

CITY OF RANCHO CUCAMONGA
STANDARD TERMS AND CONDITIONS

1. Pre-Qualification –Vendors wishing to submit a Quote, Bid or Proposal response must be registered as a Vendor with the City of Rancho Cucamonga. Only those responses received from registered Vendors will be accepted. Responses must be submitted by the same Vendor that has downloaded the Request for Quote, Bid or Proposal from the Bid system. This information is indicated in the system and provides the ability to tabulate the responses in accordance to the named Vendors. Submitting a response under a Vendor name that does not appear to be on the Notified or Prospective Bidders list will be deemed as non-responsive and disqualified from the process.
2. All prices and notations must be submitted in accordance to the instructions provided in the solicitation.
3. All pricing is to be submitted without CA sales tax, unless otherwise advised.
4. All City solicitations are conducted and to be submitted electronically through the Planet Bid system, the method utilized by the City for all solicitations unless otherwise stated in the solicitation instructions. Solicitations are to be submitted by the due date and time indicated in the solicitation package.
5. Time of delivery is part of the consideration and must be stated in definite terms; and must be adhered to. If delivery varies on different items, the Vendor shall so state for each item.
6. Payment Terms of less than thirty (30) days for cash discount will be considered as net. Cash discount period will be computed either from the date of delivery and acceptance of the goods ordered or the date of receipt of correct and proper invoices, prepared in accordance with the terms of our purchase order, whichever date is later.
7. The City of Rancho Cucamonga's standard freight terms are FOB: Destination.
8. A responsible officer or employee must sign with the Vendor's name on all submittals. Obligations assumed by such signature must be fulfilled.
9. No charge for transportation, packing, drayage, inspection on deliveries which do not meet the specifications or are above those quoted will be allowed.
10. In case of default by the Vendor, the City of Rancho Cucamonga may procure the articles or service from other sources and may deduct from unpaid balance due to the Vendor, or may bill for excess costs so paid, and the prices paid by the City of Rancho Cucamonga shall be considered the prevailing market prices paid at the time such purchase is made.
11. Contractor warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of the Work Product and/or materials produced under this Agreement, and that City has full legal title to and the right to reproduce any of the Work Product. Contractor shall defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim or liability in any way related to a claim that City's use is violating federal, state or local laws, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, software, equipment, devices or processes used or incorporated in the Services and materials produced under this Agreement. In the event City's use of any of the Work Product is held to constitute an infringement and any use thereof is enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using the Work Product by suspension of any injunction or by procuring a license or licenses for City; or (b) modify the Work Product so that it becomes non-infringing. This covenant shall survive the termination of this Agreement.

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12. The Vendor will not be held liable for failure or delay in fulfillment if hindered or prevented by fire, strikes, or Acts of God. Vendor shall be excused from performance hereunder during the time and to the extent that he/she is prevented from obtaining, delivery on, or performing in the customary manner, by acts of God, fire, war, strike, loss or shortage of transportation facilities, lockout or commandeering of raw materials, product plants or facilities by the government. Vendor shall provide the City satisfactory evidence that nonperformance is due to other than fault of negligence on Vendors part.
13. Vendors may be considered non-responsive and disqualified resulting in the rejection of submittal for any of, but not limited to, the following causes:
 - a. Failure to use the forms furnished by the City,
 - b. Failure to be registered as a Vendor,
 - c. Failure to submit response under registered Vendor name,
 - d. Lack of signature by an authorized representative on the submittal form,
 - e. Failure to properly complete the submittal,
 - f. Evidence of collusion among Vendors,
 - g. Unauthorized alteration of submittal form,
 - h. Not received by specified due date.
14. Submittals are subject to acceptance at any time within ninety (90) days after opening, unless otherwise stipulated.
15. Verify your submittal before submission, as they cannot be withdrawn or corrected after being opened. In the event of a calculation error, the unit price shall prevail.
16. The City of Rancho Cucamonga pays **California Sales Tax** regardless of Vendor's place of doing business and is exempt from Federal Excise Tax. Unless otherwise specified, **DO NOT** include sales tax in your response.
17. Accounts paying for transportation of property to the City of Rancho Cucamonga are exempt from Federal Transportation Tax. An Exemption Certificate is not required where the shipping papers show the consignee as City of Rancho Cucamonga; as such papers may be accepted by the carrier as proof of the exempt character of the shipment.
18. The articles covered by the response must conform to safety orders of, but not limited to, OSHA, CALOSHA, NFPA and/or NIOSH.
19. **CONFLICT OF INTEREST:** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Contractor shall not accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained.

Contractor further represents that it has not employed or retained any person or entity, other than a *bona fide* employee working exclusively for Contractor, to solicit or obtain this Agreement. Contractor has not paid or agreed to pay any person or entity, other than a *bona fide* employee working exclusively for Contractor, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Contractor hereunder the full amount or value of any such fee, commission, percentage or gift.

Contractor has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Contractor at any time during the term of this Agreement, Contractor

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shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited “conflict of interest” under applicable laws as described above.

20. Municipal Ordinances may require the issuance of a City of Rancho Cucamonga Business License as a condition precedent to being engaged as a contract Vendor by the City of Rancho Cucamonga.
21. The City hereby agrees to make payment to Vendor’s cost for all government mandated equipment requirements enacted after the award, which affect the Vendor’s ability to supply the specified equipment.
22. A written Purchase Order mailed, or otherwise furnished to the successful Vendor within the time for acceptance specified, shall result in a binding Agreement without further action on either part. This Agreement shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
23. **QUANTITY ADJUSTMENT:** When applicable, it is mutually accepted that the quantities defined in this document reflect the approximate City requirements and may be either decreased or increased and honored at stated prices as proposed.
24. **WARRANTIES:** Vendor will fully warrant all materials and equipment for a period of not less than one (1) year from date of final acceptance by the City unless otherwise noted. All warranties, standard and extended, shall be shown on any units offered, and all costs related to the servicing of said warranties shall be clearly stated on submittal form.
25. **APPLICABLE LAW AND VENUE:** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. Venue for any action relating to this Agreement shall be in the San Bernardino County Superior Court.
26. **AWARD:** The City of Rancho Cucamonga recognizes that price is only one of several criteria to be used in judging a product or service, and the City of Rancho Cucamonga is not legally bound to accept the lowest response. Agreements shall be awarded to the Vendor whose offer is determined to be the most advantageous to the City from the standpoint of suitability to purpose, quality, service, previous experience, price, ability to deliver, or for any other reason deemed by the City to be in the best interest of the City and, as such, will not be determined by price alone and may not be the lowest response especially where services are of utmost importance. When there is more than one (1) item, the City reserves the right to award separately or. Vendors must state "all or none" on submittal form. If optional items or trade-ins are requested, the City may accept or decline such items.
27. **TERMINATION:** City shall have the right to terminate this Agreement at any time for any or no reason on not less than ten (10) days prior written notice to Contractor. In the event City exercises its right to terminate this Agreement, City shall pay Contractor for any services satisfactorily rendered prior to the effective date of the termination, provided Contractor is not then in breach of this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation. City may terminate for cause following a default remaining uncured more than five (5) business days after service of a notice to cure on the breaching party.

Contractor may terminate this Agreement for cause upon giving the City ten (10) business days prior written notice for any of the following: (1) uncured breach by the City of any material term of this Agreement, including but not limited to Payment Terms; (2) material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties to reach accord on the fees and charges for any Additional Services required because of such changes.
28. **OWNERSHIP OF WORK PRODUCT:** All documents, ideas, concepts, electronic files, drawings, photographs and any and all other writings, including drafts thereof, prepared, created or provided by Contractor in the course of performing the Services, including any and all intellectual and proprietary rights arising from the creation of the same (collectively, “Work Product”), are considered to be “works made for hire” for the benefit of the City. Upon payment being made, and provided Contractor is not in breach of this Agreement, all Work Product shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Basic survey

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notes, sketches, charts, computations and similar data prepared or obtained by Contractor under this Agreement shall, upon request, be made available to City. None of the Work Product shall be the subject of any common law or statutory copyright or copyright application by Contractor. In the event of the return of any of the Work Product to Contractor or its representative, Contractor shall be responsible for its safe return to City. Under no circumstances shall Contractor fail to deliver any draft or final designs, plans, drawings, reports or specifications to City upon written demand by City for their delivery, notwithstanding any disputes between Contractor and City concerning payment, performance of the contract, or otherwise. This covenant shall survive the termination of this Agreement. City's reuse of the Work Product for any purpose other than the Project shall be at City's sole risk.

- (1) Assignment of Intellectual Property Interests: Upon execution of this Agreement and to the extent not otherwise conveyed to City by Section 8.1, above, the Contractor shall be deemed to grant and assign to City, and shall require all of its subcontractors to assign to City, all ownership rights, and all common law and statutory copyrights, trademarks, and other intellectual and proprietary property rights relating to the Work Product and the Project itself, and Contractor shall disclaim and retain no rights whatsoever as to any of the Work Product, to the maximum extent permitted by law. City shall be entitled to utilize the Work Product for all purposes, including but not limited to constructing, using, maintaining, altering, adding to, restoring, rebuilding and publicizing the Project or any aspect of the Project.
- (2) Title to Intellectual Property: Contractor warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of the Work Product and/or materials produced under this Agreement, and that City has full legal title to and the right to reproduce any of the Work Product. Contractor shall defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim or liability in any way related to a claim that City's use is violating federal, state or local laws, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, software, equipment, devices or processes used or incorporated in the Services and materials produced under this Agreement. In the event City's use of any of the Work Product is held to constitute an infringement and any use thereof is enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using the Work Product by suspension of any injunction or by procuring a license or licenses for City; or (b) modify the Work Product so that it becomes non-infringing. This covenant shall survive the termination of this Agreement.

29. INSURANCE

- (1) Liability Insurance: Contractor shall procure and maintain in full force and effect for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Contractor, and/or its agents, representatives, employees and subcontractors.
- (2) Minimum Scope of Insurance: Unless otherwise approved by City, coverage shall be at least as broad as:
 - a. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 - b. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - c. Worker's Compensation insurance as required by the State of California, and Employer's Liability Insurance.
- (3) Minimum Limits of Insurance: Contractor shall maintain limits no less than:

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- a. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
 - b. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
 - c. Employer's Liability: \$1,000,000 per accident and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.
- (4) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the City.
- (5) Other Insurance Provisions:
- a. The commercial general liability and automobile liability policies are to contain the following provisions on a separate additionally insured endorsement naming the City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of city or agency officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; and/or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City or agency officials which are not also limitations applicable to the named insured.
 - b. For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of city or agency officials. Any insurance or self-insurance maintained by City, their officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of city or agency officials shall be excess of Contractor's insurance and shall not contribute with it.
 - c. 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.
 - d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after 30 days prior written notice by first class mail has been given to City (ten (10) days prior written notice for non-payment of premium). Contractor shall provide thirty (30) days written notice to City prior to implementation of a reduction of limits or material change of insurance coverage as specified herein.
 - e. Each insurance policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city or agency officials.
 - f. Be issued by an insurance company approved in writing by City, which is admitted and licensed to do business in the State of California and which is rated A: VII or better according to the most recent A.M. Best Co. Rating Guide.
 - g. Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided.

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- h. Specify that all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.
 - i. Other required insurance, endorsements, or exclusions as required by the City in any request for proposals applicable to this Agreement.
- (6) Evidence of coverage: Prior to commencing performance under this Agreement, the Contractor shall furnish the City with certificates and original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the City before Contractor commences performance. If performance of this Agreement shall extend beyond one year, Contractor shall provide City with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

30. INDEMNIFICATION

- (1) Professional Services: In the connection with its professional services, the Contractor shall defend, hold harmless and indemnify City, and its elected officials, officers, employees, servants, volunteers, and agents serving as independent contractors in the role of city or agency officials, (collectively, "Indemnitees"), with respect to any and all damages, liabilities, losses, reasonable defense costs or expenses (collectively, "Claims"), including but not limited to liability for death or injury to any person and injury to any property, to the extent the same out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor or any of its officers, employees, subcontractors, Contractors, or agents in the performance of its professional services under this Agreement. Contractor shall reimburse all reasonable defense costs and expenses, including actual attorney's fees and experts' costs incurred in connection with such defense.
- (2) Other Indemnities. In connection with all Claims not covered by Section 12.1, the Contractor shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Claims including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the non-professional acts, omissions, activities or operations of Contractor or any of its officers, employees, subcontractors, Contractors, or agents in the performance of this Agreement. Contractor shall defend Indemnitees in any action or actions filed in connection with any such Claims with counsel of City's choice, and shall pay all costs and expenses, including actual attorney's fees and experts' costs incurred in connection with such defense.
- (3) Nonwaiver of Rights. Indemnitees do not, and shall not, waive any rights that they may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.
- (4) Waiver of Right of Subrogation. Except as otherwise expressly provided in this Agreement, Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Contractor.
- (5) Survival. The provisions of this Section 12 shall survive the termination of the Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

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31. **ENVIRONMENTAL SUSTAINABILITY:** Vendor will make every reasonable effort to use environmentally preferable products, methods, equipment, packaging and transportation in relation to this transaction. Further, Vendor shall ensure disposal of any removed materials is conducted in an environmentally responsible manner. Products purchased under this Agreement must meet, but not limited to, the following standards: “Energy Star” (www.energystar.gov), “EPEAT” (www.epeat.net), and provide proof of meeting the “Eco Logo and/or Green Seal” standard and certification requirements (www.egologo.org and/or www.greenseal.org).

32. **METHOD OF PAYMENT**

- (1) **Invoices.** Contractor shall submit to City monthly invoices for the Services performed pursuant to this Agreement. The invoices shall describe in detail the Services rendered during the period and shall separately describe any authorized extra services. Any invoice claiming compensation for extra services shall include appropriate documentation of prior authorization of such services. All invoices shall be remitted to the City of Rancho Cucamonga, California.
- (2) City shall review such invoices and notify Contractor in writing within ten (10) business days of any disputed amounts.
- (3) City shall pay all undisputed portions of the invoice within thirty (30) calendar days after receipt of the invoice up to the not-to-exceed amounts set forth in Section 3.
- (4) All records, invoices, time cards, cost control sheets and other records maintained by Contractor relating to services hereunder shall be available for review and audit by the City.



The undersigned Vendor declares that the above terms and conditions have been carefully read and examined. Vendor signature is required below; failure to provide signature may render the Vendors solicitation submittal as non-responsive.

Company Name:	Address: (Street, Su. # City and RCFPD, State, Zip)
Telephone #:	
Fax #:	
E-mail address:	Web Address:
Authorized Representative: (print)	Title:
Signature:	Date: