

GENERAL PROVISIONS (Services)

1. **DEFINITIONS:** Throughout this contract, the following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b) **“Buyer”** means the City of Vallejo.
 - c) **“Contract”** means this purchase order, contract or agreement, by whatever name known or in whatever format used.
 - d) **“Contractor”** means the business entity with whom the City enters into a contract. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.
 - e) **“Cost or Pricing Data”** means facts available at the time of price agreement that prudent buyers and sellers would reasonably expect to affect price significantly. Cost or pricing data are factual, not judgmental, and are therefore, verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also may include such factors as (1) sub-tier supplier quotations; (2) nonrecurring costs; (3) information on changes in production methods and in production or purchasing volume; (4) data supporting projections of business prospects and objectives and related operations costs; (5) unit-cost trends such as those associated with labor efficiency; (6) make-or-buy decisions; (7) estimated resources to attain business goals; (8) information on management decisions that could have a significant bearing on costs; (9) supplier negotiation decrement; and (10) cost/price analysis.
 - f) **“City”** means the City of Vallejo, its employees and authorized representatives.
2. **CONTRACT FORMATION:**
 - a) If this contract results from a sealed bid, then contractor’s bid is a firm offer to the City which is accepted by the issuance of this contract and no further action is required by either party.
 - b) If this contract results from a solicitation other than described in paragraph a), above, contractor’s quotation or proposal is deemed a firm offer and this contract document is the City’s acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and the City agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the contract, the contract shall be **terminated in a manner commensurate with the interests of both parties.**
5. **JOINT BIDS/JOINT CONTRACTORS:** A joint bid (which is defined as two or more suppliers bidding jointly in one solicitation response) which resulted in the award of this contract shall be deemed one indivisible contract. Each joint contractor will be jointly and severally liable for the performance of the entire contract, and the joint contractors must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The City assumes no responsibility or obligation for the division of orders or purchases among joint contractors.
6. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the City. Except as the City may specify in writing, the contractor and its personnel shall have no authority, expressed or implied, to act on behalf of the City in any capacity whatsoever as an agent. The City shall have the right to control Contractor only insofar as the results of Contractor’s services rendered pursuant to this contract; however, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract.
7. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Solano County, Vallejo, California.
8. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable federal, state and local statutes, laws, ordinances rules and regulations and agrees to indemnify the City against any loss, cost, damage or liability by reason of contractor’s violation of this provision.
9. **CONTRACTOR’S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the City harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor agrees that it will not enter into any arrangement with any third party which might abridge any rights of the City under this contract.
10. **ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of the City; such consent will not be unreasonably withheld.
11. **WAIVER OF RIGHTS:** Any action or inaction by either party or the failure of either party on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by that party of its rights hereunder and shall not prevent that party from enforcing such provision or right on any future occasion. The rights and remedies of the parties herein are cumulative and are in addition to any other rights or remedies that either party may have at law or in equity.
12. **INTERPRETATION OF CLAUSE HEADINGS:** The use of headings throughout the contract is for convenience only and shall not be used to interpret or to govern the meaning of any specific provision of the contract.
13. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this contract, the following order of precedence shall apply:
 - a) special terms and conditions;
 - b) general terms and conditions, including these General Provisions;
 - c) specifications; and
 - d) all other attachments incorporated herein by reference.

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The specifications shall prevail over any subsidiary document(s) referenced therein.

14.. TIME IS OF THE ESSENCE: Time is of the essence in this contract.

15. SAFETY AND ACCIDENT PREVENTION: In performing work under this contract, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the City may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

16. INSURANCE: During the duration of this contract Contractor shall maintain the following insurance: commercial general liability insurance, business auto liability and workers' compensation insurance.

a) Coverage shall be at least as broad as:

- i. Worker's Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance.
- ii. Insurance Service Office form number CG 0001 (Commercial General Liability).
- iii. Insurance Services Office form number CA 0001 (ed. 1/87) Automobile Liability, code 1 (any auto).

b) Contractor shall maintain limits no less than:

- i. Workers' Compensation limits as required by the Labor Code of the State of California and Employers' Liability limits not less than \$1,000,000 per accident.
- ii. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability, Independent Contractor, Broadform Property Damage, Personal Injury, Products and Completed Operations.
- iii. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit Bodily Injury and Property Damage, including Owned and Not-owned and hired auto coverage's, as applicable.

c) Any deductibles or self-insured retentions must be declared to and approved by the City.

d) The policies are to contain, or be endorsed to contain the following provisions:

i. General Liability and Automobile Liability Coverages: CITY, its officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to CITY, its officials, employees or volunteers.

(ii) Contractor's insurance coverage shall be primary insurance as respects to CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

(iv) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. All Coverages:

Each insurance policy require by this contract shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to CITY, mailed certified, return receipt requested, to the following address:

City of Vallejo
ATTN: Risk Manager
555 Santa Clara St.
Vallejo, Ca 94590

In addition, contractor agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to CITY and CITY approves the reduction in coverage or limits. Contractor further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to CITY and CITY approves such increase.

f) Insurance is to be placed with insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only, provided, however, that in no event will a carrier with a rating below B:IX be acceptable.

g) Contractor shall furnish CITY with certificates of insurance showing compliance with the above requirements and with original endorsements effecting all coverages required by this Agreement. The certificates and/or endorsements shall set forth a valid policy number for CITY, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements are to be forwarded to:

City of Vallejo
ATTN: Risk Manager
555 Santa Clara St.
Vallejo, Ca 94590

h) CITY will withhold payments to contractor if the certificates of insurance and endorsements required by this contract are canceled or Contractor otherwise ceases to be insured as required herein.

17. TERMINATION. CITY shall have the right to terminate this contract at any time by giving notice of such termination to Contractor. In the event CITY shall give such notice of termination, Contractor shall immediately cease rendering Services pursuant to this contract.

In the event CITY shall terminate this contract:

a) Contractor shall promptly deliver to CITY copies of all information prepared pursuant to this contract.

b) CITY shall pay Contractor the reasonable value of Services rendered by Contractor prior to termination; provided, however, CITY shall not in any manner be liable for lost profits which might have been made by Contractor had the contract not been terminated or had Contractor completed the Services required by this contract. In this regard, CONSULTANT shall furnish to CITY such financial information as in the judgement of the CITY is necessary to determine the reasonable value of the Services rendered

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by Contractor. In the event of a dispute as to the reasonable value of the Services rendered by Contractor prior to termination, the decision of the CITY shall be final. The foregoing is cumulative and does not affect any right or remedy which CITY may have in law or equity.

- 18. INDEMNIFICATION:** Contractor shall fully indemnify and save harmless, City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, as a direct or indirect result of any negligent act or omission or willful misconduct of Contractor, its officers, employees, subcontractors, subcontractors or agents in connection with the performance or nonperformance of this contract, whether or not the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the Contractor, and whether or not such liabilities are litigated, settled or reduced to judgment. Contractor shall, upon City's request, defend at Contractor's sole cost any action, claim, suit, cause of action or portion thereof which asserts or alleges liabilities resulting directly or indirectly from any negligent act or omission or willful misconduct of Contractor, its officers, employees, subcontractors, subcontractors or agents in connection with the performance or nonperformance of this contract, whether such action, claim, suit, cause of action or portion thereof is well founded or not. In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to the City's negligence or willful misconduct, the City shall pay the portion of damages which is allocated to the City's negligence or willful misconduct, provided that the City shall not be liable for any passive negligence of the City, its officers or employees in reviewing, accepting or approving any service or work product performed or provided by Contractor. The existence or acceptance by City of any of the insurance policies or coverages described in this contract shall not affect any rights City may have under this Section. The provisions of this Section shall survive any termination of this contract.
- 19. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in duplicate and shall include the contract number; purchase order number; item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 20. REQUIRED PAYMENT DATE:** Unless otherwise specified, payment will be made in accordance with terms specified in contract. Payment shall not be due until the later of: (a) the date of acceptance of goods or performance of services; or (b) receipt of an accurate invoice.
- 21. TAXES:** The City is exempt from Federal excise taxes. The City will only pay for any state or local sales or use taxes on the services rendered or goods supplied to the City pursuant to this contract.
- 22. CONTRACT MODIFICATION:** The contract shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any

course of performance. No modification of the contract shall be effective unless in writing and signed by the City.

23. UNILATERAL CHANGES:

- a) The City may, any time, exclusively in a writing signed by the City, and without notice to sureties, make changes within the general scope of this contract which affect the (a) drawings, designs or specifications; (b) method of shipment or packing; (c) place of inspection, delivery or acceptance; (d) delivery schedules; or (e) description of services to be performed; time of performance of services (i.e., hours of the day, days of the week, etc.); or place of performance of services.
- b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, a contract adjustment shall be made in the contract price or delivery schedule or both, and the contract shall be modified in writing accordingly. Any request by contractor for adjustment under this provision must be asserted in writing to the buyer not later than thirty (30) days after the date of receipt by contractor of written change direction, or within such extension as the City may grant in writing. The City may, in its sole discretion, consider any such request regardless of when asserted. Pending any such adjustment, contractor will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in contractor's request for contract adjustment, the City shall have the right to direct the manner of disposition of such property. The City shall have the right to require the submission of supporting cost or pricing data and/or to inspect contractor's pertinent books and records for the purpose of verifying contractor's request and determining the basis for entitlement to an adjustment.
- c) Contractor's request for contract adjustment shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all decreases in costs. The request shall be submitted by a person duly authorized by the contractor in a signed writing that contains the following certification statement: "I certify that the request is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which (insert contractor's name here) believes the City is liable."

24. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to the City's operation which are designated confidential by the City and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the City. The identification of all such confidential data and information as well as the City's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the City in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the City to be adequate for the protection of the City's confidential information, such methods and procedures may be used, with the written consent of the City, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

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25. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the City Manager or Purchasing Division.

26. EXAMINATION AND AUDIT: Contractor agrees that the City, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the City to audit records and interview staff in any subcontract related to performance of this contract.

Contractor shall maintain all records relating to their performance under this contract in accordance with generally accepted accounting practices.

27. COST OR PRICING DATA: At all times during and following the period of contract performance, the City may require contractor to furnish such cost and pricing data as the City deems necessary to assess the reasonableness of contract pricing, including the reasonableness of changes.

28. TERMINATION FOR NON-APPROPRIATION OF FUNDS: If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the City Council. If funds to effect such continued payment are not appropriated, contractor agrees terminate any services supplied to the City under this contract, and relieve the City of any further obligation therefor.

29. CONFLICT OF INTEREST:

- a) Current City Employees:
 - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any City agency, unless the employment, activity or enterprise is required as a condition of regular City employment.
 - ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any City agency to provide goods or services.
- b) Former City Employees:
 - i) For the two-year period from the date he or she left City employment, no former City officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any City agency.
 - c) For the twelve-month period from the date he or she left City employment, no former City officer or employee may enter into a contract with any City agency if he or she was employed by that City agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving City service.

30. COVENANT AGAINST GRATUITIES: The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the City with a view toward securing the contract or securing favorable treatment with respect to any

determinations concerning the performance of the contract. For breach or violation of this warranty, the City shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the City in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

31. NONDISCRIMINATION CLAUSE:

- a) According to the City of Vallejo Municipal code section 3.20.250; During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

32. RECYCLING: Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in Section 12161 and 12220 of the PCC. In addition, the COV Administrative Rule 6.8 requires all contractors doing business with the COV to comply with efforts to reduce waste as required in the CA Integrated Waste Management Act of 1989(AB939). This requirement includes submitting proposals printed on two-sided copies and recycled paper, with reusable bindings or staples. Contractors may also be asked to provide documentation on its recycling efforts as it pertains to contracts with the City.

33. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board.

34. PERSONNEL

Contractor shall assign only competent personnel to perform services pursuant to this contract. In the event the City, in its sole discretion, at any time during the term of this contract, desires the removal of any person or persons assigned by contractor to perform services pursuant to this contract, Contractor shall remove any such person immediately upon receiving notice from City of its desire for the removal of such person or persons.

35. BUSINESS LICENSE REQUIRED

In accordance with COV Municipal Code Section 5.04.115, any person or company conducting business in the COV must obtain a business license and pay the fee applicable to the type and location of business. The successful contractor, bidder or proposer will be required to show compliance with this requirement prior to the award of the contract. Information pertaining to business license fees

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should be directed to the COV Commercial Services Division-
555 Santa Clara St. Vallejo, CA. 94590- 707 648-4310.

36. LOCAL VENDOR PREFERENCE

A five percent (5%) preference shall be granted to local bidders. A local bidder is defined as a business entity with its principal place of business located within the city limits of the City of Vallejo. **To qualify for the preference, local bidders must submit proof of the address of its principal place of business and a copy of their current city Business License.** Copies of current business license certificates must be submitted with each bid for which a preference is claimed. Local preference only applies to the procurement of material, supplies, equipment, and will not apply to bids conducted cooperatively with other public agencies nor when prohibited by the terms of a Federal, State or private grant of funds.

37. OTHER AGENCY "PIGGY-BACK" PROCUREMENTS

Other municipalities, school districts, recreation districts, or public agencies in Solano County may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate in the on the bid worksheet of this request for quotation if pricing offered in this bid will be extended to other public agencies in this area not later than ninety (90) days after award by the City of Vallejo. Any such piggy-back awards will be made independently by each agency, and the City is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated piggy-back procurements.

38. NON-COLLUSION

In accordance with VMC Section 3.20.130 supplier/contractor certifies under penalty of perjury that this proposal is genuine and is not collusive or a sham proposal made in the interest of, or in behalf of any persons not herein named.

That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiant, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, firm or person to submit a collusive or sham proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other bidder, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Vallejo or any person interested in the proposed contract.

That the price or prices quoted in the proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, owners, representatives, employees, or parties in interest, including this affiant.

39. PERFORMANCE AND PAYMENT BONDS

Performance and payments bonds will be required for awards totaling _____ or more. Contractor shall furnish bonds covering the faithful performance of the contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond). The performance and payment bonds shall each be in the amount of the contract sum, and shall

be in effect on the date the contract is signed by the owner. The contractor shall promptly furnish such additional security as may be required by the owner to protect its interests and those interests of persons or firms supplying labor or materials to do the work. Surety companies used by the contractor shall be, on the date the contract is signed by the owner, listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring companies". The premiums for the performance and payments bonds shall be paid by the contractor. Other acceptable forms of bonds are certificate of deposit or irrevocable letter of credit, shall also be in the amount of the contract sum. Bonds have to be verified with the Risk Manager.

40. DEFAULT

Contractor agrees and recognized that the City may for any failure of the Contractor to comply fully with the terms and conditions and provisions of this contract, declare Contractor to be in breach and avail itself of any and all remedies available to the City at law or in equity.