

Master Service Agreement

THIS MASTER SERVICE AGREEMENT ("Agreement") is made and entered into the "Effective Date" between Western States Equipment Company and Approved Vendor. The term of this Agreement is five years. If this Agreement has not been terminated or withdrawn within 5 years after the Effective Date, then this Agreement will expire without any action on the part of either party at midnight on the date that is 5 years after the Effective Date; provided, however, that ongoing work being performed under a Work Order issued during the term of this Agreement shall be completed in accordance with the terms and conditions of this Agreement by Approved Vendor. Western States and Approved Vendor are also referred to as "party" and collectively as the "parties". Subject to and in consideration of the mutual promises, conditions, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **APPROVED VENDOR.** Upon execution of this Agreement and compliance with its terms, vendor shall be included in list of Approved Vendors. All work to be provided by Approved Vendor shall be pursuant to a separate written order ("Work Order") issued by Western States Equipment Company to Approved Vendor as provided below. Approved Vendor acknowledges that Western States Equipment Company makes no promise that there will be any Work Orders issued to the Approved Vendor. Approved Vendor is not guaranteed a minimum number of Work Orders. Approved Vendor represents that they shall remain at all times during the term of this Agreement, technically, financially, and legally ready, willing, and able to perform work with its professional area of expertise as may be described in a Work Order.
2. **WORK ORDERS.** From time to time, Western States Equipment Company may issue one or more written Work Orders directing Approved Vendors to supply or perform services. Approved Vendor agrees to perform all services and provide materials and/or equipment described in a Work Order. Each such Work Order shall be governed by and subject to the terms and conditions of this Agreement. Terms or stipulations in any Work Order that are contrary to any term of this Agreement shall be void, unless Western States Equipment Company and Approved Vendors have expressly agreed in writing that such terms or stipulations shall supersede the terms of this Agreement. Each Work Order signed by Western States Equipment Company will constitute a separate contract between Western States Equipment Company and the Approved Vendor.
3. **SCOPE OF LABOR, EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES**
 - a. Upon receipt of a Work Order, Approved Vendor shall promptly begin the work according to the specifications and requirements of this Agreement and the Work Order. The work to be provided by the Approved Vendor for each Work Order will be expressly detailed in the Work Order, including a scheduled timeframe for the work to be executed and completed.
 - b. When the Work Order involves work in a facility which must remain open for business, the Approved Vendor will schedule and perform the work in such a manner so as not to disrupt the operation of the facility, and will coordinate with a designated management representative of the facility, so there will be no unreasonable interferences with the facilities operations.
 - c. Approved Vendor acknowledges that Western States Equipment Company is relying on Approved Vendors skills and integrity to provide a completed Work Order suitable for its intended purpose. All services rendered by Approved Vendor hereunder shall be performed in accordance with the highest standard of professional skill, care and quality, in conformance with all applicable industry standards, laws, and regulatory agencies as applicable to the region or area where the work is to be performed. All materials and equipment furnished by Approved Vendor shall be new and shall be free from material defects. Any of the materials, equipment, or services found to be defective shall be, at Western States Equipment Company's sole discretion, either removed, replaced, or corrected by Approved Vendor without additional cost to Western States Equipment Company. Western States Equipment Company shall not be liable for claims arising from or relating to latent or unknown defects.
 - d. All work will be completed in strict accordance with the Work Order. If Subcontractor encounters a condition or other circumstances whereby the work of the Work Order cannot be completed in accordance with the Work Order, the matter shall be submitted to Western States Equipment Company immediately for resolution in writing. Any work performed without such written resolution will be at the Approved Vendors own risk and expense.
 - e. Unless otherwise specified by Western States Equipment Company, Approved Vendor will obtain all licenses, permits, approvals, and/or certificates of governmental authority as may be necessary to properly perform and complete the Work Order. Approved Vendor will pay all taxes associated with performing the work under a Work Order including, but not limited to, all sales, use and other taxes on income and all penalties and interest related thereto.
 - f. Approved Vendor will be solely responsible for the conduct, safety and health of Approved Vendors employees, agents, as well as the public in connection with all activities associated with work of the Work Order. Without limiting the foregoing, the Subcontractor will comply with all Applicable Laws concerning safety, and health of workers and the public including without limitation, the Occupational Safety and Health Act of 1970 ("OSHA") and any other similar statutes including Western States specific safety policies and procedures. Subcontractor will be responsible for construction means and methods, techniques, sequences, and procedures. Subcontractor will develop, maintain, and enforce a safety program, and be solely responsible for the Work Order jobsite safety of such means, methods, techniques, sequences, and procedures.
4. **INVOICING; PAYMENT.** Approved vendors shall be paid for those services, equipment and materials furnished by Approved Vendor at the rate of Net 30 from invoice date, unless otherwise negotiated. All invoices must include Purchase Order number, invoice number, invoice date, the total amount due, and be sent to apinvoiced@wseco.com, unless otherwise specified by Procurement Department. Approved Vendor shall have 30 days from the date of the invoice and duly executed lien waivers to pay the amount due thereon, or to notify Approved Vendor in writing of a *bona fide* dispute asserted in good faith as to one or more of the invoice items. Upon submission for payment, Approved Vendor certifies that there are no unsatisfied claims for labor, materials, equipment and supplies, or for injuries to persons or property not covered by insurance.
5. **INDEPENDENT CONTRACTOR.** Approved Vendors shall be deemed an independent contractor with respect to any and all work performed under this Agreement and any Work Order. It is the express understanding and intention of the parties that no relationship of master and servant or principal and agent shall exist between Approved Vendor and the employees, agents, or representatives of Western States Equipment Company.
6. **FORCE MAJEURE.** Except for the duty to make payments hereunder when due, and the indemnification provisions under this Agreement, neither Approved Vendor nor Western States Equipment Company shall be responsible to the other for any delay, damage, or failure caused by or occasioned by a Force Majeure Event. As used in this Agreement, "Force Majeure Event" shall mean any act of God, act of nature, terrorism, insurrection, revolution or civil strife, piracy, civil war or hostile action, labor strikes, acts of public enemies, federal or state laws, rules and regulations of any governmental authorities having jurisdiction over the premises, inability to procure material, equipment, or necessary labor in the open market, acute and unusual labor, or material or equipment shortages. Delays due to any of the above causes shall not be deemed to be a breach of or failure to perform under this Agreement.
7. **INSURANCE.**
 - a. At all times during the term of this Agreement, Approved Vendor shall, at their own expense, maintain with an insurance company or companies authorized to do business in the state where the work is to be performed, insurance coverage of the kind and in the minimum amounts listed below. The amount of insurance required in this Section may be satisfied by the purchase of separate Primary and Umbrella (or Excess) Liability policies which, when combined, provide the total limits of insurance specified. The required insurance shall be maintained by Approved Vendor during the term of this Agreement, and shall not be canceled, altered, or amended by Approved Vendor without thirty (30) days advance written notice to Western States Equipment Company. Approved Vendor shall make available to Western States Equipment Company current insurance coverage policies upon signing this Agreement and upon renewal of policies during the term of this Agreement.

General Liability Limits: General Aggregate: \$1,000,000 Products/Complete Operations Aggregate: \$1,000,000 Personal Injury Liability: \$1,000,000 Each Occurrence Limit: \$1,000,000 Per Project General Aggregate: \$1,000,000	Auto Liability Limits: At least \$1,000,000 per accident	Workers Compensation Liability: Coverage of at least \$1,000,000
---	--	--

***Certificate holder to be listed as "Western States Equipment Company" and the project description shall be "All Services and Maintenance Operations."**

8. **INDEMNITY.** To the fullest extent permitted by law, Approved Vendor agrees to protect, defend, indemnify and hold harmless Western States Equipment Company, its officers, directors, employees or their invitees, from and against all claims, demands, and causes of action of every kind and character without limit arising out of Approved Vendor's performance or non-performance of this Agreement and any Work Order. Approved Vendor's indemnity under this Section shall be without regard to and without any right to contribution from any insurance maintained by Western States Equipment Company. If it is judicially determined that the monetary limits of insurance required hereunder or of the indemnities voluntarily assumed under this Section (which Western States Equipment Company and Approved Vendor hereby agree will be supported either by available liability insurance, under which the insurer has no right of subrogation against the indemnitees, or voluntarily self-insured, in part or whole) exceed the maximum limits permitted under applicable law, it is agreed that said insurance requirements or indemnities shall automatically be amended to conform to the maximum monetary limits permitted under such law.
9. **TERMINATION OF WORK.** Western States Equipment Company may, upon Twenty-Four (24) hour advance written notice, in its sole discretion, terminate work covered by any work order issued hereunder. In such event, Approved Vendor shall be paid for services rendered up to the date of such termination.
10. **TERM; CANCELLATION.** This Agreement shall remain in effect until cancelled by either party hereto by giving the other party ten (10) days written notice. If work then being performed pursuant to this Agreement or any Work Order extends past such ten (10) day period, then the cancellation shall not be effective until that work is completed.
11. **SECURITY.** If Approved Vendor becomes aware of any actual unlawful or unauthorized loss, disclosure, alteration of, or access to secure information. Approved Vendor will promptly notify Western States Equipment Company of each security incident and take reasonable steps to mitigate the effects of the security incident(s).
12. **CONFIDENTIALITY.** The parties shall hold the terms of this Agreement, any Work Order, and all plans, specifications or other information related thereto confidential, and shall only disclose the same as required by law.
13. **NO WAIVER.** No waiver by either party of any of the terms, provisions or conditions of this Agreement shall be effective unless the waiver is in writing and signed by an authorized representative of both parties.
14. **SEVERABILITY.** In the event any provision of this Agreement is inconsistent with or contrary to any applicable law, rule, or regulation, the provision shall be deemed to be modified to the extent required to comply with the law, rule, or regulation, and this Agreement, as so modified, shall continue in full force and effect.
15. **DISPUTE RESOLUTION; VENUE; GOVERNING LAW.** This Agreement and any Work Order shall be governed, construed, and interpreted in accordance with the laws of the state of Idaho. Any and all disputes arising out of or relating to this Agreement or any Work Order shall be resolved by binding arbitration in accordance with the construction industry rules of the American Arbitration Association and the proceedings shall be conducted in Ada County, Idaho, unless Western States Equipment Company agrees to a different location. The prevailing party shall be entitled to recover its reasonable attorney fees and costs as determined by the arbitrator(s).