



# City of Santa Clara

The Center of What's Possible

City of Santa Clara  
Purchasing - City Hall  
1500 Warburton Ave.  
Santa Clara CA 95050-3796

**Supplier:** 0000002328  
RWG (REPAIR & OVERHAULS) USA, INC.  
6223 W SAM HOUSTON PKWY  
HOUSTON TX 77041

## Purchase Order

**PENDING APPROVAL**

**Dispatch via Print**

<b>Purchase Order</b> 23988	<b>Date</b> 08/22/2019	<b>Revision</b>	<b>Page</b> 1
<b>Payment Terms</b> 30 Days	<b>Freight Terms</b> FOB Prepaid	<b>Ship Via</b> Common Carrier	
<b>Buyer</b> Dave Oeschger	<b>Phone</b> 408/615-2043	<b>Currency</b> USD	

**Ship To:** S6P  
City of Santa Clara  
DVR Power Plant  
850 Duane Ave.  
Santa Clara CA 95054

**Attention:** Not Specified

**Bill To:** City of Santa Clara  
Finance - Accounts Payable (408-615-2369)  
1500 Warburton Ave.  
Santa Clara CA 95050-3796

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Delivery Date
1 - 1	LABOR	1.00	LOT	97,000.0000	97,000.00	09/01/2019
2 - 1	MATERIALS	1.00	LOT	479,889.0000	479,889.00	09/01/2019
3 - 1	OUTSIDE SERVICES	1.00	LOT	106,835.0000	106,835.00	09/01/2019
4 - 1	TESTING	1.00	LOT	16,575.0000	16,575.00	09/01/2019
5 - 1	FREIGHT	1.00	LOT	8,636.0000	8,636.00	09/01/2019

**Sub-Total** 708,935.00

**Total PO Amount** 708,935.00

ALL SPECIFICATIONS & REQUIREMENTS PER CITY OF SANTA CLARA RFP 18-19-33 DATED 5/7/19 ARE HEREBY INCORPORATED BY REFERENCE HEREIN. PRICING PURSUANT TO RWG USA, INC'S RFP RESPONSE DATED 6/13/19 IS HEREBY INCORPORATED BY REFERENCE.

Unauthorized

## TERMS & CONDITIONS

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1. **CONTRACT:** This purchase order, which consists of these standard terms and conditions, and any attachments hereto, evidences acceptance by the City of Santa Clara ("City") of the offer from the provider of goods and services ("Vendor") which are the subject of this purchase order and constitutes a binding contract upon the terms and conditions set forth herein without further action or agreement of Vendor. In the event of conflict between these standard terms and conditions and the provisions of any attachment hereto these standard terms and conditions shall control.
2. **SCHEDULE; TIME OF PERFORMANCE:** Vendor shall supply the goods and perform the services, with the schedule and term, as specified herein. Time is of the essence.
3. **COMPENSATION; SCHEDULE OF PAYMENT:** Compensation, and method of payment, shall be as set forth herein. Vendor shall submit an invoice within thirty (30) calendar days after satisfactory completion of performance. City shall make payment within thirty (30) calendar days after receipt of such invoice. Vendor is responsible for all costs and expenses incident to the performance of this purchase order, including without limitation all costs, taxes, and all other costs of doing business.
4. **DISCOUNT PERIODS:** Payment discount periods shall be calculated from the later of the date this purchase order is completed or the date City receives an acceptable invoice, to the date City's payment is sent.
5. **SALES TAXES:** Vendor shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods; provided, however where a tax exemption is available, such tax shall be subtracted from the total compensation and identified. Exemption certificates will be furnished upon request.
6. **PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS:** All goods shall be delivered "free on board destination" to the location specified herein, full freight prepaid except for special or expedited orders, which shall be agreed upon prior to shipment. Deliveries of goods shall be made without charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. City's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge. Title to and risk of loss on all goods pass to City only upon City's acceptance of such goods.
7. **WARRANTIES:** Vendor represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Vendor's representations regarding its skills and knowledge. Vendor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California. Vendor warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Vendor assumes design responsibility, and warrants that all goods shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Vendor's warranties shall run to City and shall not be deemed to be exclusive. Vendor agrees to promptly replace or correct any incomplete, inaccurate or defective goods or services at no further cost to City when defects are due to the negligence, errors or omissions of Vendor.
8. **CHANGES:** City shall have the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. Notice of change must be signed by the Director of Finance ("Director") or his/her designee. Upon receipt of any such notice, Vendor shall promptly make the changes in accordance with the terms of the notice. If Vendor believes that the change will cause an increase or decrease in the cost of or time for performance, then Vendor must deliver to City a statement showing the effect of any such changes within ten (10) calendar days of receipt of the City's notice of change. An equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Failure of Vendor to submit the statement within the time limit shall constitute its consent to perform the change without increase in compensation or time for performance. Changes may only be made in writing.
9. **TERMINATION FOR DEFAULT OR CONVENIENCE:** City may, by written notice, terminate this purchase order in whole or in part for default: (i) if Vendor fails to timely deliver the goods, or perform the services, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed are incorrect or unsatisfactory; (iii) if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order; or (iv) if the Vendor becomes insolvent. If this purchase order is terminated for default, City, in addition to all other rights afforded by law, shall have the right to charge Vendor the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and City may offset any such charge against any amounts which had or may become payable to Vendor under this purchase order or otherwise. City may, by not less than thirty (30) days written notice to Vendor, terminate this purchase order without cause or penalty.
10. **INDEMNITY: TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIM, LOSS OR LIABILITY (COLLECTIVELY, "CLAIMS"), INCLUDING WITHOUT LIMITATION CLAIMS FOR INJURIES OR DEATH TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY, INCLUDING ECONOMIC LOSS, CAUSED BY OR RESULTING FROM THE ACTS OR OMISSIONS OF VENDOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS PURCHASE ORDER, OR THE BREACH BY VENDOR OF ANY OF ITS OBLIGATIONS UNDER THIS PURCHASE ORDER. VENDOR'S OBLIGATION TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS, SHALL SPECIFICALLY EXTEND TO ANY AND ALL EMPLOYMENT-RELATED CLAIMS OF ANY TYPE BROUGHT BY EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR OTHER AGENTS OF VENDOR. CONTRACTOR WARRANTS THAT IT IS MEETING ITS OBLIGATIONS UNDER THE AFFORDABLE CARE ACT ("ACA") AND/OR ANY OTHER SIMILAR FEDERAL OR STATE LAW, AND WILL FULLY INDEMNIFY AND HOLD HARMLESS CITY FOR ANY PENALTIES, FINES, ADVERSE RULINGS, OR TAX PAYMENTS ASSOCIATED WITH VENDOR'S RESPONSIBILITIES UNDER THE ACT.**
11. **INSURANCE REQUIREMENTS:** Vendor agrees to have and maintain the insurance policies specified by City's Risk Manager. All policies, endorsements, certificates and/or binders shall be subject to review and approval by City's Risk Manager. Vendor shall provide City with applicable certificates and/or endorsements before work commences.
12. **COMPLIANCE WITH THE LAW:** Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.
13. **GOVERNING LAW; VENUE:** This purchase order shall be governed and construed in accordance with the laws of the State of California. The venue of any suit filed by either Party shall be in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose Division.
14. **ASSIGNMENT:** Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent.
15. **WAIVER:** Vendor agrees that City's waiver of any breach or violation of any provision of this purchase order, or acceptance of any performance, or tender of any payment, shall not be deemed a waiver of any other provision or any subsequent breach of the same or any other provision. City's inspection and warranty rights are not waived by payment or any other action by City.
16. **INDEPENDENT CONTRACTOR:** It is understood and agreed that Vendor and all person(s) employed or contracted by Vendor shall act as, and be, an independent contractor and not an employee, agent, joint venturer, or partner of City. Vendor has full rights to manage its employees and contractors under this Agreement. Vendor shall retain the right to provide goods or perform services for others during the term of this purchase order.
17. **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
18. **VENDOR'S BOOKS AND RECORDS:** Vendor shall maintain all records evidencing or relating to performance and amounts charged to or paid by City for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Vendor pursuant to this purchase order. Any such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by City. Copies of such documents shall be provided to City for inspection at City Hall if requested and if practical to do so, otherwise records will be inspected at Vendor's business location.
19. **NON-DISCRIMINATION:** Vendor and all of Vendor's subcontractors shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
20. **CONFLICTS OF INTEREST:** Vendor certifies that no City officer, employee or authorized representative has any financial interest in the business of Vendor and that no person associated with Vendor has any interest, direct or indirect, which could conflict with the faithful performance of this Purchase Order. Vendor is familiar with the provisions of California Government Code section 87100, et seq., and certifies that it does not know of any facts which would violate these laws. Vendor will promptly advise City if a conflict arises. Vendor has read and agrees to comply with City's Ethical Standards (<http://santacalaraca.gov/home/showdocument?id=58299>).
21. **SEVERABILITY:** In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.