

CITY OF SAN MARCOS
STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS
(Goods, Commodities, and Services)

1. **PURCHASE.** Upon acceptance of the bid, the City will purchase materials and/or services as described herein for prices set forth on the order, and in accordance with all specifications ("Goods, Commodities, or Services"). There shall be no substitution of Goods, Commodities, or Services, without the prior written authorization of the City.
2. **TERMS OF BID.** All terms of the bid shall be incorporated herein as if expressly set forth in this Agreement except to the extent that such provisions are in conflict with or contravene any provision herein. In the event of such conflict, the terms of this Agreement shall govern.
3. **CHANGES.** The City has the right, by written notice, to change the quantity or specifications of the Goods, Commodities and Services ordered and the terms of the shipment or packaging of Goods. Upon receipt of notice, Vendor shall proceed promptly to make changes in accordance with the terms of the notice. If any change causes an increase or decrease in the cost or performance or in time required for completion, an equitable adjustment must be negotiated promptly and the Agreement modified in writing accordingly.
4. **NONTRANSFERABILITY.** Vendor shall not assign nor delegate duties or responsibilities under this Agreement, in whole or in part, without prior written approval of the City.
5. **COMPLIANCE WITH APPLICABLE LAW.** Vendor shall abide by all applicable Federal, State and Local Laws, Ordinances, Regulations, and Statutes, as may be related to the performance of duties under this Agreement, including the payment of prevailing wage when required. In addition, all applicable permits and licenses required shall be obtained by the vendor, at vendor's sole expense.
6. **BUSINESS LICENSE.** City of San Marcos Municipal Code Section 3.08 requires all persons doing business with the City to obtain a Business License unless exempt.
7. **TERMS AND CONDITIONS.** The terms and conditions contained herein constitute the entire agreement between both parties and supersede all previous communications, whether oral or written. The terms and conditions of this Agreement shall prevail over any conflicting, additional, or other terms and conditions appearing on any writing or acknowledgment by the vendor. No change to this Agreement shall be valid unless made in writing and signed by both parties.
8. **SPECIFICATIONS.** The detailed requirements of the specifications shall supersede any general reference made within this Agreement. Specific brand names, manufacturers, and model numbers referenced shall be provided unless prior explicit approval has been obtained from the City.
9. **SEVERABILITY.** In the event that any one or more of the provisions of this Agreement shall be found to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect and enforceable.
10. **DISCOUNTS.** In the absence of discount terms, invoices shall be net thirty (30) days from the date of material/service acceptance or invoice receipt, whichever is later.
11. **DELIVERY DATE AND RISK OF LOSS.** The Goods or Commodities must be shipped FOB destination and arrive at the destination specified on the "Ship/Bill To" and Services must be provided by the Vendor by the request date specified. Unless otherwise specified, title to and acceptance will be at destination and pass directly to City, subject to inspection, and will be made by an authorized employee or representative of the City. Until delivery and acceptance, risk of loss is the vendor's responsibility. It is at the City's discretion whether it will accept a revised date of delivery.
12. **WAIVER OF SUBROGATION.** Vendor hereby waives its own right of subrogation for losses arising out of this agreement against the City, its elected or appointed officials, agents, employees and volunteers, and shall require similar written express waivers from each of its subcontractors.
13. **INSURANCE, ENDORSEMENTS.** Prior to performing any services under this Agreement, contractor, consultant, supplier, or service provider, as applicable, shall submit to the City proof of insurance and endorsements. The following minimum levels of insurance *include but are not limited to*, A) *Commercial General Liability*, B) *Auto Liability*, C) *Professional Liability* D) *Workers Compensation and Employers Liability* E) *Liability Additional Insured Endorsement designating, "City of San Marcos";* F) *Endorsements reflecting Waiver of Subrogation and Primary Coverage*, as set forth in Exhibit 1, which is attached hereto and incorporated herein by reference.

- a. Vendor shall provide proof of liability and property damage insurance, together with applicable endorsements

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prior to performance of duties. Coverage shall be from a company authorized to transact business in the State of California and shall be in an amount set forth in Exhibit 1. The City of San Marcos shall be named as an additional insured and thirty (30) days notice of cancellation shall be indicated. Worker's compensation coverage for each employee engaged in work on City premises is required. Vendor is solely responsible for all insurance premium payments.

14. **INDEPENDENT CONTRACTORS.** In the event that services are being provided under this Agreement, the provider of such services, its employees, and agents shall perform as independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including, but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits.
15. **DUTY TO DEFEND.** Vendor shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, employees, and agents, from and against all claims for damages, liability, and expenses (including attorney's fees) arising out of this Agreement and/or vendor's performance hereunder, except as to damages, liability, and expenses due to the sole negligence or willful misconduct of the City, its officers, employees, or agents.
16. **PUBLIC RECORD.** Any information deemed confidential or proprietary by the vendor shall be clearly identified. Such information will be protected and treated with confidentiality only to the extent permitted by law. Otherwise, information provided shall be considered public record.
17. **TAXES.** The Vendor must state on all invoices any taxes imposed by the local, state or federal state government applicable to furnishings goods, commodities or services; provided however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise set forth in the Purchase Order, the purchase price will be considered to include state and city sales or use tax.
18. **WARRANTY.** The Vendor warrants that all Goods will conform to applicable specifications, drawings, description, and samples, and will be of good workmanship in material and free from defect. The Vendor's warranties, together with its service guarantee, must run to the City and its customers or users of the Goods and Services and must NOT be deemed exclusive.
19. **INDEMNITY.** To the fullest extent permitted by law, Vendor shall expressly agree to indemnify, defend, protect and hold harmless the City and its elected and appointed boards, directors, officers, employees, agents, contractors, and representatives (collectively, "City Indemnified Parties") from and against any and all actions, costs, judgments or damages (including, without limitation, court costs and reasonable attorneys' fees) of any kind whatsoever resulting from or in any way connected with any personal injury or property damage, including whether caused by the active or passive negligence of the City Indemnified Parties, excepting acts caused by the sole negligence or willful misconduct of City Indemnified Parties.
20. **TERMINATION.** The City may terminate this Agreement and be relieved of any consideration to the vendor should vendor fail to perform in the manner herein described. Furthermore, the City may terminate this Agreement for any reason, without penalty, upon giving thirty (30) days written notice to the vendor. In the event of termination, the full extent of City liability shall be limited to payment for materials and/or services authorized by and received to the satisfaction of the City.
21. **GOVERNING LAW, NO WAIVER.** This Agreement shall be governed by and interpreted according to the laws of the State of California, County of San Diego, and venue shall appropriately be had in the San Diego Superior Court, North County Branch, or the nearest U.S. District Court, as applicable. The purchase shall take place in San Marcos, California. The waiver or failure of either party to exercise in any respect any right provided in this Agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.
22. **ORDER OF PRECEDENCE.** In the event of conflicting provisions, the following order of precedence will apply: 1) Standard Federal Provisions (if any), 2) City Special Provisions for Purchase Order (if any), 3) City Purchase Order Terms and Conditions 4) Exhibits and Attachments to this Purchase Order 5) the RFP/Bid and 6) Vendor's Proposal.
23. **EXHIBITS, HEADINGS.** Any Exhibit referenced in this Agreement is incorporated into this document as though set forth in full at this point. Headings are provided for the convenience of the parties and shall not be used to construe the meanings or intent of any term.

EXHIBIT 1

CITY OF SAN MARCOS INSURANCE REQUIREMENTS FOR SUPPLIERS/VENDORS/SERVICE PROVIDERS

Vendor shall obtain and maintain during the entire term of the Agreement the following insurance policies from companies authorized to issue insurance in the State of California to transact the insurance business in the class of the type provided and shall have a general policyholder's rating of not less than an "A" and a financial size of ten million dollars (\$10,000,000) (currently Class V) or better in the most current A.M. Best's Key Rating Guide; which standards shall be met by such the issuing company and not by means of the standing or assets of their parent, subsidiary or affiliate entities:

- A. Comprehensive General Liability, including premises-operations, products/completed operations, broad form property damage, bodily injury and blanket contractual liability with the following coverages:
 - \$1,000,000 per occurrence (property damage and bodily injury);
 - \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate;
 - Cross-liability exclusions prohibited
 - Defense costs shall be in addition to limits of coverage (no "burning limits" coverages)
- B. Automobile Liability, (*where applicable*) including owned, hired, and non-owned vehicles with the following coverages:
 - \$1,000,000 per accident combined single limit (bodily injury and property damage);
 - Cross-liability exclusions prohibited
 - Defense costs shall be in addition to limits of coverage (no "burning limits" coverages)
- C. Professional Liability, (*where applicable*) at minimum, policy limits of not less than \$1,000,000 per claim and in the aggregate.
- D. Cyber Liability, (*where applicable*) Policy limits not less than \$2,000,000 *per occurrence or claim*, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- E. Workers' Compensation insurance in amounts in accordance with statutory requirements. Employer's Liability (*where applicable*), \$1,000,000 per accident or disease.
- F. Umbrella/excess liability, sufficient coverage that meet or exceed the specified coverage requirements and may be applied only once to meet the insurance coverage requirement for only one line of deficient underlying insurance.

ENDORSEMENTS shall be obtained so that each policy contains the following provisions, the wording for which shall be to the satisfaction of the City Attorney, and must be submitted to and approved by the City prior to the commencement of this Agreement:

- a) Additional Insured. (Not required for Professional Errors and Omissions Liability Insurance, Auto Liability or Workers' Compensation.)

"City of San Marcos and their elected and appointed boards, officers, agents and employees are additional insureds with respect to this subject project and contract with City."
- b) Preferred Forms.
 - General Liability: CG 2010 04 13, CG 2037 12 19 or latest
- c) Notice.

"Said policy shall not terminate, nor shall it be canceled or reduced in coverage without thirty (30) days' written notice to City of San Marcos."
- d) Primary Coverage.

"The policy provides primary coverage to City of San Marcos and its elected and appointed boards, officers, agents and employees. It is not secondary or in any way subordinate to any other insurance or coverage maintained by City of San Marcos."

EXHIBIT 1

- e) Waiver of Subrogation. All applicable insurance coverage, including workers' compensation coverage, maintained or procured pursuant to this contract shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors/consultants.

Failure to comply with insurance requirements under this Agreement shall be a material breach of this Agreement.

EXHIBIT 2

Where Federal Funds are utilized, the following shall apply:

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in

connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.323.

(K) See §200.216.

(L) See §200.322.

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