PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS: "Contract' means the entire written agreement between the parties, including but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; the purchase order or price agreement document.

"Contractor" means a person or organization with which the City of Portland has contracted for the purchase of goods the terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous; "ORS' means the Oregon Revised Statutes;

"City" means the City of Portland, Oregon and is synonymous with "Buyer" as used in ORS chapter 12. "City" also means an ORCPP member if the purchase is being made under the State's cooperative purchasing program authorized by ORS 279A and the Portland City Code.

2. WORKERS' COMPENSATION: The Contractor, its subcontractor, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Contractor also shall comply with ORS 279B.230 regarding payment for medical care.

3. STANDARD AND SPECIAL TERMS AND CONDITIONS: The terms and conditions printed on this page are standard to City contracts for the purchase of goods. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which also apply to this contract, and which are incorporated by this reference herein.

4. DELIVERY: All deliveries shall be F.O.B destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the City except as to latent defects, fraud and Contractor's warranty obligations.

5. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the City at times and place determined by the City. If the City finds goods furnished to be incomplete or not in compliance with solicitation specifications, the City may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the City, the City may reject the goods and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the City's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

6. WARRANTIES: Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this contract. All warranties shall run to the City. Seller warrants that the material and/or equipment furnished do not infringe any patent registered trademark or copyright, and agrees to save, hold harmless, and indemnify the City in the event of any claim of infringement.

7. CASH DISCOUNT: If the City is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

8. PAYMENT: Payment for completion of City contracts is normally made within 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later.

9. TERMINATION: This contract may be terminated by mutual consent of both parties or by the City at its discretion. The City may cancel an order for goods at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by the City. If this contract is so terminated, Contractor shall be paid in accordance with the terms of the contract for goods delivered and accepted if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060).

10. FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond the party's reasonable control. The City may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of this contract.

11. BREACH OF CONTRACT: Should Contractor breach any of the provisions of this contract, the City reserves the right to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by the City as the result of Contractor's breach of contract including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. In the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification for City contracts, as provided in ORS chapter 279B and Portland City Code chapter 5.33.

12. HOLD HARMLESS: Contractor shall indemnify, defend and hold harmless the City and its divisions, officers, employees, agents and members, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this contract.

13. ACCESS TO RECORDS: The Contractor shall maintain all fiscal records relating to this contract In accordance with generally accepted accounting principle and shall maintain any other records relating to this contract in such a manner as to clearly document Contractor's performance hereunder. The City and its duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this contract, to perform examination, and audits and make excerpts and transcripts.

14. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the City.

15. SEVERABILITY: If any provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with the law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as of the contract did not contain the particular provision held invalid.

16. WAIVER: Failure of the City to enforce any provision of this contract shall not be a waiver or relinquishment by the City of its right to such performance in the future nor of the right to enforce any other provisions of this contract.

17. GOVERNING LAW; JURISDICTION, VENUE: This contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the City and the contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the Portland office of the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.

18. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under this contract in whole or in part, without the prior written approval of this City. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the City under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.

19. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods under this contract, including, without limitation, the provisions of ORS 279C.505, 279C.515, and 279B.235, as set forth below and the provisions of: (i) Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: http://www.portlandoregon.gov/bibs/article/446806; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336). ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In connection with its activities under this Contract, Contractor shall comply with all applicable Grant Terms and Conditions. This includes all terms and conditions contained in this Contract and, for a contract involving a grant, the Grant Terms and Conditions as further described at: http://www.portlandoregon.gov/bibs/article/455735

20. PAYMENTS REQUIRED By ORS 279C.505 AND 279B.220: For all goods provided under this contract, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial Accident Fund from the contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

21. CITY PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly is due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this contract, the City may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this contract. The payment of a claim by the City pursuant to this paragraph 21 shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

22. HOURS OF LABOR: No person shall be employed by the Contractor for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279B.020 and 279C.540.

23. SAFETY AND HEALTH REQUIREMENTS: Goods and services provided under this contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

24. AWARD TO FOREIGN CONTRACTOR: If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. The City shall withhold final payment under this contract until Contractor has met this requirement.

25. RECYCLABLE PRODUCTS: Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.

26. MATERIAL SAFETY DATA SHEET: In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide the City with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 155-005 (2); 437-155-025). In addition, Contractor must label, tag or mark such goods.

27. **THIRD PARTY BENEFICIARIES**. There are no third party beneficiaries to this contract.

28. **LICENSE/CERTIFICATION.** The Contractor shall have a current business license tax account from the City and be EEO certified, if required under City Code.