

Terms and Conditions

By filling this Purchase Order, the vendor agrees to the following terms and conditions:

Delivery and Billing: Time is of the essence of this Agreement. If the goods or services ordered herein are not delivered by the delivery date on the front of this Purchase Order, the Vendor shall be in breach of this Agreement and the City shall be entitled to all remedies available to it at law or in equity. Vendors must submit invoices within 30 days of the provision of service or goods unless the City otherwise agrees in writing. Failure to timely submit invoices may result in a rejection of invoice.

Subcontractors: Any subcontractors and outside associates or consultants required by the Vendor in connection with goods or services covered by this Agreement shall be limited to such individuals or firms as are specifically authorized in writing by the City. Any substitutions in or additions to such subcontractors, associates or consultants shall be subject to the prior written approval of the City. All subcontractors, associates or consultants are subject to the provisions of this Agreement and are directly responsible to the Vendor.

Officials Not to Benefit: No member of the City of Kentwood Board of Commissioners, or any other municipal official, except as otherwise provided for in accordance with this Agreement, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

Right to Supply Goods or Perform Services: The Vendor represents and warrants that the supply of goods or performance of services herein, and other duties and obligations of the Vendor as set forth herein, are not in violation of any other agreement to which the Vendor is a party or by which the Vendor is bound. The Vendor agrees to indemnify and hold the City harmless from and against any liability arising out of any breach or claimed breach of this warranty.

Good Workmanship and Intended Use: The Vendor represents and warrants that any goods supplied herein will be of good workmanship, free from defects, and if the intended use thereof is known to the Vendor, that the goods are suitable for that intended use. If the goods or services supplied are covered by any warranty of a supplier or manufacturer other than the Vendor, the Vendor agrees that said warranties shall be transferred to the City. If said warranties are not transferable to the City, the Vendor shall notify the City immediately upon discovery of that fact, and the City shall, at its option, be excused from performance under this Agreement.

Liability and Indemnification: The Vendor shall indemnify and hold harmless the City, its officials, officers, agents, employees and assigns, from and against all claims, judgments, losses, damages, demands, payments, recoveries, legal proceedings, orders and decrees of every nature and description, including attorney fees, of third persons or employees of the Vendor, arising out of or resulting from the Vendor's performance or non-performance under this Agreement. Such indemnification will extend to any infringing use by the City of a product or service offered by the Vendor under this Agreement when that product or service itself infringes on the intellectual property of a third party. **Risk of Loss:** The risk of loss of any goods sold to the City under this Agreement shall pass from the Vendor to the City at the time the City takes possession of the goods.

Anticipatory Breach: If the Vendor, at any time before delivery of goods or services, declares its intent not to perform in accordance with this Agreement, the City shall have an immediate cause of action for breach of this Agreement, and shall be entitled to all remedies available to it at law or in equity.

Governmental Immunity: The City does not waive its governmental immunity by entering into this Agreement, and fully retains all immunities and defenses provided by law with respect to any action based upon or occurring as a result of this Agreement.

Insurance: Unless otherwise stated in contract documents, the Vendor shall purchase and maintain, at its sole expense and as long as they are providing goods or services to the City, the following insurance coverage:

Commercial General Liability - Occurrence form, including coverage for bodily injury, personal injury, property damage (broad form), premises/operations, blanket contractual, and products/completed operations. Coverage shall be endorsed to name the County as an additional insured for work performed and materials provided by the Vendor in accordance with this Agreement.

Minimum Limits:

1. \$1,000,000 per occurrence/\$2,000,000 general aggregate
2. \$2,000,000 aggregate for products and completed operations
3. \$1,000,000 personal and advertising injury

Automobile - Motor Vehicle Liability Insurance including Michigan "no-fault" coverage, and residual automobile liability, comprehensive form, covering owned, hired, and non-owned automobiles.

Minimum limits:

1. No-fault coverages - statutory
2. Additional coverages:
 - a. \$500,000 per person/\$1,000,000 per accident - bodily injury and \$500,000 per occurrence - property damage, or
 - b. A combined single limit of \$1,000,000 per occurrence.

Workers' Compensation and Employer's Liability - Statutory coverage or proof acceptable to the City of approval as a self-insurer by the State of Michigan.

Minimum Limits:

1. Employer's Liability - \$100,000

All insurance coverages shall cover all claims against the City, its officials and employees, arising out of the work performed and/or materials provided by the Vendor or any subcontractors under this Agreement. Should any work be subcontracted, it shall be the responsibility of the Vendor to maintain Independent Contractor's Liability Insurance with limits equal to those specified above for Commercial General Liability Insurance which insurance names the City as an additional insured. In addition, the Vendor shall provide proof of Workers' Compensation Insurance for all subcontractors in compliance with the required statutory limits of the State of Michigan.

All policies of insurance shall be with companies licensed and or approved to do business in the State of Michigan and in a form satisfactory to the City. All insurance companies must maintain a rating of "A" or better by A.M. Best Company. All insurance policies naming the City as an additional insured must state a thirty (30) day notice of cancellation clause and shall be filed with and approved by the City at least five (5) days in advance of commencing work under this Agreement. Cancellation, material restriction, non-renewal or lapse of any of the required policies shall be grounds for immediate termination of this Agreement by the City.

The City reserves the right to require a complete certified copy of the insurance policies for the above coverages, which certified copy shall be issued directly from the insurance company to the City.

Any reduction or exhaustion in the limits of the required insurance coverage shall not be deemed to limit the indemnification afforded in accordance with this Agreement or any amendments thereto.

The insurance provisions contained herein may only be modified in a writing signed by each party or an authorized representative of each party.

Nothing in these insurance provisions shall be interpreted as a limitation on the ability of the Vendor to obtain additional insurance which the Vendor determines to be in its best interest. Additionally, nothing in these insurance provisions shall be interpreted to be a statement by the City that the above quoted insurance coverages will cover all risks or liability. Without regard to insurance, the Vendor remains liable to the City for all damages arising out of the Vendor's performance or non-performance of this Agreement as set forth in the indemnification provisions above.

Compliance Laws: The Vendor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Breach of this section by the Vendor within the State of Michigan shall constitute a material breach of this Agreement, and the City shall be entitled to terminate this Agreement. Pursuant to MCLA §423.321 et seq., which prohibits the City from entering into contracts with certain employers who engage in unfair labor practices, this Agreement may be terminated if the Vendor, or one or more of its subcontractors or suppliers, appears in the register compiled in accordance with MCLA §423.322. The vendor shall observe and comply with all applicable federal, state and local laws, ordinances, rules and regulations, which shall be deemed to include, but not be limited to, the Elliott-Larsen Civil Rights Act.

Safety: The Vendor shall at all times observe and comply with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the safety of equipment or material provided under or used in accordance with this Agreement, those employed on the work, and the conduct of the work. The Vendor shall indemnify and hold harmless the City against any claim or liability arising from the violation of any such provisions.

Cumulative Remedies: All remedies set forth in this Agreement are cumulative and in addition to all other rights and remedies the parties hereto may have at law or in equity, which rights and remedies are expressly reserved.

Entire Agreement: This Agreement, together with any affixed schedules, exhibits and addenda, shall constitute the entire agreement between the parties. Any prior understanding, representation or negotiation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Battle of Forms: Pursuant to MCLA 440.2207, no attempt to modify the City of Kentwood's Standard Terms & Conditions or the solicitation shall be binding on the City of Kentwood absent agreement on such modification, in writing, and signed by the City of Kentwood.

Modification of Agreement: Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

Partial Invalidity: The partial invalidity of any portion of this Agreement shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expunction of the invalid provision.

Absence of Waiver: The failure of either of the parties to this Agreement to insist on the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the terms and conditions shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Assignment of Rights: The rights and obligations of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation or other entity without the prior, express and written consent of the other party. In the event of a proper assignment, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

No Third-Party Benefit: The provisions of this Agreement are for the benefit of the parties hereto, and not for the benefit of any other person or legal entity.

Consent to Personal Jurisdiction: The Vendor acknowledges that this Agreement shall be deemed to have been executed in the State of Michigan, and hereby consents to the exercise of general personal jurisdiction over it by the appropriate courts of the State of Michigan. Any action on a controversy that arises under this Agreement shall be brought in the State of Michigan, which the Vendor agrees is a reasonably convenient place for trial of the action. The Vendor agrees that its consent in accordance with this section is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.

Vendor Representation and Warranty Regarding Federal Excluded Parties List: The Vendor acknowledges that the City may be receiving funds from or through the Federal Government and that such funds may not be used to pay any vendor on the Federal Excluded Parties List (EPLS). The Vendor represents and warrants to the City that they are not on the Federal EPLS. If the Vendor is in non-compliance at any time during execution or term of this agreement (including any extensions thereof), the Vendor shall be in breach and the City shall be entitled to all remedies available to it at law or equity, specifically including but not limited to recovery of all moneys paid to the Vendor, all consequential damages (including the lost of grant funding or the requirement that grant funding be returned), and attorneys fees (including the costs of in-house counsel) sustained as a result of the Vendor's non-compliance with this warranty and representation. Pursuant to the Michigan Iran Economic Sanctions Act, 2012 P.A. 517, Vendor certifies, under civil penalty for false certification, that it is fully eligible to do so under law and that it is not an "Iran linked business" as that term is defined in the Act.