

## TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. **PURCHASE OF GOODS & SERVICES.** City agrees to purchase, and Vendor agrees to sell, the goods ("Goods") and to provide the services related to the installation or delivery of such goods ("Services") set forth in (i) the City's Notice Inviting Bids or other written solicitation of bids by the Purchasing Agent ("City's Bid Documents") and (ii) Vendor's Bid in response thereto ("Vendor's Bid"). The City's Bid Documents and the Vendor's Bid shall be referred to collectively as the "Bid Documents." The Goods shall be in compliance with all of the standards and specifications set forth in the Bid Documents, and the Services shall be provided in a manner consistent with that level of care and skill ordinarily exercised by members in the same profession, practicing in the same locality under similar conditions. In the event of any conflict, the order of precedent shall be as follows: (i) specifications set forth in this Purchase Order; (ii) City's Bid Documents; and (iii) Vendor's Bid. There shall be no substitution of Goods or Services, without the prior written authorization of the Purchasing Agent.
2. **DELIVERY DATE.** The Goods must be shipped and must arrive at the destination specified on the Purchase Order as "Ship/Bill To" and Services must be provided by the Vendor by the request date specified therein ("Required Delivery Date"). Any failure by the Vendor to meet the Required Delivery Date will constitute a material default of this Purchase Order and the City may cancel any Goods not delivered in a timely manner without liability. The Vendor must notify the City immediately if the Vendor reasonably believes the Vendor will not be able to meet the Required Delivery Date for any reason and provide the City with a schedule that the Vendor reasonably believes it will be able to meet. It is within the City's discretion whether it will accept the revised schedule.
3. **PURCHASE PRICE.** The purchase price for the Goods and Services shall be the amount set forth in this Purchase Order. Vendor represents that the prices quoted to or paid by the City will not exceed current prices charged to any other customer by the Vendor on the Execution Date for items that are the same or substantially similar to the Goods, taking into consideration the quantity under consideration, and the Vendor will forthwith refund any amounts paid by the City in excess of the price.
4. **CANCELLATION.** The City reserves the right to cancel any portion of this Purchase Order at any time prior to the delivery of Goods and Services
5. **DELIVERY RISK OF LOSS.** All orders will be F.O.B. destination if not otherwise specified. Risk of loss or damage to the Goods must remain with the Vendor until the Goods have been delivered to and accepted by the City. All Goods and Services will be received by the City subject to its right of inspection, rejection, and revocation of acceptance under the Uniform Commercial Code. The City will be allowed a reasonable period of time to inspect the Goods and Services and to notify Vendor of any nonconformance with the terms and conditions of the specifications. The City may reject any Goods and Services that do not conform to the terms and conditions of this Bid Documents. Any Goods and Services rejected may be returned to the Vendor at the Vendor's risk and expense.
6. **INVOICES.** An invoice must be mailed to the City at the address specified in the Purchase Order as "Bill To" no later than the 5th day after shipment is made. Individual invoices must be issued for each shipment against each Purchase Order. Invoices must contain the Purchase Order number, description of Goods and Services, unit price, quantities billed, extended totals, and applicable taxes as set forth Section 9 of this Purchase Order.
7. **PACKING AND SHIPPING.** Deliveries must be made as specified, without charge, for boxing, crating or storage unless otherwise specified. Goods must be suitably packed to secure lowest transportation costs and, in accordance with the requirements of common carriers, in a manner to assure against damage from weather or transportation. The City's order numbers and symbols must be plainly marked on all invoices, packages and shipping orders. Packing lists specifying the quantity, description, and Purchase Order Number must accompany each box or packing shipment. The City's count or weight will be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by the City will be shipped in separate boxes or containers for each destination, at no charge.

8. PUBLIC WORKS. Public Works shall be performed in accordance with the provisions of the 2006 Standard Specifications for Public Works Construction, or as it may be amended by subsequent editions.

9. TAXES. The Vendor must separately state on all invoices any taxes imposed by the local, state or federal state government applicable to furnishing of Goods and Services; provided, however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise set forth in the Purchase Order, the purchase price will be considered to include state and city sales or use tax.

10. WARRANTY. The Vendor warrants that all Goods will conform to applicable specifications, drawings, description, and samples, and will be merchantable, of good workmanship in material, and free from defect. Unless manufactured pursuant to detailed design furnished by the City, the Vendor assumes design responsibility and warrants the Goods to be free from design defect and suitable for the purposes intended by the City, and that such Goods if installed by the Vendor shall conform to applicable specifications. The Vendor's warranties, together with its service guarantees, must run to the City and its customers or users of the Goods and Services and must not be deemed exclusive. The City's inspection, approval, acceptance, use of, and payment for all or any part of the Goods and Services must in no way affect its warranty rights whether or not a breach of warranty had become evident in time.

11. CHANGES. The City has the right, by written notice, to change the quantity or specifications of the Goods and Services ordered and the terms of shipment or packaging of Goods. Upon receipt of any notice, the Vendor will proceed promptly to make the changes in accordance with the terms of the notice. If any change causes an increase or decrease in the cost or performance or in the time required for performance, an equitable adjustment must be negotiated promptly and the contract modified in writing accordingly. The Vendor must deliver to the City as promptly as possible, and in any event within 30 days after receipt of change notice, a statement showing the effect of any change in the delivery dates and prices; the statement must be supplemented within 30 days by detailed specification of the amount of the price adjustment and supporting cost figures. The Vendor's failure to submit the statements within the time limits stated will constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedules.

12. BUSINESS LICENSE. The Vendor must obtain a City business license, unless the Vendor qualifies for an exemption.

13. INDEMNITY. To the fullest extent permitted by law, Vendor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Vendor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part: (i) the Goods and Services provided pursuant this Purchase Order; (ii) allegations that the Goods are defective in manufacture or design; (iii) any patent related to the Goods and (iv) the work, activities, operations, or duties of Vendor, or of anyone employed by or working under the control of Vendor, or (v) any breach of this Agreement by Vendor. Vendor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

14. INTERPRETATION. The terms of this Purchase Order should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Purchase Order or any other rule of construction that might otherwise apply.

15. GOVERNING LAW; JURISDICTION. This Purchase Order shall be construed in accordance with and governed by the laws of the State of California. The purchase of Goods shall take place in San Bernardino, California. For any dispute arising from this Purchase Order, the parties consent to jurisdiction and venue in either San Bernardino Superior Court or the United States District Court for the Central District of California.

16. NONTRANSFERABILITY. The Vendor may not transfer or assign this Purchase Order, without the prior written approval of the Purchasing Agent, which may be withheld in his/her sole discretion.

17. DISCOUNTS. The date used as the basis for discount calculation shall be computed from the date of receipt of invoice, Goods and Services, whichever is later.

18. COMPLIANCE WITH APPLICABLE LAW. Vendor agrees to comply with all applicable federal, state and local law in connection with the performance of this Purchase Order, including the payment of prevailing wage when required.

19. INTEGRATION; AMENDMENT. This Purchase Order represents the entire understanding of the City and the Vendor as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to the terms of this Purchase Order. The Purchase Order may not be modified except by Change Order or Addendum to Purchase Order. If this Purchase Order is a result of a contractual agreement between the vendor and the City of San Bernardino, the agreement will take precedence over the terms and conditions herewith. The Purchase Order will only be used as a reference for billing purposes.

20. INSURANCE. Subject to the discretion of the City's Risk Management Division, Vendor shall not begin any performance under this Purchase Order until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein. Vendor's liabilities, including but not limited to Vendor's indemnity obligations, under this Purchase Order, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Purchase Order, and Vendor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Purchase Order may be treated by City as a material breach of Agreement. City reserves the right to require Vendor to submit copies of any policy upon reasonable request by City.

- A. All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.
- B. Vendor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Purchase Order.
- C. Vendor shall maintain insurance coverage at its own expense as follows:
  - 1. Commercial General Liability. Commercial General Liability (CGL) insurance providing coverage which shall at least cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
  - 2. Commercial Automobile Liability. For all of Vendor's automobiles including owned, hired and non-owned automobiles, Vendor shall keep in full force and effect, automobile insurance providing coverage for at least broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).
  - 3. Workers' Compensation. For all of Vendor's employees who are subject to this Purchase Order and to the extent required by the applicable state or federal law, Vendor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Vendor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.
  - 4. Professional Liability. Vendor shall obtain Professional Liability coverage with limits of at least \$1 million per occurrence and \$2 million aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Vendor must ensure that the policy retroactive date is before the date of the Purchase Order is awarded, that coverage is maintained during the duration of performance of the Purchase Order or the Purchase Order period (whichever is longer) and the policy has a reporting

period or run-off provision of at least three (3) years following completion or termination of the performance under this Purchase Order.

- D. Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Consultant and shall be disclosed to City at the time the evidence of insurance is provided.
- E. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.
  - 1. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- F. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Agreement:
  - 1. Commercial General Liability Insurance Endorsements.
    - i. Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Bernardino and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
    - ii. Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Vendor's insurance and shall not contribute to it.
    - iii. Severability of Interest. The policy or policies must be endorsed to provide that Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
  - 2. Automobile Liability Insurance Endorsements.
    - i. Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Bernardino and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Vendor.
    - ii. Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Vendor's insurance and shall not contribute to it.

- iii. Severability of Interest. The policy or policies must be endorsed to provide that Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

3. Worker's Compensation Insurance Endorsements.

- i. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City of San Bernardino, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.
- ii. Reservation of Rights. City reserves the right, from time to time, to review Vendor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Vendor for the cost of the additional premium for any coverage requested by City in excess of that required by this Purchase Order, without overhead, profit, or any other markup.

G. Additional Insurance. Vendor may obtain additional insurance not required by this Purchase Order.

H. Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.