

TERMS AND CONDITIONS OF PURCHASE ORDER

1. General.
 - a) This is a government Agreement. The terms are not changed by any words added by Vendor, nor superseded because of any form used by Vendor in the course of business. Any change in terms must be agreed to by an authorized representative of the City, in writing. Acceptance by the City of goods, materials or services is not an acceptance of Vendor's other terms.
 - b) As used herein, "City" means the City of Pasadena and its representative who is authorized to issue this Agreement ("Agreement"). The term "Vendor" means the seller or contractor who agrees to furnish all goods and services subject to the terms and conditions of this Agreement, and includes its employees, representatives, subcontractors and agents.
 - c) This Agreement becomes valid only when duly executed or approved and when the City has issued a valid Purchase Order Number. The City's issuance of a Purchase Order Number is the only authorization which will be recognized by City to allow the Vendor to begin action on this Agreement and for charges to its account.
 - d) As used herein, "Agreement" means the Purchase Order Requisition, this Agreement and Purchase Order Terms and Conditions and any written documents incorporated by specific reference. This Agreement constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. In case of a conflict, these Purchase Order Terms and Conditions shall strictly prevail over the terms of any other document which is a part of this Agreement.
 - e) This Agreement is entered into in the city of Pasadena, California and governed by and construed according to the laws of the State of California.
 - f) Vendor shall comply with all Federal, State, County and City laws, ordinances, rules and regulations.
 - g) Time is strictly of the essence in this Agreement.
 - h) The City's waiver of any term, condition, breach or default of this Agreement shall not be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.
 - i) Vendor shall not assign or transfer this Agreement or any rights in this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion.
 - j) City may terminate this Agreement, or any part thereof, for any cause or without cause upon fifteen (15) calendar days' written notice to Vendor.
2. Invoices.
 - a) Each invoice under this Agreement shall contain, at a minimum, the following information: the Purchase Order Number, the name of the City department to which goods or services were furnished, whether the invoice covers complete or partial delivery or performance, a specification of the goods and services furnished according to the prices stipulated and in a format acceptable to the city, and applicable tax as a separate line item.
 - b) Vendor shall be paid upon approval of proper and acceptable invoices for material and services accepted by the City.
 - c) No invoice shall be issued prior to receipt and acceptance of material and services by City.

- d) City does not authorize and shall not pay interest charges.
 - e) No invoice shall be paid prior to the submittal by Vendor of a W-9 form, Taxpayer Identification Number and Certification.
3. Inspection and Acceptance. All material ordered and all services performed are subject to final inspection and acceptance by the City in its sole discretion. City may reject and return at Vendor's expense all materials and articles not conforming to this Agreement. Vendor shall bear all risks as to rejected material and services after notice of rejection. City shall rely on Vendor to correct, at no additional costs, all material and all services which are rejected by City as not meeting applicable standards or the requirements of this Agreement.
4. **Indemnity. Vendor agrees to indemnify, hold harmless, and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the City, its City Council and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out of the usage or operation, including the malfunctioning of, or any injury caused by, any product purchased herein, or any acts, errors or omissions, including, without limitation, professional negligence of Vendor. This agreement to indemnify includes, but is not limited to personal injury (including death at any time) and damage to property (including, without limitation, contract, tort, patent, copyright, trade secret or trademark infringement) sustained by any person or persons, corporations or Vendor.**
5. Special terms applicable to all Agreements for goods and material provided to City:
- a) Vendor agrees to prepay transportation charges and to show them separately on all invoices.
 - b) Title to all material furnished under this Agreement shall pass to the City on delivery and loading of material at the F.O.B. point designated in this Order.
 - c) All material listed in the Safety Orders of the California Division of Industrial Relations shall fully comply with the requirements of said Orders.
 - d) All goods, material and equipment ordered, except as otherwise noted in this Order, shall be delivered in a new and unused condition.
 - e) All vehicles and automotive equipment furnished under this Agreement/Purchase Order shall meet all requirements of the California Vehicle Code and regulations of the Federal Department of Transportation.
 - f) Vendor shall transfer to City the manufacturer's warranty or guarantee for each item furnished, in full force and effect as of the day the City commences operation and use of the item. Where applicable, City shall be named as owner-beneficiary of such warranty or guarantee. In addition, Vendor warrants that all material and goods provided under this Order are free from defects in material and workmanship.
 - g) If there is a patent defect in material that goes uncorrected after 10 calendar days' notice, or a shorter time in the case of an emergency demanding immediate action, City may make the necessary replacements or repairs and charge Vendor the total cost of labor, material, equipment and administration. The City may withhold from Vendor an amount for these costs and recover any balance from Vendor.
6. Special terms applicable to all Agreements for services provided to City:

- a) Proof of Insurance. Prior to performance of services, Vendor shall provide insurance certificates and endorsements to City evidencing coverage required under this paragraph and indicating that City will be notified no fewer than 30 days prior to any cancellation or reduction in coverage.
 - b) Insurance Requirements. Vendor shall, at its own expense, carry and maintain, during the period of performance: State required Workers' Compensation Insurance and Employer's Liability Insurance for its employees with limits of \$1,000,000, per occurrence, granting a waiver of transfer of rights of recovery, by vendor and its insurance carrier, in favor of City of Pasadena, or evidence of self-insurance where permitted by law; Comprehensive General Liability Insurance with minimum limits of \$1,000,000 and on which City, its Councilmembers, commissioners, officials, officers, employees, agents and volunteers are named as additional insureds, and granting a waiver of transfer of rights of recovery, by vendor and its insurance carrier, in favor of City of Pasadena; Automobile Liability Insurance with minimum limits of \$1,000,000. City reserves the right to modify or amend the type of coverage and limits based upon the scope of work and the risk(s) involved.
 - c) Vendor shall not perform work on City owned property until so authorized in writing by the Department for whom the Work was ordered.
 - d) Vendor is an independent contractor and not an employee or agent of City and shall furnish such services in its own manner and method except as required by this Agreement. Vendor's employees, subcontractors or agents shall not, under any circumstances, be considered employees of City. Vendor has and shall retain the right to exercise full control over employment, direction, compensation and discharge over all persons engaged in performance under this Agreement. Vendor shall be solely responsible for and shall indemnify, defend and save City harmless from all matters relating to the payment of its employees, including, but without limitation, deductions, withholding, wages, salaries, benefits, taxes and regulations of any nature whatsoever.
7. Special additional terms applicable to all Agreements for a Public Works Project ("Project"), in addition to those set forth in paragraph 6, above:
- a) This Project is subject to the provisions of Labor Code Sections 1720, et seq., and the requirements of Title 8 of the California Code of Regulations, Sections 16000, et seq., which govern the payment of prevailing wages, employing apprentices on public works projects and related obligations. Vendor and its subcontractors of any tier shall be governed by and required to comply with these statutes and regulations in connection with the Project.
 - b) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Public Contract Code Section 4104, or engage in the performance of this Project unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Business and Professions Code Section 7029.1 or by Public Contract Code Sections 10164 or 20103.5, provided the contractor is registered to perform public work pursuant to Labor Code Section 1725.5 at the time the Agreement is awarded.
 - c) This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations
 - d) Vendor must post job site notices prescribed by regulation.
 - e) Vendor agrees to timely furnish electronic, certified payroll records for this Project directly to the Labor Commissioner and to make them available for inspection by the City during normal business hours.
 - f) The agreement to indemnify City set forth in paragraph 4, above, includes but is not limited to indemnity for any liability loss, suits, claims, damages, costs, judgments and expenses (including

attorney's fees and costs of litigation) which in whole or in part are claimed to result from or to arise out any failure by Vendor to meet its obligations under the provisions of Labor Code, Section 1720, et seq., and the requirements of Title 8 of the California Code of Regulations, Section 16000, et seq..

8. Special additional terms applicable to software licenses and software maintenance, authorized by the Pasadena Department of Information Technology, and to equipment lease and equipment maintenance:

The form of software license, software maintenance, equipment lease and equipment maintenance attached to this Agreement, when approved as to form by the City Attorney, are incorporated as a part of this Agreement, are agreed to by the City, and shall take precedence over all of the terms and conditions of this Agreement, except as to paragraphs numbered 9 through 14, inclusive.

9. Non-discrimination and Equal Employment Opportunity Practices Provisions:

- a) Vendor certifies and represents that, during the performance of this Agreement, the Vendor and each subcontractor shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition, marital status, or any other basis enumerated in Government Code Section 12940(a). Vendor further agrees that it will not maintain any segregated facilities.
- b) Vendor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of the contractor, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition, marital status, or any other basis enumerated in Government Code Section 12940(a) .
- c) Vendor shall, if requested to so by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition, marital status, or any other basis enumerated in Government Code Section 12940(a).
- d) If requested to do so by the City, Vendor shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- e) Vendor agrees to recruit Pasadena residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this Agreement and which are performed within the City.
- f) Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
- g) Vendor shall include these provisions in each of its subcontracts under this Agreement.

10. Business License. Vendor shall obtain any City Business License required by Pasadena Municipal Code Chapter 5.04. Consult the License Division, Department of Finance, as to license requirements, phone (626)744-4166.

11. No conflict. Vendor hereby represents, warrants and certifies that no officer or employee of the Vendor is a director, officer or employee of the City of Pasadena, or a member of any boards, commission or committees, except to the extent permitted by law.

12. Maintenance and Inspection of Records. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Vendor's records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under this Agreement and/or is paying the amounts to which Vendor is properly entitled to under the Agreement or for other purposes relating to the Agreement. Vendor shall maintain and preserve all such records for a period of at least 3 years after the termination of the Agreement. The Vendor shall maintain all such records in the City of Pasadena. If not, the Vendor shall, upon request, promptly deliver the records to the City of Pasadena or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Pasadena, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.
13. Taxpayer Protection Act. The restrictions of Article XVII, City of Pasadena Taxpayer Protection Act, of the Pasadena City Charter apply to this Agreement. If the City public official responsible for approving said Agreement determines the amount of the order, or the cumulative amount of purchase orders granted to Vendor over any 12-month period, triggers the requirements of Article XVII, Vendor will be considered a "recipient of a public benefit." City public officials who approve or vote to approve this "public benefit" will be prohibited from receiving gifts or other personal benefits with a value in excess of \$50, campaign contributions, or employment from Vendor for a specified period of time. A "recipient of a public benefit" includes individuals, corporations, firms, partnerships, associations or other persons or entities, as well as those individuals who have more than a 10% equity, participation or revenue interest in an entity, or who serve as trustee, director, partner or officer of the entity. At the City's request, Vendor shall provide written disclosure of all of the foregoing interests, as applicable. Vendor's disclosure will be considered a public record.
14. Living Wage Ordinance. This Agreement, if over \$25,000, is subject to the City of Pasadena's Living Wage Ordinance, Pasadena Municipal Code Chapter 4.11 and requires that Vendors providing labor or services to the City pay employees in accordance with the Ordinance. Please visit http://www.cityofpasadena.net/Pasadena_Living_Wage.aspx for the current calendar year Pasadena Living Wage rate.
 - a) If there is a difference between the Pasadena Living Wage and Prevailing Wage rates (pursuant to paragraph 7, above) for similar classifications of labor, the contractor and his subcontractors shall pay no less than the highest wage rate.

Approved as to form
Pasadena City Attorney
January 13, 2017