

Staff Report

for the Board of Directors Meeting of July 25, 2018

TO: Board of Directors

FROM: Kris Stepanian, Board Secretary
Gary King, PE, PhD, Engineering Manager

DATE: July 18, 2018

SUBJECT: Standard Services Contract (Consent)

ADMINISTRATION

RECOMMENDATION:

Approve the standard Services Contract, as recommended by the Administrative Practices Committee on July 3, 2018.

BACKGROUND:

The District currently has four standard agreements for District work which are the abbreviated agreement, short construction contract, long construction contract, and consulting services agreements. These agreements have provided standardized contract documents for staff to use in construction and consulting work for the District.

The attached standard Services Contract, was developed and reviewed collaboratively with legal counsel and staff to be used for service work such as mowing, maintenance, and cleaning services.

As part of the recommendation to the Board, Staff recommends that the General Manager and District counsel be allowed to make minor modifications as needed to accommodate a variety of contract needs for the District.

On July 3, 2018, the Administrative Practices Committee reviewed updates that they had requested be made on May 1, 2018, to include a merger clause to constitute that the agreement is the final agreement between the parties, and that it supersedes any previous oral or written agreements. An amendment clause was also included as suggested by legal counsel.

BUDGETARY IMPACT: None

KSt/GDK

Attachments: Services Contract



NEVADA IRRIGATION DISTRICT

(Est. 1921)

SERVICES CONTRACT

Project Name (FATR #)

This AGREEMENT, made and entered into this _____ day of _____, by and between NEVADA IRRIGATION DISTRICT, hereinafter referred to as the "DISTRICT", whose address is 1036 W. Main Street, Grass Valley CA 95945, and **CONTRACTOR NAME**, hereinafter referred to as the "CONTRACTOR", whose address is **CONTRACTOR's address** for the **Service Provided**.

The terms of the Contract are as follows:

I. SERVICE DESCRIPTION AND SCOPE

This is a contract for the construction, improvement, repair, or maintenance of public facilities to be performed during its term, to be determined on an "as needed," project-by-project basis. The scope and conditions of the work shall be set forth in individual written work orders issued by the District and accepted by CONTRACTOR. The CONTRACTOR understands it has no authorization to perform work or to receive payment for work other than work explicitly set forth in individual work orders. A purchase order issued by the District can be used synonymously with work orders noted above.

II. YEARLY SERVICE SUM & PAYMENT

CONTRACTOR shall be paid for its work on a **"time and materials," "lump sum," or "lump sum with a not to exceed" please indicate one** basis, at the labor, equipment, and materials costs set forth in the Schedule of Rates attached hereto as Exhibit "B." The scheduled rates are, by this reference, incorporated herein. Payment will be made in the following manner:

A. Payment Schedule

Payment, unless otherwise specified, is to be thirty (30) days after acceptance by the District.

B. Required Documentation for Payment

Invoices will be processed for payment once the work has been accepted by the DISTRICT as complete. CONTRACTOR shall provide invoices by the 25th of each month.

C. Payment Not Acceptance

Any payment made prior to completion and acceptance of CONTRACTOR's work shall not be construed as evidence of acceptance or acknowledgment of completion of any part of CONTRACTOR's work. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the CONTRACTOR within seven days after receipt. A request returned pursuant to this paragraph will be accompanied by a document setting forth in writing the reasons why the request is not proper. Such purposes may include, without limitation:

Payment may be withheld if:

1. Defective Work

Work is found defective and not remedied;

2. Payment for Labor, Materials & Equipment

CONTRACTOR does not make prompt and proper payment for labor, materials or equipment furnished;

3. Claims or Liens for Payment of Subcontractors, Laborers, and Suppliers

Claims, liens, or stop notices, including preliminary notices, are filed on the job. The service provider shall respond to these issues on a timely basis; the District reserves the right to pay labors or suppliers directly over non-payment issues.

III.TERMINATION OF CONTRACT

CONTRACTOR or DISTRICT may terminate this contract upon 30 days' written notice without penalty. Payment shall be made for work performed prior to the effective date of termination.

IV.SCHEDULE OF WORK

A. Work Scheduling and Changes

DISTRICT shall provide CONTRACTOR with scheduling information and a schedule for performance by CONTRACTOR of CONTRACTOR's work. CONTRACTOR shall conform to the schedule and all revisions or changes made thereto. CONTRACTOR shall prosecute CONTRACTOR's work in a prompt and diligent manner in accordance with DISTRICT's progress schedule.

B. No Compensation for Delay

Should CONTRACTOR be delayed in the prosecution or completion of the work by the act, neglect or default of DISTRICT, or should CONTRACTOR be delayed waiting for materials, if required by this Agreement to be furnished by DISTRICT or others, or if CONTRACTOR is delayed by damage caused by fire or other casualty, which is not caused by or resulting from fault or collusion on the part of CONTRACTOR, then CONTRACTOR may be entitled to an allowance or extension, or both. However, no allowance or extension shall be authorized for CONTRACTOR unless a claim is presented in writing to DISTRICT within five days of the commencement of the circumstances causing such delay.

C. Failure to Maintain Schedule

In the event CONTRACTOR fails to maintain part of the progress schedule, CONTRACTOR shall, without additional compensation, accelerate the work as DISTRICT may direct until CONTRACTOR's work is in accordance with such schedule.

V.CONTRACT DOCUMENTS

The contract documents upon which this contract is based are as follows:

- A. This Contract.
- B. The scope or work and expected performance standards set forth in the Work Order attached hereto as Exhibit A.
- C. Schedule of Rates attached hereto as Exhibit B.

- D. Written interpretations of the contract documents and directives to be made from time to time by the DISTRICT.
- E. Work Change Orders issued or to be issued and authorized approved by the appropriate DISTRICT Manager or General Manager, or Board of Directors.

CONTRACTOR, by executing this Contract, represents that CONTRACTOR has inspected and is familiar with the work site and the local conditions under which the work is to be performed. CONTRACTOR further represents that CONTRACTOR has read and understands each contract document.

VI.CONTRACTOR - DUTIES AND RIGHTS

CONTRACTOR's duties and rights in connection with this project include the following:

A. Furnishing of Labor and Materials

CONTRACTOR shall provide and pay for all labor, materials, equipment (including tools, construction equipment, and machinery), utilities, transportation, and all other facilities and services necessary for the proper completion of the work on the project in accordance with the contract documents. No subcontractors will be used in the performance of the work without the prior approval of the DISTRICT.

B. Payment of Taxes, Procurement of License and Permits

CONTRACTOR shall pay all taxes required by law in connection with the work on the project in accordance with this Contract, including sales, use, and similar taxes and shall secure all licenses and permits necessary for proper completion of the work, and paying the fees therefor.

C. Compliance with Laws and Regulations

CONTRACTOR shall comply with all laws and ordinances, and the rules, regulations or orders of all public authorities relating to the performance of the work. If any of the contract documents are at variance with each other, CONTRACTOR shall notify the appropriate DISTRICT Manager representative promptly upon discovery of any such variance.

D. Responsibility for Negligence of Employees and Subcontractors

CONTRACTOR agrees to assume full responsibility for the acts, negligence, or omissions of all of the CONTRACTOR's employees on the project, for those of the CONTRACTOR's subcontractors and subcontractors' employees, and for those of any other persons doing work for the CONTRACTOR.

E. Warranty of Equipment and Materials

If materials provided are expected to last more than a year, CONTRACTOR represents and warrants to the DISTRICT that the work and any and all equipment, materials, and supplies incorporated into the work will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is agreed that all equipment and materials not meeting the requirements of this Paragraph will be considered defective.

F. Cleanup

CONTRACTOR agrees to keep the work premises and adjacent areas, including roads, free of waste material and rubbish caused by the work including that of CONTRACTOR's subcontractors. CONTRACTOR further agrees to remove all such waste material and rubbish on termination of the project, together with all of the CONTRACTOR's tools, equipment, machinery and surplus materials. CONTRACTOR agrees, on terminating the work at the site, to conduct general cleanup operations.

G. Indemnity and Hold Harmless Agreement

CONTRACTOR agrees to indemnify and hold harmless both the DISTRICT and all of its agents and employees from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees due to bodily injury, illness or death or property damage, including loss of use and any other damages, and for associated legal costs, fees, and expenses including attorney and consultant fees arising out or related to the performance of this Contract.

This duty to indemnify shall not extend to claims to the extent caused by the willful misconduct or active negligence of District. In such case, the obligation to indemnify shall be reduced proportionately by the percentage to which District's willful misconduct or active negligence caused, or contributed to the cause of, the Claim.

This duty to indemnify shall extend to Claims by any employee of CONTRACTOR or its subcontractors or suppliers.

In addition to and separate from its duty to indemnify, CONTRACTOR shall defend District against suits, actions, or proceedings founded upon Claims. This duty to defend arises upon the commencement of the suit, action, or proceeding founded upon Claims and exists irrespective of any obligation of CONTRACTOR to indemnify.

CONTRACTOR's duties to indemnify and defend are not limited in scope or amount to insurance required by this Contract.

CONTRACTOR's duties to indemnify and defend shall survive the completion of the Work.

H. Safety Precautions and Programs

CONTRACTOR has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work. In this connection, CONTRACTOR shall take reasonable precautions for the safety of all employees on the work and all other persons that the work might affect, all work and materials incorporated in the project, and all property improvements on the construction site and adjacent to the site, and comply with all applicable laws, ordinances, rules, regulations, and orders.

I. Civil Rights and Discrimination

During the performance of this Contract, CONTRACTOR assures DISTRICT that CONTRACTOR will not unlawfully discriminate, with respect to employment, based on race, color, national origin, sex, age, handicap, marital status, medical condition, or upon any other basis prohibited by State and federal law.

J. Workers' Compensation Insurance

CONTRACTOR shall take out and maintain during the life of this Contract, Workers' Compensation Insurance for all employees at the site of the project in accordance with Labor Code §1860. By executing this contract, CONTRACTOR certifies pursuant to Labor Code §1861 that:

"CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."

If any subcontractors are used, CONTRACTOR shall require each subcontractor to provide Workers' Compensation Insurance for all of the subcontractor's employees.

K. Hazardous Waste

CONTRACTOR shall immediately notify DISTRICT in writing of any materials found to exist on or near the job site which may be hazardous waste. DISTRICT shall promptly investigate any written notice of hazardous or potentially hazardous materials or waste.

L. Public Work

This project is "public work"; CONTRACTOR and any subcontractor shall perform this work as "public work" pursuant to and in compliance with the prevailing wage laws, Labor Code §§ 1720-1861 and 8 C.C.R. §§ 16000-16464. No CONTRACTOR or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

M. Payroll Records

CONTRACTOR shall keep accurate payroll records of all employees and certify these records upon request and make them available for inspection to employees, the DISTRICT, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards pursuant to Labor Code §1776. DISTRICT may inspect CONTRACTOR's payroll records to assess compliance with prevailing wage requirements.

N. Apprentices

CONTRACTOR guarantees that CONTRACTOR has read the provisions of the California Labor Code and is familiar with the provisions in that Code dealing with apprentices. CONTRACTOR shall comply will all provisions of law relating to apprentices.

O. Wages

CONTRACTOR and any subcontractor under him shall not pay less than the prevailing rate of wages and the applicable holiday and overtime pay. The District has determined the general prevailing rates of wages for the crafts, classifications or types of workers required for the work, in the locality of the work. Said rates are accessible on the Internet at <http://www.dir.ca.gov/>, and are also available at the DISTRICT Engineer's office and may be viewed there by appointment. Questions or disputes regarding prevailing wage coverage or applicable rates may be resolved using the process described in 8 C.C.R.

§ 16001(a). DISTRICT may withhold from CONTRACTOR, as a penalty and not as forfeiture, a penalty of up to \$50 per day per worker for failure to pay prevailing wages, in addition to actual prevailing wages owed. CONTRACTOR must post the job site notices required by Labor Code § 1771.4(a)(2) and 8 C.C.R. § 16451(d).

P. Working Hours Restrictions

Eight (8) hours of labor is a legal day's work. The time of service of any worker is restricted to eight (8) hours during any calendar day and forty (40) hours during any calendar week, unless overtime compensation is paid at not less than one and one-half (1½) times the basic rate of pay. The CONTRACTOR shall pay a penalty of \$25.00 for each day a worker is employed in violation of these provisions.

Q. Insurance

CONTRACTOR will file with the District before beginning work, certificates of insurance and policy endorsements satisfactory to the District, evidencing general liability coverage, or not less than \$1,000,000 per occurrence (\$2,000,000 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 District. Any deductibles or self-insured retentions must be declared and are subject to District approval. Such insurance shall be primary, and any insurance, self-insurance or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it. The general liability coverage shall give the District, its directors, officers, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent. 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 District. In the event that the CONTRACTOR employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the CONTRACTOR's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

CONTRACTOR agrees to waive subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

R. Correcting Work

When it appears to the CONTRACTOR during the course of the construction that any work does not conform to the provisions of the contract documents, CONTRACTOR shall make the necessary corrections so that the work will conform to the contract.

S. Work Changes

Work shall be changed and the contract price and termination time shall be modified, only as set out in a written change order. Any adjustment in the contract sum or completion time, resulting in a credit or a charge to the DISTRICT shall be determined by mutual agreement of the parties, before starting the work involving the change.

T. Extra Work, Changes, Deletions

DISTRICT may, without affecting the validity of this contract, order changes, modifications,

deletions, and extra work by the issuance of a written purchase order from time to time during the progress of the job. CONTRACTOR shall make no change in the work without the issuance of a written change order, and CONTRACTOR shall not be entitled to compensation for any extra work performed unless the DISTRICT has issued a written change order designating in advance the amount of additional compensation to be paid for the extra work. In the event that DISTRICT orders work deleted, the contract price shall be reduced by a fair and reasonable valuation, but if the parties are unable to agree on the amount of credit to be allowed DISTRICT for work deleted from the contract, CONTRACTOR will nevertheless continue with the Project, and the amount to be credited shall be determined by arbitration or litigation. Payments for extra work will be made as the extra work progresses, concurrently with progress payments made under the payment schedule.

U. Merger

This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged and superseded by this Agreement. In entering into this Agreement, neither party has relied upon any statement representation, warranty, or agreement of the other party except for those expressly contained in this Agreement.

V. Amendment

The Parties may not amend this Agreement, except by written agreement of the parties.

VII. STATE LICENSE BOARD (If Required)

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD.

A. Assignment

CONTRACTOR shall not assign or transfer any of his or her rights, duties, obligations, liabilities or responsibilities under this Contract without the prior written consent of the DISTRICT.

B. Resolution of Claims

Public Contract Code §20104 *et seq.* shall govern the resolution of claims arising under this Contract.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement, on the respective dates indicated below.

CONTRACTOR:

DISTRICT:

By _____
Representative, Title

By _____
General Manager or Department Manager

Date: _____

Date: _____

*CONTRACTOR shall attach a Resolution authorizing an individual to execute agreements on behalf of a corporation. CONTRACTOR shall also attach a current IRS Form W-9 providing an Employer Identification Number (EIN) and/or Social Security Number (SSN) if sole proprietor.