



# REQUEST FOR PROPOSALS

## Cover Sheet

General Information		
Project Name	Excavator	
Project Description	The Jordanelle Special Service District ("JSSD") desires to procure a new excavator (Mini Track Hoe).	
Project Timing	JSSD intends to select a vendor in February, 2019.	
Contract Type	Sale of Goods contract – Fixed Price	
Procurement Process Information		
Contract Administrator	Max Covey P.O. Box 519 Heber City, Utah 84032 mcovey@jssd.us  <i>All communications regarding this solicitation must be through the Contract Administrator.</i>	
<b>Evaluation Criteria</b>	<b>Weight</b>	This is a best value procurement. Proposals will be scored out of 100 total points. Weighting for each factor and sub-factor will be as set forth to the left.
<b>Technical Factors</b>	<b>70 points</b>	
○ Customer Support/Maintenance	20 points	
○ Quality and Experience	20 points	
○ Exceptions to Commercial Terms, Proposed Warranty Terms	15 points	
○ Additional Features	10 points	
○ Delivery lead time	5 points	
<b>Price</b>	<b>30 points</b>	
RFP Schedule		
• JSSD Issues Request for Proposals	January 22, 2019	
• Deadline to submit Notice of Intent to Submit a Proposal	January 29, 2019	
• Deadline to submit Questions and Requests for Changes	January 31, 2019	
• Last day for JSSD to issue addenda and clarifications	February 5, 2019	
• <b>Deadline to submit Proposals</b>	<b>February 11, 2019 2:00 p.m.</b>	

Included as part of this RFP		
Part A – Project Information and JSSD Specifications		
Part B – Procurement Process & Proposal Contents		
Part C – Standard Terms of Solicitation		
Part D – JSSD Standard Contract Terms		
Proposal Contents		
Page Limit The cover letter, price proposal, and exceptions to Standard Contract Terms do not count toward the page limit. (See Part B)	10 pages	
Submittal Instructions <ul style="list-style-type: none"><li>Email proposal to the Contract Administrator. Proposal should be in the form of two separate .pdf files. One file should include the quality proposal, and the other file should include the price proposal (see Part B).</li></ul>		



# REQUEST FOR PROPOSALS

## Part A – Project Information & JSSD Specifications

### 1. The Special Service District

The Jordanelle Special Service District (“JSSD”) is a special service district organized pursuant to Utah Code Ann. § 17D-1-101 *et seq.* JSSD provides culinary water and sanitary sewer services in portions of Wasatch County, Utah. The Wasatch County Council serves as the governing body of JSSD, which is managed by a General Manager.

### 2. The Project

JSSD desires to procure a Mini Track Hoe Excavator for use in its operations.

### 3. Excavator Mandatory Specifications

The Excavator must be new (not used) and must have the following specifications and features:

- Overall weight: 13,000 LBs Maximum
- Transport length: 18’6” Maximum
- Undercarriage width: 6’8” Maximum
- Maximum Digging Reach: 19’6” Minimum
- Maximum Digging Depth: 11’6” Minimum
- Maximum Dumping Height: 13’0” Minimum
- Zero tail swing
- Enclosed cab (heater, air conditioner, windshield wipers, radio)
- Cab must have compliant Roll Over Protection Structure (ROPS)
- Control Pattern Selector Switch
- Joystick controls with armrest
- LED lights on cab and arm
- Travelling levers and foot pedals
- Backfill blade with minimum 30 degree angle
- Hydraulic quick coupler
- 12” and 24” bucket
- Thumb attachment
- Rubber tracks
- Minimum 2-year warranty



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## Part B – Procurement Information & Proposal Content

### 1. NOTICE OF INTENT TO SUBMIT A PROPOSAL

Anyone that intends to submit a Proposal should notify JSSD of that intent by emailing the Contract Administrator no later than the Deadline to Submit a Notice of Intent to Submit a Proposal listed on the Cover Sheet. The notice should include the Proposer's point of contact name, address, telephone number, and email address. Submission of the notice will not require the Proposer to submit a Proposal, but JSSD will not be required to provide addenda and clarifications to the RFP to anyone that does not timely submit the notice.

### 2. PROPOSAL CONTENT

#### A. Cover Letter and Executive Summary

Proposers should provide a cover letter briefly describing their company, their product, and their interest in the Project described in this RFP. The cover letter should state whether the Proposal includes any trade secret information. (See Part C, paragraph 1.C).

#### B. Customer Support and Maintenance

Proposers should describe their customer support program. Describe typical response times to customer support requests, availability of replacement parts, etc.

#### C. Quality and Experience

Proposers should describe their company experience in supplying their proposed excavator. Describe evidence of quality and reliability, in terms of routine maintenance, common breakdowns, etc. Describe how the equipment is operated, paying special attention to ease of use. Please list sales of the proposed excavator to similar customers, along with at least two customer references, including contact information.

#### D. Exceptions to Commercial Terms; Proposed Warranty Terms

Proposers should list any exceptions taken to the JSSD Standard Contract Terms, included as Part D of this RFP.

In addition, Proposers should propose warranty terms. *Note that the minimum acceptable warranty term is 2 years.*

**E. Excavator Specifications and Features**

Proposers should describe the features and specifications of the proposed excavator, paying special attention to the JSSD Specifications listed in Part A. Proposers should describe any additional features, or any features of their proposed equipment that exceed the JSSD Specifications (e.g., longer reach, etc.)

**F. Delivery Lead Time**

Proposers should indicate how soon the proposed excavator can be delivered to JSSD.

**G. Price**

Proposers should include the price of the proposed excavator. If the Proposal includes optional features, Proposers should list the price for those options separately.

*Price must be submitted separately (see below).*

**3. PROPOSAL FORMAT**

Proposals should adhere to the following format:

- Proposals should be submitted in two separate .pdf files. One file should include the quality proposal, and the other file should include the price proposal.
- Proposals should consist primarily of 8 ½ by 11 inch pages. 11 by 17 inch pages may be used for charts, tables, and schedules. No text should be included on 11 by 17 inch size pages except for text that is required for the interpretation of the chart, table, or schedule.
- Proposals should be printed in a minimum of 12-point font.
- The Proposal should not exceed the Page Limit shown on the RFP Cover Sheet.

Failure to follow the format described above may result in the Proposal being deemed non-responsive.



# REQUEST FOR PROPOSALS

## Part C – Standard Terms of Solicitation

### 1. INSTRUCTIONS TO PROPOSERS

#### A. Submission of Proposals.

Proposals will be received by the Contract Administrator via email, or as otherwise arranged between the Proposers and the Contract Administrator. The Contract Administrator will log the date and time of each Proposal received. Any Proposal received after the Deadline to Submit Proposals listed on the RFP Cover Sheet will be considered non-responsive. It is the responsibility of the Proposer to ensure that its Proposal is received by the Contract Administrator by the specified time.

#### B. Minimum Standards.

This RFP sets forth the minimum requirements that all Proposals must meet. Failure to submit Proposals in accordance with this RFP may render the Proposal unacceptable or non-responsive. JSSD may, in its sole discretion, waive minor irregularities in a Proposal that do not alter the quality or quantity of the information provided.

#### C. Confidential, Protected, and Public Information

In accordance with Utah Code Section 63G-2-305(6) of the Government Records Access and Management Act ("GRAMA"), information related to this procurement will not be made public until after execution of the contract with the successful Proposer. Procurement information includes the Proposals submitted by Proposers in response to this RFP and any accompanying documentation, as well as records maintained by JSSD during the procurement process.

JSSD will maintain a process to ensure confidentiality for the duration of this procurement. If the Proposer submits information in its Proposal that it believes is "trade secret," the Proposer must follow the procedure set forth in Section 63G-2-309 of GRAMA.

Additionally, for ease of Proposal evaluation, JSSD requests that each Proposer also follow the steps identified below:

- 1) Clearly mark all trade secret information as such in its Proposal at the time the Proposal is submitted, and state in a cover letter that the "DOCUMENT CONTAINS TRADE SECRET INFORMATION," and identifying each section and page which has been so marked;
- 2) Include a statement with its Proposal justifying the Proposer's determination that certain records are trade secret information for each record so defined;
- 3) In addition to the Proposal copies submitted in accordance with the Submittal Instructions on the RFP Cover Sheet, submit one electronic copy of the Proposal that has all the trade secret information deleted from the Proposal and label such copy of the Proposal "Public Copy." If a Proposer submits a Proposal containing no trade secret information, no "Public Copy" need be submitted. However, any Proposer that submits a Proposal containing no trade secret information must so certify in a cover letter to its Proposal; and
- 4) Defend any action seeking release of the records it believes to be trade secret information and indemnify, defend, and hold harmless JSSD and its agents and employees from any judgments awarded against JSSD or its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives JSSD's cancellation or termination of this procurement or award and subsequent execution of the contract. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the trade secret information is in possession of JSSD.

All records pertaining to this procurement will become public information after execution of the Contract, unless such records are identified as trade secret information as specified above. No liability will attach to JSSD or its agents for the errant release of trade secret information by JSSD or its agents under any circumstances.

**D. Submitting Questions to JSSD**

Questions and Requests for changes to the RFP must be submitted via email. All questions must be directed to the Contract Administrator identified on the RFP Cover Sheet. Questions must be received no later than the Deadline to submit Questions and Requests for Changes listed on the RFP Cover Sheet.

JSSD's answers to timely questions will be issued by the Contract Administrator no later than the Last day for JSSD to issue Addenda and Clarifications, listed on the RFP Cover Sheet.

**E. Requests for Approved Equals or Changes**

Whenever a brand, manufacturer, or product name is indicated in this RFP, they are included only for the purpose of establishing identification and a general

description of the item. Wherever such names appear, the term "or approved equal" is considered to follow.

Requests for Approved Equals must be submitted to the Contract Administrator via email, no later than the Deadline to Submit Questions or Requests for Approved Equals.

Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal or better than the RFP requirement.

It should be understood that specifying a brand name, components, and/or equipment in this RFP will not relieve the Proposer from its responsibility to provide the product in accordance with the performance specifications, warranty, and contractual requirements. The Proposer shall notify JSSD of any inappropriate brand name, component, and/or equipment that may be called for in this RFP and shall propose a suitable substitute for consideration.

**F. Multiple or Alternative Proposals**

Submission of multiple or alternative Proposals, except as specifically called for in the RFP, may render all such Proposals non-responsive and may cause the rejection of some or all of such Proposals.

**G. Withdrawal of Proposals**

A Proposer may withdraw its Proposal before the Proposal due date without prejudice to itself by submitting a written request for its withdrawal to the Contracts Administrator. If a Proposer withdraws its Proposal prior to the Deadline to Submit Proposals, JSSD will return the Proposal to the Proposer.

**H. Cost of Proposals**

JSSD is not liable for any costs incurred by Proposers in the preparation of Proposals submitted in response to this RFP.

**I. Examination of Request for Proposals**

The submission of a Proposal constitutes an acknowledgment upon which JSSD may rely that the Proposer: (i) has thoroughly examined and is familiar with the RFP, including any contractual terms included in the RFP, (ii) is familiar with any work site identified in the RFP, and (iii) has reviewed and inspected all applicable statutes, regulations, ordinances, and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a Proposer to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions will in no way relieve the Proposer from any obligations with respect to the Proposer's Proposal or to any contract awarded pursuant to



this RFP. No reduction or modification in the Proposer's obligations will be allowed based upon a lack of knowledge or misunderstanding of this RFP, work sites, statutes, regulations, ordinances, or resolutions.

**J. Firm Offer**

Unless otherwise stated in this RFP, submission of a Proposal constitutes an offer to provide the goods or services described in the RFP, for the price set forth in the Proposal. Such offer must be good and firm for a period of ninety (90) days after the Deadline to Submit Proposals.

**K. No Collusion**

By submitting a Proposal, the Proposer represents and warrants that its Proposal is genuine and not a sham, and that the Proposer has not colluded with any other parties regarding this procurement process. If JSSD learns that the Proposal is not genuine, or that the Proposer did collude with other parties, or engaged in any anti-competitive or fraudulent practices in connection with this procurement process, JSSD may immediately terminate any resulting contract and seek any remedies available in equity or at law.

**2. SELECTION PROCESS**

**A. Changes to the RFP Schedule**

JSSD may make changes to the RFP Schedule, in its sole discretion. Deadlines shown on the RFP Cover Sheet that apply to JSSD, such as the Last day to for JSSD to issue addenda and clarifications, are estimates only, and may be adjusted by JSSD in its sole discretion.

**B. Addenda to the Request for Proposals**

JSSD may make changes to the RFP, by issuing a written addendum to the RFP which will be issued to all firms or individuals that submitted a Notice of Intent to Submit a Proposal.

**C. JSSD's Procurement Options**

Based on submitted information, JSSD may do or take any of the following actions, without limitation:

- select a Proposer based solely on the written Proposals, with or without subsequent negotiations;
- ask for more information or Clarifications before making a selection;
- determine a Short List, conduct Discussions, and/or request Best and Final Offers ("BAFOs") before making a selection;

- if a material error in the RFP is discovered during the evaluation process, JSSD may issue an addendum to all Proposers that have submitted Proposals requesting revised Proposals based upon the corrected RFP.
- decline to accept any Proposal;
- re-advertise;
- cancel the RFP without awarding a contract;
- cancel the RFP and award the contract on a sole source basis;
- elect to otherwise procure the needed services in accordance with JSSD policy and procedures.

JSSD reserves the right to negotiate price, scope, schedule, and other contract terms with the preferred Proposer after a selection is made.

#### **D. Responsiveness**

Proposals that are conditional, that attempt to modify the RFP requirements, that contain additional terms or conditions, or that fail to conform to the requirements or specifications of the RFP may be considered non-responsive.

#### **E. Responsibility**

JSSD will not select a Proposer who is deemed by JSSD, in its sole discretion, to lack the ability or responsibility to perform successfully under the terms of the contract. Such determination of responsibility may encompass management, technical, legal, and financial matters.

#### **F. Checking References**

JSSD reserves the right to contact any reference specifically named by the Proposer in its Proposal or any other additional references as deemed appropriate by JSSD, including references suggested by the Proposer's named references or references known to JSSD through its own knowledge of the industry.

#### **G. Requests for Clarification**

The Proposer shall provide accurate and complete information to JSSD. If information is incomplete, appears to include a clerical error, or is otherwise unclear, JSSD may either (i) declare the Proposal non-responsive, (ii) evaluate the Proposal as submitted, or (iii) issue a Request for Clarifications to the Proposer stating the information needed and a date and time by which the information must be provided. If the Proposer does not respond to the Request for Clarifications in a timely manner, or if the Proposer's response is deemed to be insufficient by JSSD, in its sole discretion, then JSSD may declare the Proposal non-responsive.

**H. Short Listing**

JSSD may declare a Short List including only those Proposers that have a reasonable chance of being selected. JSSD will declare a Short List, if it chooses to do so, after a careful analysis of the Proposals. JSSD may declare a Short List of only one Proposer. JSSD will not be required to announce how many Proposers are on the Short List.

**I. Discussions**

JSSD may, at its sole discretion, conduct written and/or verbal Discussions with any of the Proposers on the Short List regarding the content of their Proposal. If Discussions are held, they will be held with all Proposers on the Short List.

**J. Best and Final Offers**

Although JSSD reserves the right to issue a request for Proposal revisions (including Best and Final Offers), JSSD is under no obligation to do so. JSSD may make its selection and award based on the initial Proposals submitted.

If JSSD requests Proposal revisions and/or BAFOs, Proposers on the Short List may be informed of and requested and/or allowed to revise their Proposals, including correction of any weaknesses, minor irregularities, errors, and/or deficiencies identified to the Proposers by JSSD following initial evaluation of the Proposals. The request for Proposal revisions and/or BAFOs will allow adequate time for the Proposers to revise their Proposals. Upon receipt of the Proposal revisions and/or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate. Although this RFP allows for Proposal revisions and/or BAFOs, all efforts will be made to make a selection based on initial Proposals. If Discussions are held, JSSD will attempt to limit the selection process to a single BAFO following Discussions. If a Proposal revision and/or BAFO is requested of a Proposer, and that Proposer opts to not submit a Proposal revision and/or BAFO, that Proposer's original Proposal or most recent Proposal revision, as appropriate, will be treated as its BAFO.

**K. Best Value Determination**

This is a Best Value procurement, in which selection of a Proposer is based on a combination of price and qualitative/technical components. Accordingly, JSSD might not select the Proposal with the lowest price, or the Proposal with the highest qualitative/ technical rating. JSSD will select the responsible Proposer whose Proposal is deemed to be the most advantageous to JSSD.

**L. Negotiations**

After selection but prior to award of the Contract, JSSD may, at its sole discretion, either conduct negotiations with the successful Proposer or JSSD may choose to

not conduct negotiations with the successful Proposer and award the Contract to the successful Proposer based on its written Proposal and any additional information received during Discussions and Proposal revisions and/or BAFOs, if conducted.

If JSSD and the selected Proposer are unable to reach a meeting of the minds on the scope, contractual terms, and/or price of the Contract, then JSSD may, in its sole discretion, negotiate with the next most advantageous Proposer or choose to terminate the procurement in its entirety.

If JSSD receives only one responsive Proposal, JSSD reserves the right to negotiate all elements of the Proposal and the Contract with the sole responsive Proposer, including, but not limited to, profit.

**M. Board Approval**

Execution of a contract with the selected proposer is subject to the approval of the JSSD Governing Body.



# REQUEST FOR PROPOSALS

## Part D – Standard Contract Terms

1. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** Utah law governs this contract. The parties shall submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract. Venue is in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
2. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction proposed and furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements, labor laws, non-discrimination laws, and environmental laws. Contractor is responsible to know what laws apply to its performance under this contract. The omission of any applicable law in this paragraph will not relieve Contractor from its contractual obligation to JSSD to comply with such laws.
3. **RECORDS ADMINISTRATION:** The Contractor shall maintain all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. Contractor shall retain those records for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor shall allow JSSD, State, and Federal auditors, and JSSD agency staff, access to all the records relating to this contract, for audit, inspection, and monitoring of services. Such access must be during normal business hours, or by appointment.
4. **CONFLICT OF INTEREST:** Contractor states that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of JSSD to secure favorable treatment with respect to being awarded this contract.
5. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor, and as such has no authorization, express or implied, to bind JSSD to any agreements, settlements, liability or understanding whatsoever, and shall not perform any acts as agent for JSSD, except as expressly set forth in this Contract. Compensation stated in this Contract is the total amount payable to the Contractor by JSSD. The Contractor is responsible for the payment of all income tax and social security tax due as a result of payments received from JSSD for these contract goods or services. Persons employed by JSSD and acting under the direction of JSSD will not be deemed to be employees or agents of the Contractor.
6. **STANDARD OF CARE:** Contractor shall perform any services to be provided under this Contract in a good and workmanlike manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.

## 7. TERMINATION:

- a. **Termination for Convenience.** JSSD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in JSSD's best interest. JSSD shall pay Contractor its costs, including contract close-out costs, and profit on work performed up to the time of termination. To be paid those costs, the Contractor must promptly submit its termination claim to JSSD. If the Contractor has any property in its possession belonging to the JSSD, the Contractor shall account for the same, and dispose or deliver it in the manner the JSSD directs.
- b. **Termination for Default.** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the JSSD may terminate this contract for default. To terminate for default, JSSD must serve a notice of termination on the Contractor describing the nature of the Contractor's default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by JSSD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, JSSD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. **Opportunity to Cure.** JSSD may, in the case of a termination for default, allow the Contractor a period of time, to be determined by JSSD (but, in no event shall such time be less than five (5) days), to cure the default (that period of time, the "Cure Period"). In such case, the notice of termination will state the time period in which cure is permitted and other conditions deemed appropriate by JSSD.

If Contractor fails to remedy the default to JSSD's satisfaction within the Cure Period, JSSD may immediately terminate the Contract for default. Termination for default will not preclude JSSD from also pursuing all available remedies against Contractor and its sureties for the default.

- 8. **SALES TAX:** Contractor shall pay any applicable sales tax. Sales taxes must be itemized on Contractor's invoices to JSSD.
- 9. **MOST FAVORED CUSTOMER:** Contractor states that the price set forth in this contract for the goods or services provided under this contract are and will continue to be the lowest prices charged by Contractor for the same or substantially similar goods or services. If at any time during the term of this contract, Contractor offers or sells the same or substantially similar goods or services to a third party at a lower price than the prices set forth in this contract, Contractor will immediately notify JSSD and reduce the purchase prices for the applicable goods or services to be provided under this contract to such lower price on any pending or future purchase orders for the goods or services provided under this contract.

**10. DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage remains with Contractor until final inspection and acceptance, when responsibility will pass to JSSD, except as to latent defects, fraud, and Contractor's warranty obligations.

**11. INSPECTIONS:** Goods furnished under this contract will be subject to inspection and testing by the JSSD at times and places determined by the JSSD, as may be more specifically set forth in the contract of which these Standard Contract Terms are a part. If JSSD finds goods furnished to be incomplete or not in compliance with bid/proposal specifications, JSSD may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by JSSD, then JSSD may cancel the order in whole or in part. The goods will be accepted or will be deemed to have been accepted by the JSSD no later than ninety (90) days after delivery unless the JSSD notifies Contractor, in writing, to the contrary during said ninety (90) day period stating how the goods are not in compliance with the Contract ("Acceptance"). After Acceptance, Contractor's sole liability and the JSSD's exclusive remedy for defective goods shall be Article 13 (Warranty).

**12. INVOICING AND PAYMENT:** The Contractor shall submit itemized invoices to JSSD within 30 days of delivery of goods or services. The JSSD contract number and/or purchase order number, along with the contract item number, must be listed on all invoices, freight tickets, and correspondence relating to the contract. Invoices for services or construction must indicate the time period covered by the invoice. The prices paid by JSSD will be those prices listed in the contract. JSSD may adjust or return any invoice reflecting incorrect pricing. Unless otherwise specified, payment terms are Net 30 days following receipt of invoice.

**13. WARRANTY:**

***[Warranty terms to be proposed by Proposer. A two year warranty is the minimum acceptable term. See Part B]***

**14. INDEMNIFICATION:** Contractor shall indemnify and hold harmless JSSD, and its officers and employees (the "Indemnitee(s)), and, with counsel approved by JSSD, defend the affected Indemnitee(s), and any and all of its/their boards, officers, agents, representatives, employees, assigns and successors-in-interest, from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses suffered by the Indemnitee(s) and any and all of its/their boards, officers, agents, representatives, employees, assigns and successors-in-interest as a result of a claim for death or bodily injury or personal injury to any person, including Contractor's employees, or physical damage or destruction to any tangible property, arising out of the acts, errors, omissions or willful misconduct incident to the performance of this contract on the part of the Contractor, except to the extent any such harm or damages caused by the active negligence or willful misconduct of the affected Indemnites(s).

**15. INSURANCE:**

- a. Contractor shall maintain or cause to be maintained on its behalf insurance policies of the types required below with insurance companies authorized to do business in the State of Utah, (i) having a Best Insurance Reports rating of "A" or better and a financial size

category of "X" or higher, or (ii) otherwise being acceptable to the JSSD with coverage limits and provisions at least sufficient to satisfy the requirements set forth below:

- (1) Workers' Compensation Insurance: Statutory workers' compensation insurance. Such insurance shall also include employer's liability insurance in a limit of no less than \$1,000,000. No owner or officer may be excluded.
  - (2) General Liability Insurance: Commercial general liability insurance on an occurrence basis arising out of claims for bodily injury (including death) and property damage. Such insurance shall provide coverage for ongoing operations and products-completed operations, blanket contractual, broad form property damage, personal and advertising injury, independent contractors and sudden and accidental pollution liability with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage, provided the general policy aggregate shall apply separately to the Contractor on a per project basis. Any aggregate limit that does not apply separately to the premises shall be at least double the required per occurrence limit. Contractor shall provide a certificate of insurance verifying completed operations coverage for a period of not less than two years after project completion. This coverage must be amended to show JSSD as an Additional Insured.
  - (3) Automobile Liability Insurance: Automobile liability insurance for the Contractor's liability arising out of the use of owned (if any), leased (if any), non-owned and hired vehicles of the Contractor, with a \$1,000,000 minimum limit per accident for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable. All owned and/or leased automobiles shall be covered using symbol "1" (any auto). This coverage must be amended to show JSSD as an Additional Insured.
  - (4) Professional Liability Insurance: To respond to the Contractor's architectural, design and engineering work in an amount not less than \$1,000,000 each claim, \$1,000,000 aggregate. Coverage shall apply to all operations and activities undertaken by the Contractor.
  - (5) Excess Liability Insurance: The amounts of insurance required in the foregoing subsections (1), (2), (3), this subsection may be satisfied by the Contractor purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the required limits specified above.
- b.** All policies of insurance to be maintained by the provisions of this section, except Professional Liability insurance, shall provide for waivers of subrogation in favor of JSSD and its officers and employees.
  - c.** The liability limits shown in this section are minimum requirements. To the extent the Contractor maintains, or causes to be maintained on its behalf, liability limits which are higher than the minimum limits stated in this section, the higher liability limits shall be required of the Contractor.



- d. All policies of liability insurance required to be maintained by the Contractor shall be endorsed as follows:
  - (1) To name JSSD as additional insured for ongoing operations (ISO CG 20 10 or equivalent) and completed operations (ISO CG 20 37 or equivalent).
  - (2) That the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by JSSD.
- e. Contractor shall provide proof of insurance to JSSD prior to commencing any Work under this Agreement.

**16. PATENTS, COPYRIGHTS, ETC.:** Contractor shall indemnify and hold harmless JSSD and its officers and employees (the "Indemnitee(s)), and, at the option of the affected Indemnitee(s), defend the affected Indemnitee(s), and any and all of its/their boards, officers, agents, representatives, employees, assigns and successors-in-interest, from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature arising from the Contractor's use of any copyrighted or un-copyrighted composition, trade secret, patented or un-patented invention, article or appliance furnished or used in the performance of this contract. Contractor shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including goods provided by Contractor, which have been modified or combined with other equipment or process not supplied by Contractor or (ii) any action settled or otherwise terminated without the prior written consent of Contractor. If, in any such action, the goods are held to constitute an infringement, Contractor shall, at its option and its own expense, procure for JSSD the right to continue using said goods; or modify or replace it with non-infringing equipment. THE FOREGOING PARAGRAPHS STATE THE ENTIRE LIABILITY OF CONTRACTOR AND EQUIPMENT MANUFACTURER FOR CLAIMS OF INFRINGEMENT.

**17. HAZARDOUS MATERIALS:** The Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to JSSD.

**18. PUBLIC INFORMATION:** Contractor acknowledges that the contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for this contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

**19. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**20. WRITTEN AMENDMENTS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto.

**21. ASSIGNMENT:** Contractor shall not assign, sell, or transfer any interest in this Contract without the express written consent of JSSD.

- 22. FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. JSSD may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
- 23. WAIVER:** Any waiver by a party of any breach of any kind or character whatsoever by the other party, whether such be direct or implied, will not be a continuing waiver of or consent to any subsequent breach of this Contract.
- 24. ENTIRE AGREEMENT:** The Contract of which these JSSD Standard Contract Terms are a part, constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of the Contract supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of JSSD. The terms of this Contract prevail in any dispute between the terms of this Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of this Contract.
- 25. LIMITATION OF LIABILITY:** In no event shall Contractor be liable for any special, incidental, indirect or consequential damages of any kind, whether in contract, warranty, tort, negligence, strict liability or otherwise. Contractor's maximum aggregate liability for any and all claims whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising from or related to this Contract shall not exceed the 150% of the Contract price. The foregoing limitations on the types and amounts of liability will not apply to third party indemnity claims or to losses resulting directly or indirectly from Contractor's intentional misconduct.