

CITY OF ONTARIO
PURCHASE ORDER TERMS AND CONDITIONS

- 1. BINDING CONTRACT:** Execution of this Purchase Order (PO) or commencement of performance pursuant to this PO constitutes acceptance by Vendor. If delivery dates cannot be met, Vendor shall immediately inform City in writing. City's acceptance of late performance is not a waiver of the City's right to hold the Vendor liable for any loss or damage or modify Vendor's obligation to make future deliveries in accordance with the schedule. Any additions or different terms in the Vendor's forms are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given.
- 2. COMPENSATION:** Vendor shall be paid on a time and materials, unit price basis or lump sum basis, as may be agreed upon by the parties, within 30 days of receipt of an undisputed invoice. Payment may be withheld, in whole or in part, due to deficiencies in Vendor's performance. Payment of an invoice by City shall be without prejudice to any and all claims City may have against Vendor in connection with performance of this PO. If the work is performed on a time and materials basis, the invoice shall include a detailed description of the work performed.
- 3. INSPECTION:** All materials and workmanship are subject to inspection and testing by City for compliance with specifications as included herein. In the event materials or services are found to be defective or do not conform with this PO, City shall have the right either to reject or revoke acceptance of the materials and/or require correction of the services and the City shall have the right at its option to cancel the remainder, if any, of the order, by notice to Vendor at the time notice is given of rejection or revocation of acceptance. Defective materials or services shall be removed from City premises and/or corrected by and at the expense of Vendor, including but not limited to packing and shipping. Failure to inspect and accept or reject shall not relieve Vendor from responsibility for compliance with specifications.
- 4. RESPONSIBILITY:** Unless otherwise specified, Vendor shall be responsible for all items or materials covered by the PO until delivered at the designated delivery point, and Vendor shall bear all risks as to items rejected or requiring correction after notice of such rejection or correction is given and pay for any and all loss or damage to the goods from any cause whatsoever. City's acceptance of non-conforming goods, delivery or service is not a waiver of any right, claim or remedy City may have under this Purchase Order or applicable law.
- 5. CHANGES:** This PO may at any time, by written order signed by City, be changed in regards to the materials or services to be furnished, quantities ordered, unit price, discount, delivery point or arrangements, terms, or any other matters affecting a valid order. In the event such change causes an increase or decrease in the cost or the time required for the performance hereunder, an equitable adjustment will be made for the cost thereof, subject to the approval of City, and written notice given therefore.
- 6. QUANTITIES:** No variation in the quality or quantity of any item called for by this PO shall be acceptable except as a result of a written change order signed by City so authorizing. No change in cost shall be valid unless so ordered.
- 7. TERMINATION:** City may terminate the whole or any part of the Purchase Order for cause: (1) if Vendor fails to deliver or fails to perform other terms and conditions of this PO; (2) if Vendor delivers nonconforming goods; or (3) if Vendor fails to make progress as to endanger performance of this PO. In the event of any such failure, City will provide Vendor with written notice of default and City's intention to terminate if Vendor fails to cure the default to City's satisfaction within three (3) calendar days of the date of City's notice. If Vendor fails to cure or correct the default within three (3) calendar days, the City may, without further notice to Vendor, procure upon such terms and in such manner as the City may deem appropriate, goods or services similar to those terminated, and the Vendor shall be liable to the City for any excess costs of such similar items; however, the Vendor shall continue the performance of this PO to the extent not terminated. The rights and remedies of the City provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this PO. City may also terminate this PO, in whole or in part, without cause, upon five (5) calendar days written notice to Vendor. If City terminates this PO without cause, Vendor shall be entitled to payment only for goods and services provided and accepted by City. Vendor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination, including but not limited to lost profits. Upon termination, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for the work.
- 8. COMPLIANCE WITH ALL LAWS:** Vendor shall comply with all applicable laws and regulations of the federal, state and local government Vendor shall assist City, as requested, in obtaining and maintaining all permits required of Vendor by Federal, State and local regulatory agencies. Vendor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her work under this PO. Vendor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work is performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws, if applicable. Vendor shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon Vendor and all sub-contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code §§ 1771; 1774; 1775), employment of apprentices (Labor Code § 1777.5), certified payroll records (Labor Code §§ 1771.4; 1776), hours of labor (Labor Code §§ 1813; 1815) and debarment of contractors and subcontractors (Labor Code § 1777.1). This PO may be subject to compliance monitoring and enforcement. If the work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Vendor agrees to fully comply with such Prevailing Wage Laws, including, along with subcontractors, being registered with the Department of Industrial Relations (Labor Code §§ 1725.1; 1771.1). The articles and/or materials covered by this PO must conform with safety orders of the California Division of Industrial Safety.
- 9. STANDARD OF CARE:** Vendor shall perform the PO in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing under similar conditions.
- 10. INSURANCE:** Vendor shall take out and maintain, during the performance of all work under this PO: A Commercial General Liability Insurance, of at least \$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad Insurance Work Office Commercial General Liability coverage (Occurrence Form CG 2503); B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$2,000,000 per occurrence for bodily

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Injury and property damage, at least as broad as Insurance Work Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto); and C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$2,000,000 per occurrence. City, its officials, officers, employees, agents and volunteers shall be named as additional insureds on Vendor's policies of Commercial General Liability and Automobile Liability insurance. Defense costs shall be paid in addition to the limits. Insurance carriers shall be authorized by the Department of Insurance, State of California, to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A", "Class VII" according to the latest A.M. Best's Key Rating unless otherwise approved by City. Insurance, if required by City, must name City as "Additionally Insured" and a waiver of subrogation in favor of City shall apply.

11. INDEMNIFICATION: Vendor shall defend (with counsel of City's choosing), indemnify and hold harmless City, its officials, officers, volunteers, agents and employees of City, to against any and all claims, liabilities, expenses, causes of action, costs or losses, or damages, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, patent infringement or fees for use of patented items, failure to comply with all local, state and federal laws, rules and regulations, or any claim of Vendor or sub-Vendor for wages or benefits which arise in connection with the performance of this PO except where caused by the sole negligence or willful misconduct of City. Vendor's obligation to indemnify shall survive expiration or termination of this PO and shall not be restricted to insurance proceeds, if any, received by Vendor or the City. If Vendor's obligation to defend, indemnify, and/or hold harmless arises out of Vendor's performance as a "design professional" (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Vendor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Vendor, and, upon Vendor obtaining a final adjudication by a court of competent jurisdiction, Vendor's liability for such claim, including the cost to defend, shall not exceed the Vendor's proportionate percentage of fault.

12. WARRANTY: In addition to all warranties which may be provided by law, Vendor warrants that the items delivered shall (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to specifications, drawings, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty, or as agreed to by Vendor and City, from the date of final written acceptance by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City. Vendor, at its own expense, shall repair or replace, at the option of City, any defective items within two (2) business days after receipt of notice from City or within four (4) hours in case of emergency, as determined by City. Vendor also warrants that the items are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the items. Vendor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties. Vendor shall be liable to the City for all damages proximately caused by breach of any of the foregoing warranties, including incidental damages.

13. LAWS AND VENUE: This PO shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this PO, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

14. CONTRACT TERMS: Nothing herein shall be construed to give any rights or benefits to anyone other than City and Vendor. The unenforceability, invalidity or illegality of any provision(s) of this PO shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the parties to the addresses set forth in the PO. Vendor shall not assign, sublet, or transfer this PO or any rights under or interest in this PO without the written consent of City, which may be withheld for any reason. Vendor is retained as an independent contractor and is not an employee of City. No employee or agent of Vendor shall become an employee of City. This is an integrated PO representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. If, for any reason an overpayment is made, Vendor shall promptly refund such overpayment to City via a properly referenced check, in order that City can expedite clearing of the overpayment through its accounting system. No exercise by City of its rights hereunder shall constitute a waiver of any rights it may have for breach of contract. City's waiver of or failure to enforce its rights on account of Vendor's failure or delay in performing any obligation of Vendor hereunder, or on account of Vendor's breach of contract in any respect, shall not constitute a waiver of any subsequent failure, delay, or breach.

15. DELAYS - DAMAGES: Time is of the essence in the performance of this PO. Without limiting any other provision of this PO, in the event Vendor fails to perform its obligation under this PO within the time specified, if any, or a reasonable time after placement of the order, City may by written notice, order Vendor to cease further deliveries or services and may hold Vendor liable for any damage caused City by reason of such delay. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of City.

16. FREIGHT: A copy of the freight bill MUST accompany invoices whenever freight charges are prepaid and added to invoices.