



CITY OF PORTLAND STANDARD PURCHASE ORDER TERMS AND CONDITIONS (GOODS AND SERVICES)

1. GOVERNING TERMS AND CONDITIONS. The buyer of Goods and Services under this Purchase Order is the City. This Purchase Order is expressly conditioned on Contractor's agreement to these Purchase Order terms and conditions. The City intends that this Purchase Order constitute an offer to buy from Contractor. However, to the extent that this Purchase Order is interpreted as the City's acceptance of Contractor's offer to sell, such acceptance is expressly conditioned on Contractor's agreement to these Purchase Order terms and conditions. The City hereby objects to any different or additional terms in Contractor's acceptance of this offer or any other communication by Contractor, including, but not limited to Contractor quotes, invoices or hyperlinks, unless expressly incorporated by reference on the face of the Purchase Order.

2. DEFINITIONS:

"Acceptance" means the Goods have been delivered and Services have been performed to the City's satisfaction, as confirmed in writing by the City's project manager.

"Contract" means the entire written agreement between the Parties, including but not limited to the Invitation to Bid ("ITB") or Request for Proposal ("RFP") and its specifications, terms and conditions; solicitation instructions; solicitation addenda and Contract amendments, if any, Contractor's bid, quote or proposal, this purchase order or Master Agreement document.

"Contractor" means a person or organization with which the City of Portland has contracted for the purchase of Goods or Services or both.

The terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous. "Goods" and "Services" are defined in Portland City Code Chapter 5.33 and professional services in 5.68.

"ORS" means the Oregon Revised Statutes.

"City" means the City of Portland, Oregon and is synonymous with "Buyer" as used in ORS Chapter 72. "City" also means any other Oregon Cooperative Procurement Program member if the purchase is being made under the State's cooperative purchasing program authorized by ORS Chapter 279A and the Portland City Code.

"Confidential Information" means any non-public or confidential information that is disclosed by the City to the Contractor, whether orally or in writing, that is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by a person exercising reasonable judgment, to be confidential. Confidential Information does not include any information that: (1) is or becomes publicly known through no wrongful or negligent act of Contractor; (2) is already lawfully known to Contractor without restriction when it is disclosed; (3) is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the parties or of any applicable protective or similar order, in Contractor's

possession without any obligation restricting disclosure; (4) is independently developed by Contractor, as shown by reasonable written documentation, without breach of this Contract; or (5) is explicitly approved for release by written authorization of the City.

“Master Agreement” means a price agreement or other separate written agreement entered into between City and Contractor governing City’s purchase of Goods or Services from Contractor.

3. ORDER OF PRECEDENCE: These Purchase Order terms and conditions shall take precedence over any other terms and conditions, whether contained in any quotation, proposal or other document provided by Contractor in connection with City’s purchase of Goods and Services from Contractor. In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict or ambiguity will be resolved in accordance as follows: (1) These Purchase Order terms and conditions, (2) Contractor’s Price, (3) Scope of Work, (4) Procurement documents such as RFP, RFQ, IFB (5) Contractor’s proposal or bid, and (6) Contractor’s hyperlinks. For the avoidance of doubt, no other terms and conditions will override the Contractor’s obligations for indemnification Insurance, Confidentiality, and the Governing Law; Jurisdiction provisions of these Purchase Order terms and conditions. Notwithstanding the foregoing, in the event the City and Contractor have entered into a Master Agreement, the Master Agreement shall take precedence over these Purchase Order terms and conditions.

4. INSURANCE: Contractor shall obtain and maintain in full force at Contractor expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities while the Contract is in effect.

4.1 Workers' Compensation Contractor shall carry insurance as required by ORS Chapter 656 and as it may be amended. Unless exempt under ORS Chapter 656, the Contractor and all subcontractors shall maintain coverage for all subject workers.

4.2 General Commercial Liability (CGL) Contractor shall carry commercial general liability coverage (“CGL”) in an amount not less than \$1 million per occurrence and aggregate limit of not less than \$2,000,000 per occurrence for damage to property or personal injury arising from Contractor’s work under this Contract.

4.3 Automobile Liability Contractor, if driving to deliver Goods or Services under this Contract, shall carry insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto, or all owned, scheduled, hired and non-owned auto.

4.4 Excess and Umbrella Insurance Coverage may be used in any combination to supplement the required limits for general liability and auto liability coverage in section 4.2 and 4.3 above.

If Contractor is providing professional Services, the following additional insurance is required:

4.5 Professional Liability Contractor shall carry insurance to cover damages caused by negligent acts, errors or omissions related to the professional Services, and performance of duties and responsibilities of the Contractor under this Contract in an amount not less than \$1 million per occurrence and aggregate of \$2 million for all claims per occurrence. . In lieu

of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than \$1,000,000 per claim and \$2,000,000 annual aggregate, if the Contractor acquires an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

4.6 Continuous Coverage; Notice of Cancellation: The Contractor agrees to maintain continuous, uninterrupted coverage while the Contract is in effect. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) calendar days written notice from Contractor to the City. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.

4.7 Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Contractor's Services to be performed, or Goods to be provided. Coverage shall be primary and non-contributory with any other insurance and self- insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

4.8 Certificate(s) of Insurance: Contractor shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the City prior to the award of the Contract if required by the procurement documents (e.g., Request for Proposal), or at execution of Contract and prior to any commencement of work or delivery of Goods or Services under the Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City of Portland. The Contractor shall pay for all deductibles and premium. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

4.9 Subcontractor(s): At City's request, Contractor shall provide evidence that subcontractors, if any, performing work or providing Goods or Services under the Contract have the same types and amounts of coverages as required of the Contractor.

5 DELIVERY: Contractor shall ship Goods freight and insurance prepaid; F.O.B. the City's designated location at the time indicated herein. Shipments will be complete and partial shipments will be avoided unless the City agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until Goods are received by the City at the delivery site. Delivery of Goods shall not be deemed to be complete and title to Goods shall not pass to the City until written Acceptance has been issued by the City, except as to latent defects, fraud and Contractor's warranty obligations

6 INSPECTIONS: Goods and Services furnished under this Contract shall be subject to inspection and test by the City at times and places determined by the City. If the City finds Goods or Services furnished to be incomplete or not in compliance with specifications, the City may reject the Goods or Services and require Contractor to either correct or re-perform Services without charge or deliver Goods 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 or Services 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 a buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

7 WARRANTIES: Unless otherwise stated, all Goods shall be new and current model and shall carry full manufacturer warranties. All warranties shall run to the City. Contractor warrants that, to the best of its knowledge, the Goods and/or Services furnished do not infringe any patent, registered service mark, trademark, trade dress, copyright, or other intellectual property rights, and agrees to save, hold harmless, and indemnify the City in the event of any claim of infringement, to the extent found to have been caused by the actions, errors, or omissions of Contractor.

8 OWNERSHIP OF WORK PRODUCT. All work product produced by the Contractor under this Contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Contractor and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a "work made for hire," the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Contractor are and will remain the exclusive property of Contractor. Contractor hereby grants to the City a non-exclusive, perpetual, irrevocable, world-wide license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing intellectual property rights incorporated into the Work Product(s).

9 CITY'S CONFIDENTIAL INFORMATION. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall

Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Contract, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent.

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

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

12 TERMINATION: This Contract may be terminated by mutual consent of both Parties or by the City at its sole discretion. The City may cancel an order for Goods or Services 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 shipment of any Goods or performance of any Services 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).

13 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.

14 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.

15 INDEMNIFICATION: Contractor shall indemnify, defend and hold the City and its divisions, officers, employees, agents, and members harmless from and against all claims, suits, actions, and costs (including attorneys' fees) of any nature arising out of or related to the acts, errors, or omissions of Contractor or its officers, subcontractors, agents, or employees under this Contract.

16 ACCESS TO RECORDS: Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract or until the resolution of all audit questions or claims, whichever is longer.

16.1 The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Contract and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.

16.2 The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Contract at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

17 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.

18 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 if the Contract did not contain the particular provision held invalid.

19 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.

20 GOVERNING LAW; JURISDICTION:

This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

21 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 the City. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee, assignee 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.

22 COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of Goods and Services under this Contract, including, without limitation:

22.1 The provisions of ORS 279, 279A, 279B and 279C incorporated by reference.

22.2 Title VI of the Civil Rights Act of 1964 and its corresponding regulations.

22.3 Section V of the Rehabilitation Act of 1973

22.4 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

22.5 If applicable, in connection with its activities under this Contract, Contractor shall comply with all grant terms and conditions. This includes all terms and conditions contained in this Contract.

22.6 Contractor warrants its compliance with terms and conditions of City of Portland HR 2.02.

22.7 All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

23 CITY PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly as due, any claim for labor or Services furnished to Contractor or any subcontractor by any person in connection with the Goods or Services provided under this Contract, the City may pay such claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. The payment of a claim by the City pursuant to this paragraph 22 shall not relieve Contractor or its surety, if any, from obligation with respect to any unpaid claims.

24 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.

25 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.

26 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.

27 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 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.

28 THIRD PARTY BENEFICIARIES: There are no third-party beneficiaries to this Contract.

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

30 INDEMNIFICATION: If the City is required to indemnify Contractor or any third party under this Contract, the City's indemnification obligation is subject to the conditions and limitations of the Oregon Constitution Article XI, Section 9 and the Oregon Tort Claims Act ORS 30.260 to ORS 30.300, \$5,000, or the annual value of this Contract, whichever is lesser.

31 ENTIRE AGREEMENT: This Contract constitutes the entire agreement between the City and Contractor and supersedes all prior and contemporaneous oral and written agreement between the Parties on this subject matter.