

## **SECTION B: CONSTRUCTION AND MAINTENANCE**

### **B1 CONSTRUCTION BY PRIVATE PARTIES WITHIN TCID EASEMENTS**

In accordance with the O & M agreement between the District and the Bureau of Reclamation, Contract Number 7-07-20-X0348, all individuals/entities engaging in construction within Project easements must obtain a permit from both the District; and the Bureau of Reclamation as outlined in Section C: Easements. All plans for construction within District easements will be submitted to the District's designee for approval. Installations will be constructed to District specifications and subject to the inspection of the District's designee at any time during construction. Any deviation from the approved plans must have the written approval of the District.

### **B2 PERFORMANCE DEPOSITS**

A performance deposit of \$1,000 for box culvert, \$600 for pipe culvert, \$500 for other construction or 20% of the estimated cost, whichever is greater; shall be deposited at the District's office prior to the beginning of construction. A performance bond based upon approved plans and specifications in the amount of 100% of the installation costs could be an acceptable alternative if approved by the Finance Committee or the Board of Directors. Administration and inspection fees will be charged as approved by the Board of Directors in Section H.

### **B3 GOVERNMENTAL ENTITIES**

Governmental entities, such as the United States, State, County, or Cities are exempt from the performance deposit and application fees, they are still required to apply to the District. However, if an application entails an inspection the minimum inspection fee will be required. The only exception for the inspection fee is Churchill County Road Department because of an interagency agreement. Private contractors of governmental entities are subject to all fees and deposits.

### **B4 EXCEPTIONS TO PROVISION OF PERFORMANCE DEPOSIT BY CERTAIN ENTITIES**

The exception is proprietary operations such as CC Communications which will pay administrative fees as prescribed in Section H. CC Communications is exempt from payment of construction deposits. CC Communication's subcontractors are exempt from performance deposits or bonds as well. The subcontractor's bond to CC Communications will cover the District as a third party beneficiary. CC Communications will provide a one-year warranty.

### **B5 WRITTEN NOTICE TO PROCEED AND INSPECTION**

After all pre-conditions are met, the District's designee will provide written notice to proceed. Approval to construct and/or change facilities within the District's easements is limited to one year from date of issuance. After completion, the District will inspect the construction to verify compliance with license requirements. Upon certification of compliance, all performance deposits will be refunded. All work shall be warranted for a period of one year from completion.

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### B6 DEDICATION OF EASEMENT AS NECESSARY

If the proposed installation requires an easement to be dedicated to the District, the survey, maps and legal documents for recording, as well as any recording fees, shall be the obligation and the expense of the individual requesting such construction.

### B7 PURCHASE OF PIPE

a. **General Conditions.** A purchaser must be a water user in the District. The purchase of materials must advance a genuine District purpose, such as a connection to District water conveyance and drain facilities, avoidance of waste, conservation, etc. These terms and conditions will apply, in spite of inconsistencies in terms, conditions, or pricing stated otherwise. You agree that these terms cannot be modified except in writing. Your receipt of materials from us constitutes your acceptance of these terms and conditions.

b. **Payment.** Materials purchased will be charged at the rate of total cost to the District for the same, plus 10% or a minimum of \$100, whichever is greater, and a maximum of \$500. Total cost includes administrative costs, handling, billing, etc. Payment in full must be made at the time of receipt by purchaser of materials. The District will not extend terms of financing for purchases.

c. **Security Interest.** While we expect that full purchase price will have been made by you prior to your receipt of materials, we will have a purchase-money security interest in all materials purchased by you until payment is made in full. Purchaser authorizes us to prepare and file financing statements or other documents in order to perfect a purchase-money security interest.

d. **Special Orders.** Orders for materials not maintained by the District in its inventory are deemed "special orders" and must be fully paid prior to ordering by the District. Other expenses may apply to a special order, which are incapable of being determined at this time, which purchaser agrees to be responsible for.

e. **Returns Policy.** Materials which are routinely maintained by the District in its inventory may be returned at the base cost for the materials less a \$100 re-stocking fee. Return of materials will not be made of any materials which have been placed in the ground or have in anyway been altered. Special order materials will not be returned.

f. **Limited Liability.** IN NO EVENT SHALL WE BE RESPONSIBLE FOR (A) ANY PRODUCT DEFECT, REGARDLESS OF KIND, UNLESS SUCH DEFECT RESULTED FROM OUR WRONGFUL ACTS OR NEGLIGENCE, OR (B) SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR INCOME, AND ANIMAL OR PROPERTY LOSS OR DAMAGE, WHETHER YOUR CLAIM IS IN CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. You agree to file against the manufacturer of the materials any claim arising out of the use, sale, or possession of the materials.

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g. **Exclusive Remedy.** PURCHASER'S EXCLUSIVE REMEDY AGAINST US FOR ANY CAUSE OF ACTION RELATING TO THE SALE, HANDLING, OR USE OF THE MATERIALS SOLD BY US IS A CLAIM FOR DAMAGES AND IN NO EVENT SHALL DAMAGES OR ANY OTHER RECOVERY OF ANY KIND AGAINST US EXCEED THE PRICE OF THE SPECIFIC MATERIALS WHICH CAUSED THE ALLEGED LOSS, DAMAGE, OR OTHER CLAIM.

h. **Purchaser Indemnity.** IN CONSIDERATION OF THE SALE OF MATERIALS TO YOU, WHICH SALES WE WOULD NOT HAVE OTHERWISE MADE, YOU AGREE TO INDEMNIFY AND HOLD US HARMLESS FROM ALL CLAIMS, EXPENSES, LOSSES AND LIABILITY OF ANY NATURE WHATSOEVER ARISING OUT OF YOUR HANDLING AND/OR USE OF THE MATERIALS, WHETHER ALONE OR IN PROXIMATION WITH ANY OTHER SUBSTANCE.

i. **Confidentiality.** We reserve the right to disclose aggregate data or information without attribution to any identifiable individual or specific data that you separately and specifically agree we can share without infringing upon your confidentiality.

j. **Waiver.** The failure of either party to enforce any provision hereof shall not be deemed a waiver of the right to enforce said provision or any other provision thereafter.

k. **Force Majeure.** We will not be liable for any delay or failure of delay in delivery of materials of the whole or part of the materials due to any cause whatsoever, including acts of God, war, sabotage, accidents, labor disputes, shortages, unanticipated demand, or compliance with governmental laws (whether valid or invalid).

l. **Severability.** In any clause or provision of this Statement of Terms is found to be invalid or is incapable of being enforced by any rule of law or public policy, all other clauses and provisions, shall, nevertheless, remain in full force and effect.

m. **Governing Law.** This Statement of Terms shall be subject to the laws of the State of Nevada and shall in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of Nevada.

n. **Inspection.** Purchaser has inspected the materials and represent that no defect was observed upon receipt.

o. **Warranty.** We extend to purchaser any assignable manufacturer's warranty on the materials, and purchaser agrees to look solely to the materials manufacturer for any warranty. WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF ANY SUPPLIES OR THEIR FITNESS FOR ANY PARTICULAR USE OR PURPOSE. PURCHASER ACKNOWLEDGES THAT NONE OF OUR AGENTS OR EMPLOYEES HAS ANY

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AUTHORITY TO MAKE REPRESENTATION, OR WARRANTY CONCERNING THE MATERIALS BEYOND THE CLAIMS CONTAINED ON SUCH MATERIAL'S LABEL.

p. **FREIGHT STRUCTURE.** The District may impose a charge associated with the delivery or freight charge for pipe from a distributor based upon a schedule of such charges as may be imposed freight charges by such distributor.

### **B8 PENALTY FOR FAILURE TO OBTAIN PERMISSION**

A minimum \$500 penalty will be charged when construction is commenced without a permit or without authorization in writing to proceed. Any penalty over the \$500 minimum will be determined by the Board of Directors depending upon the amount of time required to resolve the matter.

### **B8 PLACEMENT OF GATE OR CATTLE GUARD**

On a case-by-case basis, the Board upon recommendation of District staff shall determine gate or cattle guard placement.

### **B9 BRIDGES OR CROSSINGS**

All bridges or crossings on District laterals will require the construction of a concrete box culvert. Specifications for the structure must be approved by the District.

### **B10 PERMIT RENEWAL**

Permits can be renewed for an additional year after verification by District staff that circumstances remain the same as when the original license was issued.

### **B11 CONSTRUCTION REQUEST BY AND CONSTRUCTION FOR OTHERS BY THE DISTRICT**

If work is requested by the District staff for private purposes (purposes not considered necessary or needed for the District which directly benefits private interests without benefit to the Project as a whole), any such request for work shall be submitted to the O&M Committee for review and approval by the O&M Committee. The District staff shall prepare a detailed bid of time and materials estimate for review and signature of the party requesting the construction.

### **B12 AGREEMENT AS NECESSARY WITH PRIVATE PARTY**

The District may require an agreement with the private party. In the event that no set fee exists for the activity, the bid or estimate will be based on labor at the rate as approved by the Board of Directors in Section H, (Appropriate administrative payroll overhead as computed annually will be considered in establishing the labor rates in Section H). Equipment will be charged at the applicable outside rental rate. Materials will be charged at cost to the District. Such may include administrative costs for ordering, handling, billing, etc. (Applicable work might include, without limitation, research of documents or maps and construction.)

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### **B13 REQUIREMENT FOR AGREEMENT IN WRITING**

If the request is approved, then the agreement for work described in paragraph B12 hereof must be made in writing. The agreement shall reasonably identify the work to be done and the costs to be imposed. No work may be commenced until the agreement has been executed.