

**MARICOPA FLOOD CONTROL DISTRICT
STANDARD TERMS AND CONDITIONS**

DEFINITIONS:

- 1.1 "Attachment" means any item the Solicitation requires the Contractor to submit as part of the Offer or Solicitation.
- 1.2 "Contract" means the combination of the Solicitation, including the Standard and Special Instructions to Contractor, the Standard and Special Terms and Conditions, and the Specifications and Statement of Scope of Work and Fee Schedule and other Exhibits or Attachments; the Offer and any Best and Final Offers; and any Solicitation Addendums or Contract Amendments.
- 1.3 "Contract Amendment" means a written document signed by Maricopa Flood Control District ("MFCD or District"), the district manager or MFCD's designee that is issued to make changes in the Contract.
- 1.4 "Contractor" means any person or entity who has a Contract with the District.
- 1.5 "Days" means calendar days unless otherwise specified.
- 1.6 "Exhibit" means any item labeled as an Exhibit or placed in the Exhibits Section of the Solicitation.
- 1.7 "Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.8 "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.9 "MFCD" means the MFCD board of directors as contracting authority for the District. The district manager has authority to contract for services when the full cost is under \$500 without formal board approval.
- 1.10 "May" means something that is not mandatory but permissible.
- 1.11 "Offer" means bid, proposal or quotation.
- 1.12 "Party or parties" means the District or the Contractor.
- 1.13 "Services" means the furnishing of labor, time, work or effort by a Contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but not including employment agreements or collective bargaining agreements.
- 1.14 "Shall, Will, Must" means a mandatory requirement.
- 1.15 "Should" means something that is recommended but not mandatory.
- 1.16 "Solicitation" means an Invitation for Bids, a Request for Proposals, a Request for Qualifications or a Request for Quotations.
- 1.17 "Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

CONTRACT INTERPRETATION:

2.1 Implied Contract Terms.

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.2 Contract Order of Precedence.

In the event of a conflict in the provisions of the Contract and as it may be amended, the following shall prevail in the order set forth below:

- 2.2.1 Special Terms and Conditions;
- 2.2.2 Standard Terms and Conditions;
- 2.2.3 Statement or Scope of Work;
- 2.2.4 Specifications;
- 2.2.5 Attachments;
- 2.2.6 Exhibits;
- 2.2.7 Special Instructions;

- 2.2.8 Standard Instructions; and
- 2.2.9 Other documents referenced or included in the Solicitation.

2.3 No Parole Evidence.

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties shall add to or explain any terms used in this Contract.

CONTRACT ADMINISTRATION:

3.1 Notice to Proceed.

The Contractor agrees to provide services promptly and diligently upon receipt of a written purchase order or notice to proceed. Prior to receiving this notice, the Contractor shall not commence any billable activities related to the Contract.

3.2 Contractor Facilities and Business Practices.

The Contractor's personnel, facilities and equipment shall be in full compliance with all applicable federal, state and local health, environmental and safety laws, regulations, standards, ordinances, privilege license and permit requirements, whether they have been referenced by the District. Employee compensation shall meet all applicable requirements of the Fair Labor Standards Act and Federal and Arizona minimum wage laws, in addition to all applicable Occupational Safety and Health Administration regulations. The Contractor bears full responsibility for employee training, safety, and providing necessary equipment to achieve compliance with all such laws and regulations prior to and throughout the duration of the Contract.

3.3 Drug Free Workplace Program.

The Contractor shall require a drug free workplace for all employees working under the Contract. Failure to require a drug free workplace may result in termination of the Contract and possible debarment from bidding on future District contracts or projects.

3.4 Surveys

Land Surveyors must adhere to the Arizona State Board of Technical Registration's ("ASBTR") rules, the Arizona Boundary Survey Minimum Standards as adopted by the ASTBR, and with state laws and regulations pertaining to the appropriate survey drawings.

3.5 Property of the District.

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the District and shall not be used or released without prior written consent of the District.

3.6 Ownership of Intellectual Property.

Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or envisioned pursuant to or as a result of this Contract and any related Subcontract ("Intellectual Property"), shall be work made for hire and the District shall be considered the creator and owner of such Intellectual Property. The Contractor, on behalf of itself and subcontractor(s) if any, agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the District. The Intellectual Property shall not be disclosed by the Contractor or its subcontractor(s) to any entity other than the District without the express written consent of the District.

3.7 Confidentiality of Records.

The Contractor shall maintain the confidentiality and privilege of any documents that the Contractor has access to which have been designated by the District as confidential or privileged.

PAYMENTS AND COSTS:

4.1 Payments.

A separate invoice shall be issued for each task for service performed, unless otherwise directed, and no payment shall be issued prior to receipt of acceptable services and a correct invoice noted with the contracted prices or rates for services. Payments made shall not be a representation that the District has undertaken any informed, exhaustive or continuous review of the Contractor's services nor shall any such payment constitute a representation that the District has approved the services or constitute a waiver of any right that the District has pursuant to this Contract or otherwise.

CONTRACT CHANGES:

5.1 Amendment.

This Contract is issued under the authority of the District. This Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract directed by a person who is not specifically authorized by the District in writing or made unilaterally by the Contractor are violations of this Contract and of applicable law.

5.2 Subcontracts.

The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without prior written approval of the District. Any such Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation.

No right or interest in this Contract shall be assignable in whole or in part without the prior written consent of the parties hereto, and no delegation of any duty of the Contractor shall be made without prior written permission of the District. This Contract and all the terms, conditions and provisions herein, shall extend to and be binding upon the heirs, administrators, executors, successors, and assigns of the parties hereto.

RISK AND LIABILITY:

6.1 Right to Recovery.

The Contractor shall do nothing to prejudice the District's right to recover against third parties for any loss, destruction, or damage to District property, and shall at the District's request and expense, furnish reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the District in obtaining recovery. Without limiting the foregoing, the Contractor shall, without limitation, at its expense defend the District against all claims asserted by any person that anything provided by the Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the District in any such action, or pay any settlement of such action or claim. The District assumes no liability for actions of the Contractor and shall not indemnify or hold the Contractor or any third party harmless for claims based on this Contract or use of the Contractor provided services.

6.2 Indemnification.

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, directors, officials, and employees from and against all claims, actions, liabilities, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, mistakes or malfeasance relating to the performance of this Contract which includes the Contractor's services. The Contractor's duty to defend, indemnify, and hold harmless the District, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury or personal injury, sickness, disease, death, injury to, impairment or destruction of tangible or intangible property, including damage or loss of use resulting

therefrom, caused in whole or in part by the negligent or willful acts or omissions of the Contractor, anyone directly or indirectly employed by them, including any of its owners, officers, directors, agents, employees or subcontractors or anyone for whose acts they may be liable regardless of whether it is caused in part by a party indemnified hereunder, including the District. This indemnity includes any claim or amount arising out of or recovered under the Worker's Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intent of the parties that the District in all instances shall be indemnified by the Contractor from and against any claims. The parties agree that the Contractor shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of this Contract award, the Contractor agrees to waive all rights of subrogation against the District, its agents, representatives, officers, directors, officials, and employees for losses arising from the services performed by the Contractor for the District.

6.3 No Limit of Scope of Indemnity.

The amount and type of insurance coverage requirements set forth in the Contract shall in no way be construed as limiting the scope of the indemnity in this Contract.

6.4 Force Majeure.

Except for payment of sums due, neither party shall be liable or in default to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. Force Majeure shall not include the following occurrences: Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall promptly notify the other party in writing of such delay, no later than the following working day, and shall specify the causes of such delay through a notice by delivery or mailed certified-return receipt invoking this section.

6.5 Care of District Property.

The Contractor shall be responsible for any damages to District property when such property is the responsibility of or in the custody of the Contractor.

WARRANTIES:

7.1 Liens.

The Contractor warrants that the services supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality of Work.

The Contractor shall be responsible for the professional quality and technical accuracy of the services provided under this Contract. Services shall be performed in accordance with generally accepted professional and industry standards and in compliance with applicable federal, state and local statutes, rules, codes, laws, ordinances, regulations and restrictions.

7.3 Fitness.

The Contractor warrants that any services supplied to the District shall fully conform to all requirements of the Contract and all representations of the Contractor and shall be fit for all purposes and uses required by the Contract.

7.4 Examination

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by examination of the services provided or payment for the services by the District.

7.5 Compliance with Applicable Laws.

The services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination.

All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders or notices received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the District.

CONTRACTUAL REMEDIES:

8.1 Right to Assurance.

If the District in good faith has reason to believe that the Contractor does not intend to or is unable to perform or continue performing under this Contract, the district manager may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance may, at the District's option, be the basis for terminating the Contract under the Standard Terms and Conditions or other rights and remedies available by law or provided by the Contract.

8.2 Stop Work Order.

The District may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the services called for by this Contract for period(s) of days indicated by the District after the stop work order is delivered to the Contractor. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work.

8.3 Non-exclusive Remedies.

The rights and the remedies of the District under this Contract are not exclusive.

8.4 Nonconforming Tender.

Services supplied under this Contract shall fully comply with the Contract. The delivery of services or a portion of the services that do not fully comply constitutes a breach of contract. On delivery of nonconforming services, the District may terminate the Contract for default pursuant to the Contract, exercise any of its rights and remedies in this Contract or pursue any other right or remedy available to it.

8.5 Right of Offset.

The District shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the District, or damages assessed by the District concerning the Contractor's non-conforming performance or failure to perform under the Contract.

CONTRACT TERMINATION:

9.1 Gifts.

The District may terminate this Contract, in whole or in part, if the District determines that employment or a Gift was offered or made by the Contractor or its representative to any District board member or employee related to the outcome of the procurement or favorable treatment related in any way to the Contract.

9.2 Suspension or Debarment.

The District may, by written notice to the Contractor, immediately terminate this Contract if the District determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the District.

9.3 Termination for Convenience.

The District reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the District upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress and work completed before the effective date of the termination.

9.4 Termination for Default.

In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor: to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, to provide required period statements, to provide satisfactory quality of services, or to make satisfactory progress in performing the Contract. This may include any cessation or diminution of service, including but not limited to failure to maintain adequate personnel, whether arising from employment disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor that within the opinion of the District is not in its best interest.

9.4.1 Failure of the Contractor to remedy any problems noted by the deadline set in the Notice of Default or to otherwise bring performance to satisfactory levels that are within the requirements of the Contract shall give the District cause to cancel this Contract. The District shall provide written notice of the termination and the reasons for it to the Contractor.

9.4.2 Upon termination under this section, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the District on demand.

9.4.3 The District may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, services to replace those under this Contract. The Contractor shall be liable to the District for any excess costs incurred by the District in procuring services in substitution for those due from the Contractor.

9.5 Continuation of Performance Through Termination.

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

ARBITRATION:

10.1 No provision of any resulting contract shall require arbitration by the District except by the District's express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration as provided for in A.R.S. § 12-1501 et seq.

10.2 Notwithstanding the provisions of this section, the Contractor shall continue to render the services required by this Contract without interruption.