

CITY OF SPARKS - PURCHASE ORDER TERMS AND CONDITIONS

Vendors providing goods or services to the City of Sparks acknowledge that by delivering such goods or services, they agree to the following terms and conditions. Should a formal contract be executed between the City of Sparks and the Vendor (whether as a result of a formal bid or not), the terms and conditions defined in that contract shall prevail over those listed here in any case of conflict.

1. Acceptance of this Purchase Order, including the terms and conditions set forth herein, shall constitute the formation of a binding and enforceable contract between City and Vendor/Contractor.
2. This Purchase Order supersedes and cancels all prior written or oral communications between the parties, except as specifically shown on the face of this Purchase Order. Seller shall not alter or vary any terms or conditions contained or incorporated herein, including but not limited to, the quantity, price, delivery date or date designated as After Receipt of Order (ARO) or date for commencement or completion of construction, unless such alteration or variation is consented to in writing by a duly authorized representative of the City.
3. The City of Sparks (City) shall not be financially responsible for any materials or services furnished without a written and properly authorized purchase order issued by the City's Purchasing Division.
4. In the course of performing this Purchase Order, time is of the essence. City reserves the right to rescind this Purchase Order or any portion thereof, without subjecting it to any penalty or liability, in the event Vendor/Contractor fails to complete performance within the specified time.
5. ALL BACK ORDERS must be approved by the Purchasing Division. If orders cannot be timely delivered, Vendor/Contractor shall immediately advise PURCHASING DIVISION in writing.
6. Except where otherwise prohibited, this Purchase Order, and the terms and conditions contained and incorporated herein, shall be governed and interpreted by the Uniform Commercial Code (UCC), Chapter 104 of the Nevada Revised Statutes and all other applicable federal, state and local laws.
7. Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the City, whichever is later. Payment is made, for discount purposes, when check is mailed.
8. In the event Vendor/Contractor breaches any of the terms or conditions contained and incorporated herein, City, upon furnishing Vendor/Contractor with thirty (30) days prior written notice, reserves the right to cancel this Purchase Order, or any part thereof, without subjecting the City to any penalty or liability, and without limiting its right to seek damages, costs and fees arising from or relating to Vendor/Contractor's breach.
9. Vendor/Contractor understands and agrees that the City shall have the right to set off any amounts which are due and owing or may become due and owing to Vendor/Contractor from City under this Purchase Order or any other contractual agreement between the parties.
10. Vendor/Contractor SHALL NOT CHARGE FEDERAL OR STATE SALES TAX on the sale of any tangible personal property sold to the City. The City is exempt from Nevada State Sales Tax pursuant to NRS 372.325 and Federal Excise Tax under Chapter 32 of the Internal Revenue Code, exemption certificate A396200, Federal Tax ID# 88-6000202.
11. All Vendor/Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented, from time to time, by the Code of Federal Regulations, 41 CFR Part 60.
12. All printing forms, art work or designs ordered and paid for by the City shall become exclusive property of the City and shall be immediately returned to the City upon demand.
13. Seller warrants and represents that all goods to be delivered hereunder shall be free and clear of any and all liens, encumbrances or claims of title adverse to the City.
14. Unless otherwise provided, all goods shall be shipped, freight prepaid, F.O.B. destination specified by City. Only upon the City's written authorization may goods be shipped F.O.B., point of shipment. In the event City authorizes delivery of goods F.O.B., point of shipment, Vendor/Contractor shall provide for delivery of goods via common carrier in a manner that serves the City's best interest.
15. In the event of Vendor/Contractor's insolvency or bankruptcy filing, City reserves the right to cancel this Purchase Order by providing Vendor/Contractor with prior written notice, without subjecting the City to penalty or liability.

16. Seller shall procure and maintain for the duration of the contract sufficient insurance against claims for injuries or damages to property which may arise from or relate to Vendor/Contractor=s delivery and supply of goods and materials to the City.

17. The Vendor/Contractor shall, at all times, maintain the premises of any construction site free from accumulations of waste materials or rubbish arising from performance of this Purchase Order and caused by its employees, agents or subcontractors. Upon the complete performance of the work arising from this Purchase Order, Vendor/Contractor shall remove from the construction site premises all rubbish, implements, equipment and surplus materials and shall leave such premises broom clean.

SUPPLEMENTARY TERMS AND CONDITIONS

The following terms and conditions are applicable in cases where the purchase order is used for the provision of services specific to construction, installation, repair work or other services performed on City premises.

The term "City" refers to the City of Sparks.

Whereas, Vendor/Contractor, and City desire to enter into an agreement relating to the construction, installation, repair work or services described on the attached purchase order, and

Whereas, Vendor/Contractor, and City understand that in certain important respects the terms and conditions on the purchase order are insufficient to cover this kind of work, and

Whereas, Both parties desire to supplement those terms and conditions with this agreement,

NOW THEREFORE, Vendor/Contractor and City agree that these supplementary terms and conditions shall become a part of the contract entered into between Vendor/Contractor and City as more fully described in the attached purchase order and any other documents specifically referenced in such purchase order.

1. **These Terms Supplement Printed Terms and Conditions on Purchase Order.** The terms and conditions contained on the back of the attached purchase order, shall be supplemented by these terms and conditions. To the extent these terms and conditions are inconsistent with the terms and conditions contained on that purchase order, these terms and conditions shall govern.
2. **Scope of the Work.** The Vendor/Contractor, as promptly and as economically as practicable, shall perform all necessary services, shall procure, order and furnish all of the required materials, labor and equipment, and perform all of the services necessary for the completion of all of the work called for and described in this Purchase Order and in any specifications, drawings and other descriptive data that may be referred to herein and attached hereto.
3. **Time of Completion.** The work to be performed under this contract by the Vendor/Contractor shall be commenced immediately and shall be complete in accordance with the specifications on or before the date set forth in this contract. If, however, the Vendor/Contractor is delayed in the performance or completion of the work under his contract by labor strikes, lock-outs, fire, unavoidable casualties, or other causes beyond the control of the Vendor/Contractor and without its fault or negligence, then the time for the performance or completion of said work may be extended for a reasonable period to allow therefore, but any extension for a period of seven (7) days or more shall be valid only if the same is in writing signed by the City.
4. **The Contract Sum.** The City shall pay the Vendor/Contractor for the performance of the work under this contract the sum set forth herein (hereinafter referred to as the "Contract Sum").
5. **Payment.** Unless otherwise provided in this contract, the Contract Sum shall be due thirty days after the work is finally completed in accordance with the specifications; provided, however, that said payment shall not be due until the Vendor/Contractor has delivered to the City a complete release of all liens arising out of this contract, or receipts in full covering all labor and materials for which a lien could be filed, or a bond satisfactory to the City indemnifying it against any lien.

6. **Changes, Alterations and Modifications.** City may at any time by a written order and without notice to the Vendor/Contractor's sureties or assigns change the extent of the work covered by this contract or other description herein, or the time of completion. In connection with any such written order, City may issue a written stop work order with which Vendor/Contractor shall fully comply, and Vendor/Contractor shall be excused from proceeding with the work as changed only so long as such work remains in effect. Promptly upon receipt of the details of any such change, Vendor/Contractor shall either advise that the change will not affect is costs, or furnish: (1) a breakdown of estimated cost and changes in the Contract Sum attributable thereto, and (2) a statement of any necessary changes in the time of completion. Vendor/Contractor's failure to advise City within 10 days of the effect of any change hereunder shall constitute Vendor's consent to conform to the change without increase in the Contract Sum, or without change in other terms and conditions of this contract. The "written order" authorized by this article shall be effective notwithstanding the absence of Vendor/Contractor's formal written acceptance thereof. If the change causes a material increase or decrease in costs, then an equitable adjustment of the Contract Sum herein to be paid to Vendor/Contractor shall promptly be negotiated by City and Vendor/Contractor and incorporated in an amendment to this contract.
7. **Materials and Employees.** Unless otherwise specified, all materials shall be new, and both workmanship and material shall be of good quality. The Vendor/Contractor shall, if required by the City, furnish samples or other satisfactory evidence as to the kind and quality of materials as directed by the City, and all materials as directed by the City, and all materials thereafter furnished by the Vendor/Contractor shall be in strict accord with such approved samples. The Vendor/Contractor shall at all times enforce strict discipline and good order among its employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.
8. **Defaults.**
 - a. The Vendor/Contractor shall pay the costs of the work as they are incurred.
 - b. If the Vendor shall fail to pay any of the costs properly incurred by it, the City shall have the right to pay such costs directly, upon 24 hours written notice to the Vendor/Contractor, and deduct such costs from the Contract Sum.
 - c. If the Vendor/Contractor should fail in the prosecution of the work under this contract, to perform any provision of this Contract, the City may serve a Notice in writing upon said failure, and upon the refusal or neglect of the Vendor/Contractor for a period of two working days to remedy such failure, the City shall be entitled to remedy such deficiency, and any cost thereby incurred by the City shall be paid from the account of the Vendor/Contractor and deducted from the Contract Sum.
 - d. Any expense or cost arising out of the Vendor/Contractor's negligence, or that of its agents or employees, for replacing defective work, for damage to property, and for the disposal of material wrongly supplied, may be paid by the City from the account of the Vendor/Contractor and deducted from the Contract Sum.
9. **Set Offs.** Vendor/Contractor agrees that City shall have the right to set off any amounts which may become payable by City to Vendor/Contractor under this contract or otherwise, any amounts which Vendor/Contractor may owe to City, whereas arising under this contract or otherwise.
10. **Protection of Work, Property and Persons.** It is specifically understood and agreed that during the progress of the work under this contract, the Vendor/Contractor shall take extreme precautions against the possibility of fire on the City's property and maintain adequate protection of the work, adjacent property, and public, and shall be responsible for any damage or injury due to its act or neglect. Any other provision in this contract to the contrary notwithstanding, the Vendor/Contractor hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death or personal injury resulting therefrom) to all persons, whether employees of the Vendor/Contractor, or otherwise, and to all property, caused by, resulting from, or arising out of the Vendor/Contractor's negligence or that of its agents or employees.
11. **Inspection.** The City shall have access to and the right to inspect all work in the course of construction.
12. **Subcontracts.** The Vendor/Contractor agrees to obtain the agreement of every subcontractor to be bound to

terms and conditions materially and substantially comparable to those contained herein unless otherwise authorized and approved by the City.

13. **Separate Contracts.** The City shall have the right to let other contracts in connection with this work or other work and the Vendor/Contractor shall afford other vendors or contractors reasonable opportunity for the execution of their work and shall properly connect and coordinate its work and theirs. **The Vendor/Contractor shall be liable for any damage that it, its agents or employees may cause to any other vendor or contractor, and shall save City harmless therefrom.**
14. **Use of Premises.** The Vendor/Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances or permits, and shall not unreasonably encumber the premises with its materials. Before storing any materials or apparatus, or before constructing any temporary work shanty or workshop upon the City's premises, the Vendor/Contractor shall obtain clearance from the City in writing designating the location and space on the City's premises for such storage. In addition, before the Vendor/Contractor moves or relocates any storage area or temporary shanty or workshop, it shall obtain similar clearance in writing from the City designating new or additional space on the City's premises.
15. **Permits and Regulations.** Before commencing the performance of any of the work under this contract, the Vendor/Contractor shall comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this contract, and if the Vendor/Contractor performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom. In the event that the Vendor/Contractor is unable to procure the necessary permits, as aforesaid, the City shall have the option to cancel this contract without any liability whatsoever, or the City may procure the permits, and the costs thereof shall be deducted from the Contract Sum. Vendor/Contractor specifically agrees to abide by and observe all standards or regulations of the Occupational Safety and Health Administration which are applicable to the work being performed.
16. **Insurance.** The Vendor/Contractor shall maintain such insurance as will protect it and the City from all claims under (1) Worker's Compensation Acts, (2) Personal Liability, (3) Property Damage and all other claims for damages, including personal injury and death, which may arise from operations under this contract.
17. **Indemnity.** Contractor agrees to indemnify, hold harmless, protect and defend the City, its agents, employees, contractors and/or representatives, from and against any liability, claim, loss, cost, expense or damage, including reasonable attorneys' fees and court costs, claimed against the city resulting from, arising out of, or in any manner relating to any act or failure to act by the Contractor, its agents, employees, subcontractors and/or representatives in connection with the performance of its obligations hereunder.
18. **Assignment.** None of the sums due or to become due, nor any part of the work to be performed under this contract, shall be assigned; nor shall Vendor/Contractor subcontract any substantial portion of this contract without City's prior written consent.
19. **Cleaning Up.** The Vendor/Contractor shall at all time keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work, it shall remove from the premises all rubbish, implements and surplus materials and shall leave the premises broom clean.
20. **Termination.**
 - a. Anything in this contract to the contrary notwithstanding, if the Vendor/Contractor should so fail to make progress as to endanger performance of this contract in accordance with its terms, or if it should fail to make prompt payments to subcontractors or for material or labor, or violate any laws, ordinances or regulations, or otherwise violate any provision of this contract, then the City may, without prejudice to any other right or remedy, terminate this contract in whole or from time to time in part upon written notice and proceed to complete or cause the work to be completed; and the City may deduct the cost of completing the said work from payments then or thereafter due to the Vendor/Contractor, who shall pay the City any amount by which such cost of completion shall exceed the unpaid monies due to become due to the

Vendor/Contractor.

- b. In addition to the provisions of paragraph (a), the City shall have the right to terminate this Contract without cause upon 5 days written notice to the Vendor/Contractor, but in that event, City shall pay to the Vendor/Contractor a proportionate amount of the Contract Sum, as amended, based upon the percentage of the completion of the work under this Contract and any amendment hereto.

21. **Miscellaneous.**

- a. The terms "work" and "work under this contract" include labor and materials as required for the performance of this contract.
- b. Written notice under this contract shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if sent by registered by mail or by telegram to the Vendor/Contractor at the address shown herein, or to the City at the address shown herein to the attention of the person executing this contract.
- c. Failure of either party to this contract to enforce any provision of this contract shall not be deemed a waiver of such provision or of subsequent failures to comply with any such provision.
- d. This contract may not be altered or amended in any way whatsoever, except in writing signed by both parties hereto.
- e. This contract shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State of Nevada.

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