred payment method.
15. **PATENT RIGHTS: The contractor agrees to defend with counsel of District's choosing, indemnify, and hold the District harmless from any and all claims, demands, and lawsuits involving patent right infringement or copyrights on goods supplied by contractor.**
16. **FUNDING:** The contractor recognizes that any contract shall commence upon the effective date and continue in full force and effect until termination in accordance with its provisions, completion of the project, or acceptance of the goods. Contractor and District herein recognize that the continuation of any contract after the close of any given fiscal year of the District, which fiscal year ends on September 30th of each year, shall be subject to District Board approval. In the event that the District's Board does not approve the appropriation of funds for the contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.
17. **AUDIT:** The District reserves the right to audit the records and performance of contractor during the contract term and for three years thereafter.
18. **INSURANCE:** If doing business on District property, the District requires the contractor to carry the minimum insurance as required by state laws and insurance requirements outlined in Exhibit A.
19. **INDEMNIFICATION: To the fullest extent permitted by laws and regulations, contractor shall defend with counsel of District's choosing, indemnify and hold harmless NTMWD, and its officers, directors, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the contractor's performance under this Purchase**



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Order, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom but only to the extent caused by any intentional, knowing, and/or negligent act or omission of contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work or anyone for whose acts any of them may be liable.

20. **TERMINATION / LIMITATION OF DISTRICT LIABILITY:** The District may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to contractor with the understanding that all services being terminated shall cease upon the date such notice is received unless otherwise indicated in writing by the District. In the event of such termination, it is mutually agreed that District shall only be liable up to the amount of the cost of any satisfactory work actually performed or materials delivered in compliance with the Purchase Order, and shall not be liable for expected profit or any other remedy. In no event shall District be liable for an amount greater than the total price of the Purchase Order.
21. **VENUE:** This agreement will be governed and constructed according to the laws of the State of Texas. Exclusive venue shall be in District Courts of Collin County, Texas.
22. **LIABILITY FOR DAMAGE TO DISTRICT PROPERTY:** The contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the contractor and its employees, agents, subcontractors and supplies, including any delivery or cartage company, in connection with any performance. Contractor shall notify the District in writing of any such damage within one (1) calendar day of causing such damage.
23. **WORKFORCE:**
- a. The contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform for the District.
 - b. Vehicle operators are required to have appropriate state licenses and comply with all federal, state, and local laws governing the operation of motor vehicles.
 - c. The contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services for the District or while on District property:
 - use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
 - d. If the District or District's representative notifies the contractor that any worker is incompetent, disorderly, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the contractor shall immediately remove such worker, and may not employ such worker again for District business without the District's prior written consent.
 - e. The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. Department of Justice form I-9. The contractor warrants that contractor is in compliance with IRCA and will maintain compliance with IRCA while doing business



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with the District. Contractor warrants that contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services for the District.

24. **SAFETY:**

- a. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work, including but not limited to the requirements of the United States Occupational Health and Safety Administration. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - all persons on the site or who may be affected by the work;
 - all the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of project.
- b. Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground facilities and other utility owners when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- c. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by contractor, any subcontractor, supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, shall be remedied by contractor at no cost to NTMWD.
- d. Contractor's duties and responsibilities for safety and for protection of the work shall continue until such time as all the work is completed and final payment has been issued.
- e. Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- f. Debris discharged into the street, into traffic lanes, down gutters/waterways, down storm drains or onto private property must be minimized and cleaned up as quickly as possible.

25. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:**

- a. The contractor, its subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the District and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern.
- b. Services, products, materials, and supplies provided by the contractor must meet or exceed all applicable health, safety, and the environmental laws, requirements, and standards. In addition, contractor agrees to obtain and pay, at its own expense, for all licenses, permits, certificates, and inspections necessary to provide the products or to perform the services hereunder. The contractor shall indemnify and hold the District harmless from and against all claims, demands, suits, actions,



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judgments, fines, penalties, and liability of every kind arising from the breach of the contractor's obligations under this section.

26. **CONFIDENTIALITY:** In order to provide deliverables to the District, contractor may require access to certain of the District's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the District or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the District and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the District and/or its licensors. The contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the District or in a manner not expressly permitted under this agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the contractor promptly notifies the District before disclosing such information so as to permit the District reasonable time to seek an appropriate protective order. The contractor agrees to use protective measures no less stringent than the contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
27. **PREVAILING WAGE RATES:** Contractors are required to pay not less than the rates determined using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, to a worker employed by it in the execution of a contract for the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. Contractors are required to comply with Texas Government Code, Chapter 2258, Prevailing Wage Rates. A worker is employed on a public work if the worker is employed by the contractor or any subcontractor in the execution of the contract for the project.
28. **DISCLOSURE OF CERTAIN RELATIONSHIPS:** A person or business, and their agents, who contract with the District or seek to contract with the District for the sale or purchase of goods, services or property; are required by Texas Local Government Code, Chapter 176, to file a Conflicts Disclosure Questionnaire (FORM CIQ), if applicable, created by the Texas Ethics Commission, which is available online at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>. The form must be filed with the District no later than seven (7) days after the date the person or business begins contract discussions or negotiations with the District, or submits an application, response to a bid, correspondence, or other writing related to a potential agreement with the District for the sale or purchase of goods, services or property.

FOR PURCHASES OF \$100,000 AND ABOVE, THE FOLLOWING PROVISIONS APPLY

29. **FOREIGN TERRORIST ORGANIZATION:** Contractor represents that (1) (a) it does not engage in business with Iran, Sudan, or any foreign terrorist organization and (b) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization, or (2) the United States government has affirmatively declared Bidder/Proposer/Contractor to be excluded from its federal sanctions regimes relating to Sudan, Iran, or any foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given to such term in Section 2252.151, Texas Government Code.



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30. **PROHIBITION ON BOYCOTTING ISRAEL:** Texas Government Code Chapter 2271, prohibits Contracts with Companies Boycotting Israel. On a contract with a company with 10 or more full-time employees and a contract value of \$100,000 or more that is to be paid wholly or partly from public funds, a governmental entity may not enter into said contract with a company for goods or services unless the contract contains a written verification from the company that: (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

"Boycott Israel" is defined in Section 808.001(1) of the Texas Government Code and means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. "Company" is defined in Section 808.001(2) of the Texas Government Code and means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By accepting this purchase order, contractor verifies that it does not Boycott Israel and will not Boycott Israel (as that term is defined in Texas Government Code Section 808.001(1)) during the term of the contract.



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EXHIBIT A NORTH TEXAS MUNICIPAL WATER DISTRICT INSURANCE REQUIREMENTS

Contractors doing business with District shall have, at minimum, the following insurance coverages and limits for the duration of the contract/project:

1. **COMMERCIAL GENERAL LIABILITY** – covering bodily injury and property damage (including property of NTMWD, its officers, agents and employees) with minimum limits on a per project basis of **One Million Dollars (\$1,000,000) occurrence, Two Million Dollars (\$2,000,000) aggregate for premises/operations and One Million Dollars (\$1,000,000) occurrence, Two Million Dollars (\$2,000,000) aggregate for products/completed Operations.**
2. **AUTOMOBILE LIABILITY** - covering all operations of Contractor pursuant to this contract involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than **Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury, death and property damage liability.**
3. **WORKERS' COMPENSATION** – in full accordance with the requirements of the state of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than **Five Hundred Thousand Dollars (\$500,000/\$500,000/\$500,000).** These limits do not affect the payment of medical expenses or lost wages to injured employees.
4. **Waiver of Subrogation** – The Commercial General Liability, Workers Compensation and Auto insurance required pursuant to this Contract shall provide for waivers of all rights of subrogation against NTMWD, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent the loss, if any, is covered by the proceeds of insurance.
5. **Additional Insured Status** – All insurance shall be endorsed to name NTMWD, its officers, and employees as additional insureds as to all applicable coverage except for the Workers Compensation Insurance.
6. **Proof of Carriage of Insurance** – All certificates of insurance will be required in duplicate and filed with NTMWD.
7. All certificates shall provide North Texas Municipal Water District with an unconditional thirty (30) days' written notice in case of cancellation or any major change to Contractor's insurance policies or the contractually required coverages mentioned herein.
8. All copies of the certificates of insurance shall reference the project name and/or bid number for which the insurance is being supplied.
9. The Contractor is responsible for making sure any sub-contractor(s) performing work under this contract have the required insurance coverage(s) and supply NTMWD with the proper documents verifying the coverage.
10. Insurance requirements are subject to change at the District's sole discretion.