



Texas Department of Motor Vehicles
Business Unit # 60800
Purchase Order # 0000006929

Payment Terms: **NET30** Freight Terms: **FOB Destination** Ship Via: **US MAIL** PCC: **0** Date: **05/20/19** PO Method: **SV** Dispatch: **Dispatch** Rev Dt: **Via Print**

PLEASE NOTE: ADDITIONAL TERMS AND CONDITIONS MAY BE LISTED AT THE END OF THE PURCHASE ORDER.

Vendor: VICTOR T VANDERGRIFFF LLC
 PO BOX 120963
 ARLINGTON TX 76012-0963
 United States

Ship To: 1P00 - TxDMV Warehouse
 4000 Jackson Avenue
 Austin TX 78731
 United States

Vendor ID: 1465379022 1

Bill To: 4000 Jackson Avenue
 Austin TX 78731
 United States

Purchaser: Ron Dale Hunter
Phone: 512/465-5808
Fax: 512/465-5641
Email: Ron.Hunter@TxDMV.gov

Fax:
Email: DMV_FIN-INVOICES@TxDMV.gov

PO Information:

Pursuant to Texas Occupations Code, Section 2301.153(a)(9) and (13); Transportation Code, Section 1001.042; 43 TAC 206.1(a)(2)(D) and (b)(2) and (4); and TxDMV Board Resolution dated May 2, 2019. The TxDMV enters into this contract for qualified expert witness to provide services in an administrative enforcement action filed by TxDMV against Tesla Motors, Inc. in the State Office of Administrative Hearings (SOAH): MVD Docket No. 17-0081487.ENF; SOAH Docket No. 608-18-4533.ENF.

Attachment A is attached and incorporated into this Purchase Order.

In accordance with attached Statement of Work (Attachment A), Additional Terms and Conditions, Texas Occupations Code, Chapter 2301 and Transportation Code, Chapter 503. The TxDMV authorizes this procurement to contact for expert witness services.

Term:
 The term of the contract will be from date of award through December 31, 2019, subject to renewal for up to twelve (12) additional months in one or more renewal terms.

Funding:
 TxDMV shall process additional paperwork for services performed in Fiscal Year 2020 (September 1, 2019 through August 31, 2020), not listed on this purchase order.

Quantity(ies):
 All quantities are estimated: TxDMV does not guarantee to purchase any minimum or maximum quantity. TxDMV reserves the right to increase or decrease the quantity(ies) of the purchase order at the same original terms and conditions. The vendor will be notified in writing by purchase order change notice of any requirements for any increased or decreased quantity(ies).

Change Orders:
 Change orders will be allowed only if unforeseen conditions arise such as, but not limited to, increasing or decreasing quantities or if the department needs dictate changes. All changes shall be in the scope of original work. No verbal change orders shall be permitted. All change orders must be in writing with a Purchase Order Change Notice (POCN) issued by TxDMV Purchasing Section.

Payment:
 Payment will be made in accordance with the Texas Prompt Payment Act, TGC, Subtitle F, Chapter 2251. Vendor shall submit one copy of a correct itemized invoice showing the purchase order number, payee ID., remit to address, and phone number on invoice. Vendors may submit an electronic invoice. All electronic invoices shall be sent to DMV_FIN-INVOICES@txdmv.gov (note: There is an underscore "_" between DMV and FIN).

All invoices received at the email address will be filed for future reference and you will receive a receipt confirmation email. To avoid the confusion of duplicate invoices, please do not send other copies of this invoice via regular mail, fax or other means. On emails for electronic invoices, include the company name (as it appears on the invoice) and the purchase order number in the subject line to assist in identifying and processing your invoices in a timely manner. TxDMV will not incur any penalty for late payment if payment is made in 30 days or less from receipt of goods or services and a correct invoice, whichever is later.

Authorized Signature

R D Hunter, CTAM, CTEM, CTP

05/20/2019



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Note: warrants will not be issued to a vendor without a current Texas Identification Number.

Texas Department of Motor Vehicles (TxDMV) Contact:
 Barbara Jordan
 Managing Attorney, Enforcement Division
 (512) 465-1306
 Barbara.Jordan@txdmv.gov

Vendor Contact:
 Victor Vandergriff
 v.vandergriff@icloud.com
 P.O. Box 120963
 Arlington, Texas 76012
 (817) 271-1200

Line-Sch	Line Description	Class/Item	Quantity	UOM	Unit Price	Extended Amt	Due Date
1- 1	Expert witness in Texas Department of Motor Vehicles Enforcement case - Records review & expert report.	969/95	3000.0000	UNT	\$1.00000	\$3,000.00	05/20/2019
						Schedule Total	<input type="text" value="\$3,000.00"/>
<u>Contract ID:</u> 0000006929				<u>ReqID:</u> 0000007673			
						Item Total for Line # 1	<input type="text" value="\$3,000.00"/>
2- 1	Expert witness in Texas Department of Motor Vehicles Enforcement case - Deposition - limited to 6 hours.	969/95	6.0000	HR	\$300.00000	\$1,800.00	05/20/2019
						Schedule Total	<input type="text" value="\$1,800.00"/>
<u>Contract ID:</u> 0000006929				<u>ReqID:</u> 0000007673			
						Item Total for Line # 2	<input type="text" value="\$1,800.00"/>

Authorized Signature

R. J. Jumper, CTAM, CTEM, CTP

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Line-Sch	Line Description	Class/Item	Quantity	UOM	Unit Price	Extended Amt	Due Date
3- 1	Expert witness in Texas Department of Motor Vehicles Enforcement case - Review of depositions and expert reports.	969/95	1000.0000	UNT	\$1.00000	\$1,000.00	05/20/2019
						Schedule Total	<input type="text" value="\$1,000.00"/>
<u>Contract ID:</u> 0000006929				<u>ReqID:</u> 0000007673			
						Item Total for Line # 3	<input type="text" value="\$1,000.00"/>
4- 1	Expert witness in Texas Department of Motor Vehicles Enforcement case - Supplemental report (if required).	969/95	1500.0000	UNT	\$1.00000	\$1,500.00	05/20/2019
						Schedule Total	<input type="text" value="\$1,500.00"/>
<u>Contract ID:</u> 0000006929				<u>ReqID:</u> 0000007673			
						Item Total for Line # 4	<input type="text" value="\$1,500.00"/>
5- 1	Expert witness in Texas Department of Motor Vehicles Enforcement case - Prefiled testimony (if required).	969/95	1000.0000	UNT	\$1.00000	\$1,000.00	05/20/2019
						Schedule Total	<input type="text" value="\$1,000.00"/>
<u>Contract ID:</u> 0000006929				<u>ReqID:</u> 0000007673			
						Item Total for Line # 5	<input type="text" value="\$1,000.00"/>

Authorized Signature

05/20/2019

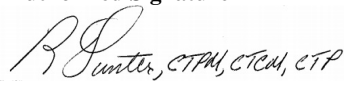


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Line-Sch	Line Description	Class/Item	Quantity	UOM	Unit Price	Extended Amt	Due Date
6- 1	Expert witness in Texas Department of Motor Vehicles Enforcement case - Deposition preparation.	969/95	1000.0000	UNT	\$1.00000	\$1,000.00	05/20/2019
						Schedule Total	<input type="text" value="\$1,000.00"/>
Contract ID: 0000006929				ReqID: 0000007673			
						Item Total for Line # 6	<input type="text" value="\$1,000.00"/>
						Total PO Amount	<input type="text" value="\$9,300.00"/>

All Shipments, Shipping papers, invoices and correspondence must be identified with our Purchase Order Number. Over shipments will not be accepted unless authorized by Purchaser prior to Shipment.

Texas Department of Motor Vehicles Standard Terms and Conditions can be found at: <http://www.txdmv.gov/contractors-vendors>

Authorized Signature

05/20/2019

**STATEMENT OF WORK AND
ADDITIONAL TERMS AND CONDITIONS**

1. SUMMARY AND BACKGROUND

- a. The Texas Department of Motor Vehicles (TxDMV) investigates allegations of violations of Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, and proceeds with administrative enforcement actions as authorized by law. To assist in these investigations and administrative enforcement actions, TxDMV is authorized to contract with qualified professionals to serve as expert witnesses.
- b. TxDMV enters into this contract under Occupations Code, Section 2301.153(a)(9) and (13); Transportation Code, Section 1001.042; 43 TAC 206.1(a)(2)(D) and (b)(2) and (4); and TxDMV Board Resolution dated May 2, 2019.
- c. TxDMV wants a qualified expert witness to provide services in an administrative enforcement action filed by TxDMV against Tesla Motors, Inc. in the State Office of Administrative Hearings (SOAH): MVD Docket No. 17-0081487.ENF; SOAH Docket No. 608-18-4533.ENF.

2. CONTRACTOR DELIVERABLES, PAYMENT SCHEDULE, AND RETAINAGE

The Contractor must provide his expert opinion regarding whether Tesla Motors, Inc. engaged in the business as a motor vehicle dealer without the appropriate license.

The Contractor must:

- a. Use his best efforts to ensure his opinion meets the criteria for expert testimony established by E.I. du Pont de Nemours and Co., Inc. v. Robinson, 923 S.W.2d 549 (1995).
- b. Review the applicable records, including records provided by TxDMV, and prepare an expert report containing the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them. The Contractor must submit one hard copy and one electronic copy, in the format as requested by the TxDMV Project Monitor, of the expert report to the TxDMV Project Monitor by June 6, 2019;
- c. Provide the following to the TxDMV Project Monitor by June 6, 2019: all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and the expert's current resume and bibliography;

- d. Give a deposition as scheduled; and
- e. Give testimony at the contested case hearing, which is currently scheduled for December 2 – 6, 2019.

Deliverable	Amount	Due Date*
Records review and expert report	\$3,000 flat fee	June 6, 2019
Deposition preparation, including review of the file and any conferences with TxDMV staff.	\$1,000 flat fee	By the day of the deposition, which is due by September 20, 2019
Deposition	\$300 per hour	TBD – due by September 20, 2019
Review of the Respondent's deposition(s) and expert report(s)	\$500 per deposition; \$500 per expert report =< 20 pages; \$1000 per expert report > 20 pages	Respondent's expert's report is due by July 19, 2019
Supplemental report, if requested	\$1500 flat fee	Discovery closes on September 27, 2019
Prefiled testimony, if requested	\$1000 per day	TBD
Hearing preparation, including review of the file and any conferences with TxDMV staff.	\$1000 flat fee	By day of hearing, which is scheduled for December 2-6, 2019
Hearing testimony in Austin, Texas– at least one day required; however, expert must attend day to day until testimony is concluded.	\$2400 per day	Scheduled for December 2-6, 2019
Travel and Per Diem Expenses - Deposition takes place in county of expert. Only overnight travel should be to the hearing in Austin, Texas.	Reimbursed according to State of Texas Comptroller Guidelines	

*These dates are subject to change to the extent SOAH amends the scheduling order.

TxDMV will retain 30% of each payment to the Contractor until Contractor testifies at the hearing. The contractor forfeits all retainage if he fails to testify at the hearing, unless the case settles or is otherwise disposed of prior to the hearing.

3. TxDMV RESPONSIBILITIES

TxDmv's Project Monitor will:

- a. Provide additional detail and answer any questions regarding the deliverables under this contract; and
- b. Provide approval of all deliverables provided by the Contractor.

4. ADDITIONAL TERMS AND CONDITIONS

The following terms and conditions are in addition to the terms and conditions incorporated into the Purchase Order that are found at <http://www.txdmv.gov.contractors-vendors>

- a. In the event of a conflict between this Attachment A and the Purchase Order, Attachment A controls.
- b. Time is of the essence for delivering the deliverables under this contract.
- c. Contractor will not be paid or reimbursed for any work performed prior to the issuance of a Purchase Order.
- d. The invoice for the review of records and creation of the expert report must not be submitted until the expert report is delivered to TxDmv. All other invoices must be submitted after completion of the work. The only row of deliverables listed above for which Contractor may submit more than one invoice is the row for review of the Respondent's depositions and expert reports, as well as any travel and per diem expenses. The Contractor may submit a separate invoice for the review of each deposition and expert report, as well as any day the Contractor travels to perform under this contract.
- e. Contractor certifies to the following upon submission of any invoices: that the invoices have been carefully reviewed for detailed description of the services performed; that the services have been performed in compliance with the contract; and that all appropriate and required supporting documentation is attached.

Invoices must include a detailed billing report that provides a description of the work performed, the dates service were performed, original documentation that validates the charges, and any other information requested in the Purchase Order for payment.

TxDmv may, in its sole discretion, require additional documentation to support payment, and Contractor must respond to each request within five calendar days of receiving the request.

- f. During and after the term of this contract, Contractor agrees to keep the following confidential, and will not use any such information to the detriment of TxDmv or any officer or agency of the State of Texas: all

communications between the Contractor and TXDMV. No information in whatever form prepared by the Contractor for the TXDMV under this contract may be disclosed by the Contractor without the prior written approval of the TXDMV or as required in giving testimony either by deposition and/or live testimony at a hearing in this case.

The obligations of this section do not apply to information that Contractor can demonstrate: (i) is publicly available; (ii) Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act; (iii) Contractor independently developed without regard to the TxDMV confidential information; (iv) is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that Contractor must furnish prompt written notice of such required disclosure and shall reasonably cooperate with TxDMV at TxDMV's cost and expense, in any effort made by TxDMV to seek a protective order or other appropriate protection of its confidential information; or (iv) TxDMV consents in writing to authorize the disclosure of the information.

- g. All files, records, reports, data, and other documents prepared or otherwise developed by the Contractor in the performance under this contract are considered to be "works for hire" and are owned exclusively by TXDMV, and shall be delivered to TXDMV within ten (10) business days upon written request of the TXDMV.
- h. Termination for Default. If Contractor fails to carry out or comply with any of the requirements of this contract with the TxDMV, the TxDMV may notify Contractor of the failure or default in writing and demand that the failure or default be remedied within ten (10) days. If Contractor fails to remedy the failure or default within the ten (10) day period, the TxDMV has the right to cancel this contract upon ten (10) days written notice.

Contractor's failure to comply with any contract deadline constitutes an incurable breach.

The cancellation of this contract, under any circumstances whatsoever, does not affect or relieve Contractor from any liability that may have been incurred pursuant to this contract, and such cancellation by the TxDMV does not limit any other right or remedy available to the TxDMV at law or in equity.

- i. The TxDMV may terminate this Contract as follows:
 - For Cause: The TxDMV may terminate this Contract if Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section above titled "Termination

- for Default.”
- Termination for listing on Federal Excluded Party List, on the Terrorism List (Executive Order 13224), or on the State of Texas Debarred Vendor List: The TxDMV has the absolute right to terminate this Contract without recourse as follows: a) if Contractor becomes listed on the prohibited vendor list authorized by Executive Order #13224 “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if Contractor becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List (EPLS) maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The TxDMV will provide Contractor with written notice to terminate the Contract, which termination will become effective immediately upon Contractor’s receipt of the notice.
- j. This contract may not be assigned to another contractor.
- k. The parties will email each other for notice requirements. Either of the parties may change its email address or designated individual to receive notices by giving the other party written notice as provided above, specifying the new address or individual and the date upon which it will become effective.

If to TxDMV:

Barbara Jordan
TxDMV Project Monitor
Email: Barbara.Jordan@txdmv.gov
and
TxDMV Purchasing
Email: Purchasing@TxDMV.gov

If to Contractor:

Victor Vandergriff
Email: v.vandergriff@icloud.com