

This purchase order by the City of Menifee is subject to the following terms and conditions. The purchase order and the following terms and conditions will collectively be referred to as the "Order," the City of Menifee will be referred to as "City," the individual or entity from which goods and/or services are ordered will be referred to as "Seller," and the goods and supplies, services, equipment, materials or products listed on this order will be referred to as "Goods" or "Services."

#### TERMS AND CONDITIONS

1. **Acceptance.** This Order constitutes an offer to purchase which may be changed at any time before it is accepted by Seller. This offer to purchase may be accepted by signing and returning to City written indication of acceptance, but in any event, the performance of any Services purchased under this order, as well as the shipment of any conforming or non-conforming Goods, shall constitute acceptance by Seller of this offer to purchase and all of its terms and conditions.
2. **Acceptance Varying Terms.** Acceptance of this Order is expressly limited to the terms of this Order. City specifically objects to the inclusion of any different or additional terms or conditions by the Seller in acknowledging and accepting this Order. If Seller does include different or additional terms and conditions in its acknowledgement acceptance, confirmation, invoice, or other written form sent in response to this Order, and Seller expressly conditions its acceptance of this Order upon acceptance by City of such different and additional terms and conditions, neither City's acceptance of delivery of all or part of the Goods nor City's payment for the Goods or Services shall constitute acceptance of such different and additional terms.
3. **Delivery.** Time of delivery is the essence of this Order. City reserves the right to refuse any Goods and to cancel all or any part of the Goods not delivered by the due date and/or not conforming to applicable specifications, drawings, samples or descriptions. Acceptance of any part of the Goods shall not bind City to accept future shipments of Goods, nor deprive it of the right to return Goods already accepted, at Seller's expense. Over-shipments and under-shipments shall only be as agreed to by City.
4. **Risk of Loss.** Seller shall have title to and bear the risk of any loss of or damage to the Goods purchased hereunder until they are delivered in conformity with this Order at the City's premises and accepted by City. Upon such delivery and acceptance, Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence or failure to comply with this Order.
5. **Warranty.** In addition to any other warranties contained herein or in any specifications, drawings, samples, or other descriptions furnished or specified by City, including performance specifications or implied by law, Seller warrants to City and to others users of the Goods and/or Services called for by this Order, that all Goods and/or Services furnished hereunder will be free from defects of material workmanship, design or fabrication, will be of merchantable quality, will be fit and sufficient for the purposes for which they are purchased, which Seller acknowledges it is aware of, and will conform strictly to the terms of this Order and to any specifications furnished in connection herewith. This warranty will survive any inspection, delivery, acceptance, or payment by City. Section 9, "Indemnification" shall specifically apply to any all claims, liabilities, expenses, costs, and losses, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or for damages, arising from or in any way connected with such defects.
6. **Taxes.** Unless otherwise provided herein or by law, the price quoted does not include California State sales or use tax. The City is exempt from Federal excise tax.
7. **Insurance.** Sellers providing Services under this Order shall maintain in full force during the term of this Order the following insurances, in a form and with companies as approved by the City, with limits not less than those specified: (a) Workers' Compensation and Employers Liability complying with all statutory requirements; (b) Commercial General Liability including broad form property damage, products/completed operations and contractual liability coverage, with a \$1,000,000.00 combined single limit each occurrence; endorsements to the Commercial General Liability insurance shall be obtained by Seller, adding the following three provisions: (1) Additional insureds: "The City of Menifee and its elected and appointed boards, officers, agents, and employees are named as additional insureds with respect to the subject project and agreement." (2) Notice: "Said policy shall not terminate, nor shall it be cancelled nor the coverage reduced, until thirty (30) days after written notice is given to City." (3) Other insurance: "Any other insurance maintained by the City of Menifee shall be excess and not contributing with the insurance provided by this policy. The contractor's insurance is primary." (c) Comprehensive Auto Liability (including the owner, non-owned, and hired automobile hazards) with \$1,000,000.00 combined single limit each occurrence. If City so desires, these limits may be increased or decreased. Upon City's request, Sellers providing Goods under this Order shall maintain Comprehensive General Liability Insurance and Products Liability Insurance, including personal injury and property damage, in amounts acceptable to City, which policies shall name City as an additional insured and shall contain a cross-liability endorsement.
8. **Infringement.** Seller warrants to City and to other users of the Goods and/or Services called for by this Order that such Goods and/or Services will not infringe upon any United States or foreign patent or any trademark, copyright, trade secret, proprietary process or right, or other similar process or right. Section 9, "Indemnification" shall specifically apply to any all claims, liabilities, expenses, costs, and losses, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or for damages, arising from or in any way connected with any such infringement or alleged infringement.
9. **Indemnification.** To the fullest extent permitted by law, Seller agrees to defend at its sole cost and expense, to indemnify, and to hold harmless the City, its elected and appointed officials, agents, employees, and volunteers, from and against any and all claims, liabilities, expenses, costs, and losses, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or for damages, arising from or in any way connected with the performance of or failure to perform this Order, except where such liability, damages, costs, losses, claims, or expenses are caused solely by the City's gross negligence or unlawful acts.
10. **Nondiscrimination.** Seller shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Order are incorporated by this reference.
11. **Force Majeure.** When an actual or potential labor dispute or other non-economic cause outside the control of Seller delays or threatens to delay the timely performance of this Order, Seller shall immediately give written notice thereof to City. In the event of such delay, City may, in its discretion, consent to, condition, or reject delayed performance of this Order resulting from force majeure.
12. **Assignment.** Neither this Order nor any claim against City arising directly or indirectly out of or in connection with this Order shall be assignable by Seller, or by operation of law, nor shall Seller subcontract any obligations hereunder, without City's prior written consent.
13. **Status of Seller; No Third-Party Beneficiaries.** Seller is acting as an independent contractor, not an agent or employee of City. There are no express or implied third-party beneficiaries to this Order.
14. **Termination.** City, in its sole and absolute discretion, may terminate this Order, in whole or in part, at any time, without cause, upon five business days' written notice to Seller. In such case, Seller shall be entitled to payment only for those goods delivered and services performed that City has accepted.
15. **Changes.** City may change: (1) specifications, drawings, and samples if any; (2) method of shipping or packaging; (3) the place and time of delivery; and (4) the Goods, including quantity, to be furnished by Seller, upon written notification to Seller. If any change causes an increase in the cost of, or time required for the performance of the Order, the delivery schedule or purchase price shall, upon Seller's written request, be adjusted only by written agreement signed by the City and Seller to reflect the change. Any request by Seller for adjustments under this clause must be made within thirty (30) days from the date of receipt by Seller of notification of the change.
16. **Remedies.** If Seller defaults under this Order, City may pursue any and all remedies provided under this Order, by law, in equity, or statute or otherwise. Seller's remedies for breach against City are limited to those provided by the Uniform Commercial Code. Seller will not be entitled to any incidental or consequential damages, as those terms are defined by the Uniform Commercial Code.
17. **Bills and Liens.** Seller shall pay promptly all indebtedness for labor, materials, and equipment used in performance of any Services required under this Order. Seller shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Seller shall promptly procure its release. Section 9, "Indemnification" shall specifically apply to any all claims, liabilities, expenses, costs, and losses, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or for damages, arising from or in any way connected with any such indebtedness.
18. **Law.** This Order is governed by the laws of the State of California. The provisions of the Uniform Commercial Code shall apply except as otherwise set forth in this Order. Any action arising out of this Order shall be brought and tried in the County of Riverside, State of California, and the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses.
19. **No Waiver.** No waiver of any term or condition of this Order shall be a continuing waiver thereof. This Order may be amended only in a specific writing referring to the section(s) to be amended and signed by both parties.
20. **[Reserved]**