

TERMS AND CONDITIONS OF PURCHASE ORDER/CONTRACT (SERVICES) - CITY OF VERNON

This is a government contract. The terms are not changed by any words added by Contractor, nor superseded because of any form used by Contractor in the course of business. Any change in terms must be agreed to by an authorized representative of the City, in writing. Acceptance by the City of goods, materials or services is not an acceptance of Contractor's other terms.

1. Parties: (a) Purchaser: City of Vernon ("City"); (b) Contractor: as set forth in Purchase Order/Contract ("Contractor").
2. Contractor agrees to furnish the services described in the Purchase Order/Contract to which this is attached and subject to all terms and conditions of the Purchase Order/Contract, this Attachment to the Purchase Order/Contract, and all other attachments hereto.
3. Contractor agrees to submit all invoices to the address indicated on the Purchase Order/Contract.
4. Contractor agrees to invoice at net prices without federal excise tax or federal fuel tax.
5. Contractor agrees to show on all invoices the name of the department to which services were furnished, whether the invoice covers complete or partial performance, the Purchase Order/Contract number, and any applicable cash discount.
6. Contractor agrees to show applicable sales or use tax as separate items on all invoices.
7. Any item ordered on the face hereof that is listed in the Safety Orders of the California Division of Industrial Safety shall fully comply with the latest revised requirements of said Safety Orders.
8. Unless otherwise specified, all work performed will be subject to final inspection and approval on the site where services are supplied, or, in the event installation of equipment is required, such inspection and approval shall be at a place of installation. The making of periodic payments by City shall not be construed as acceptance of work up to the time of payments.
9. Contractor shall diligently and carefully perform all work required hereunder in a good and workmanlike manner, and shall furnish all labor, supervision, machinery, materials, equipment, and supplies as necessary.
10. Contractor warrants that all work performed under this Purchase Order/Contract shall conform to specifications, drawings, samples, or other descriptions furnished or adopted by City; and all workmanship or service rendered will be in accordance with standards established by City. Contractor agrees that the supplies/services furnished under this Purchase Order/Contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies/services, and that the rights and remedies provided herein are in addition to, and do not limit any rights afforded to the City by, and other clause of a Purchase Order/Contract awarded hereunder.
11. Prior to the issuance of the Purchase Order/Contract, Contractor may be required to provide to City evidence of insurance. Failure to maintain the required amounts and types of coverage throughout the duration of services supplied shall constitute a material breach of this Purchase Order/Contract and shall entitle the City to terminate this Purchase Order/Contract.
- 12. As respects acts, errors, or omissions in the performance of services under this Purchase Order/Contract, the Contractor agrees to indemnify and hold harmless the City, its officers, agents, employees, representatives, and volunteers from and against all claims, demands, defense costs, liability, or consequential damages arising out of the Contractor's negligent acts, errors, or omissions in the performance of its professional services under the terms of this Purchase Order/Contract or those of Contractor's subcontractors or anyone for whom Contractor is legally liable. As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, the Contractor agrees to indemnify, defend (at City's option), and hold harmless the City, its officers, agents, employees, representatives, and volunteers from and against all claims, demands, defense costs liability, or consequential damages arising out of or in connection with the Contractor's (including Contractor's employees, representatives, subcontractors or anyone for whom Contractor is legally liable) performance or failure to perform under this Agreement; excepting those which arise out of the sole negligence of City.**
13. Contractor shall indemnify and save harmless City from laborers, mechanics', and materialmen's liens upon materials, equipment, work in progress, or the premises on which the work is to be performed.
14. Contractor shall not perform work on City owned property, and shall not commence work or cause materials to be delivered to the job site, until so authorized in writing by the Head of the Department (or designee) for whom the work was ordered. Contractor shall perform all work in such manner as not to interfere with use of premises by City or other contractors. Contractor agrees that there shall be no interruptions of City's use except as stated on this Purchase Order/Contract. Contractor shall take all necessary precautions

(including those required by City's safety regulations) to protect the premises and all persons and property thereon from damage or injury and shall assume responsibility for the taking of such precautions by Contractor's and subcontractor's employees, agents, licensees, and permittees, and subcontractors. Upon completion of the work, Contractor shall leave the premises clean and free of all tools, equipment, waste material, and rubbish.

15. Contractor certifies and represents that, during the performance of this Purchase Order/Contract, the Contractor and each subcontractor shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition or marital status. Contractor further agrees that it will not maintain any segregated facilities.

16. Contractor shall obtain a City Business License under the terms and conditions of Vernon Municipal Code, Sections 5.20, et seq., where required.

17. Contractor hereby represents, warrants and certifies that no officer or employee of the Contractor is a director, officer or employee of the City of Vernon, or a member of any boards, commission or committees, except to the extent permitted by law.

18. Contractor shall keep sufficient and accurate records of all costs incurred as they relate to the basis of compensation as outlined on this Purchase Order/Contract. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor's records to the extent the City deems necessary to ensure it is receiving all money to which it is entitled under the Purchase Order/Contract and/or is paying the amounts to which Contractor is properly entitled to under the Purchase Order/Contract or for other purposes relating to the Purchase Order/Contract. The Contractor shall maintain and preserve all such records for a period of at least 3 years after the termination of the Purchase Order/Contract. The Vendor shall maintain all such records in the City of Vernon. If not, the Contractor shall, upon request, promptly deliver the records to the City of Vernon or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Vernon, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

19. It is understood that in the performance of any services herein provided, for Contractor shall be, and is, an independent contractor, and is not an agent or employee of City and shall furnish such services in its own manner and method, except as required by this Purchase Order/Contract. Further, Contractor has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Contractor in the performance of the services hereunder. Contractor shall be solely responsible for, and shall indemnify, defend, and save City harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that Contractor and any subcontractors, agents or employees are not entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or Workers' Compensation insurance benefits.

20. In case of conflict between the terms of this Purchase Order/Contract and the terms of any other document which is a part of this transaction, the terms of this Purchase Order/Contract shall strictly prevail.

21. Contractor shall not assign or transfer this Purchase Order/Contract or any rights hereunder with out the prior written consent of the City which may be withheld in the City's sole discretion. Any unauthorized assignment of transfer shall be null and void and shall constitute a material breach of Contractor of its obligations under this Purchase Order/Contract. All subcontractors shall be approved by City. Contractor agrees to secure proper agreements from all subcontractors necessary to protect City in the same manner as Contractor has herein agreed.

22. Time is strictly of the essence of this Purchase Order/Contract and each and every covenant, term and provision hereof.

23. In case of default by Contractor, the City reserves the right to procure the goods or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby. Contractor shall not be held accountable for additional costs incurred due to delay or default as a result of Force Majeure. Contractor must notify the City immediately upon knowing that non-performance or delay will apply to this Purchase Order/Contract as a result of Force Majeure. At that time Contractor is to submit in writing a Recovery Plan for this Purchase Order/Contract. If the Recovery Plan is not acceptable to the City or not received within 10 days of the necessary notification of Force Majeure default, then the City may cancel this Purchase Order/Contract in its entirety at no cost to the City, owing only for goods and services completed to that point.

24. The failure of City to insist upon performance of any provision of this Purchase Order/Contract or to exercise any right or privilege granted to City under this Purchase Order/Contract shall not be construed as waiving any such provisions, and the same shall continue in force. The City's waiver of any term, condition, breach or default of this Purchase Order/Contract shall not be valid unless set forth in a writing, executed by both parties, and shall not be considered to be a waiver of any other term, condition, default of breach, not of a subsequent breach of the one waived.

25. The provisions of California Labor Code Sections 1770, et seq., regarding the payment of prevailing wages on public works, and related regulations, apply to all City Contracts. In addition, Contractor must be currently registered and qualified (including payment of any required fee) with the State Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the State Department of Industrial Relations.

26. The City reserves the right to cancel any portion of this Purchase Order/Contract at any time prior to the delivery of services.

27. This Purchase Order/Contract shall be deemed a contract and shall be governed by and construed in accordance with the laws of the State of California. Contractor agrees that the State and Federal courts which sit in the State of California shall have exclusive jurisdiction over all controversies and disputes arising hereunder, and submits to the jurisdiction thereof.

28. This Purchase Order/Contract, including any Exhibits attached hereto, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

29. All additional terms and conditions must be approved as to form by the City Attorney in writing.

30. This Purchase Order/Contract does not and is not intended to confer any benefit on nor create any right exercisable or enforceable by any third party.

31. If any provision of this Purchase Order/Contract shall be determined to be invalid or unenforceable, such provision shall be deemed to be severed and the remainder of the Purchase Order/Contract shall be given full force and effect.