

PURCHASE ORDER TERMS AND CONDITIONS FOR EQUIPMENT AND MATERIALS

1. Acceptance. This purchase order for equipment and materials issued by the City of Milpitas ("CITY") to the Vendor designated in the purchase order must be promptly accepted and acceptance is expressly limited to the terms of this order. 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. Vendor's shipment of goods in response to this order shall be considered acceptance by the Vendor.

2. Entire Agreement. Unless Vendor and CITY have entered into a separate written contract covering the purchase of the goods described herein, the entire contract between the parties consists of this order and the Vendor's acceptance as above stipulated, and said contract shall not be changed or added to except in writing signed by authorized representatives of each party.

3. Price. The price invoiced for the goods on this purchase order shall be no higher than the price stated on the front of this purchase order unless prior notification is received from Vendor prior to shipment and the change is accepted by CITY. If the Vendor's established price for any item upon the date of delivery shall be lower than the price shown on this purchase order, CITY shall have the benefit of such lower price. Vendor shall deliver to CITY all invoices within 30 days of shipping or service delivery.

4. Payment. Payments will be made net 30 days unless otherwise specified as per agreements regarding discount terms. The period of computation will commence on the date of receipt of a correctly completed 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 such goods. Invoices are paid on a weekly basis and such practice may result in minor deviations from payment terms otherwise cited herein.

5. Time of the Essence. Time is of the essence on this order. If delivery is not made in the quantity or quantities and at the time or times specified, CITY shall have the right, at its option, to cancel the entire order or that part of same not so delivered. If CITY accepts delayed delivery the time of payment shall be extended accordingly.

6. Delivery and Acceptance. Vendor expressly warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Vendor has good and marketable title to same. Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. destination. No charge will be allowed for packing, crating, freight, express or other carrier's charges, or cartage, unless specifically agreed to by CITY. Title to equipment and materials purchased hereunder shall pass to Vendor at the designated F.O.B. point, subject to Vendor's right to inspect and reject or revoke acceptance.

7. Warranty. Vendor warrants for a period of 12 months following start of use or 18 months from receipt, whichever occurs first, that the goods described herein will be free of defects in workmanship, design, materials, and title, and notwithstanding anything herein to the contrary, will conform to all applicable proposals, specifications, instructions, drawings, data, descriptions, and samples, and will be of good and merchantable quality and fit and sufficient for the purpose intended. Vendor shall obtain and provide to CITY Material Safety Data Sheets (MSDS) for each product that contains hazardous substances as defined by CalOSHA. ..

8. Rejection of Goods. CITY shall have the right, at its option, to reject or revoke acceptance of any goods which do not conform to these warranties or to the specifications. In case of such rejection or revocation of acceptance, transportation of the rejected goods, both to and from CITY, shall be at the expense of Vendor, said rejected goods are not to be replaced except upon specific instruction from CITY, and 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. Vendor shall be liable to CITY for all damages proximately caused by breach of any of the foregoing warranties, including incidental damages but excluding special or consequential damages.

9. Returns. CITY reserves the right to return for full credit any excess over quantity called for in any order or orders. Vendor to bear the cost of transportation both ways.

10. Force Majeure. Vendor shall not be held responsible for failure or delay in shipping nor CITY for failure or delay in accepting goods described herein if such failure or delay is due to act of God, war, federal or state legislation or any regulations or orders, fire, accident, or other causes, either similar or dissimilar to the foregoing, beyond their control. In the event of any such excused interference with shipments, CITY shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in these terms and conditions.

11. Additional Fees. Unless otherwise required by law or provided herein, Vendor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the article sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with performance of this order.

12. No Waiver. 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.

13. Compliance with Law. Vendor shall comply with all applicable laws and regulations of the federal, state and local government. CITY shall assist Vendor, 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. 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 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 \$1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws. Vendor shall defend, indemnify and hold CITY, its 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. Any stop orders issued by the Department of Industrial

Relations against Vendor or any subcontractor that affect Vendor's performance of services, including any delay, shall be Vendor's sole responsibility and Vendor shall indemnify CITY from liability arising out of the same. It shall be mandatory upon the Vendor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

14. Insurance. Vendor shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto); C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by those Vendors transporting hazardous materials. Insurance carriers shall be licensed to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A:VII" rating according to the latest Best Key Rating unless otherwise approved by CITY. VENDOR SHALL ENSURE THAT THIRD PARTY SHIPPERS CONTRACTED BY VENDOR HAVE ADEQUATE INSURANCE COVERAGE. If attached, Vendor shall refer to Exhibit "A" – Insurance Requirements, for further insurance requirements applicable to Vendor.

15. Indemnification. The Vendor shall indemnify and hold harmless CITY, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of the Vendor or sub-contractors for wages or benefits which arise in connection with the sale, delivery and/or installation of equipment or materials, except to the extent caused or resulting from the negligence or willful misconduct of CITY. The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to CITY and CITY's attorneys' fees incurred in such an action.

16. Substitutions, Changes and Cancellation. No substitutions are acceptable unless expressly accepted in writing by CITY. CITY may make changes in the general scope of this order by giving written notice to Vendor. If any such change affects the cost of or time to deliver or perform under this order, an adjustment in price, delivery or both will be made as CITY determines to be equitable. Vendor may request changes; however, no such change shall be effective

unless accepted in writing by CITY. CITY may cancel this order in whole or in part at any time before acceptance of the equipment and materials due to Vendor's breach or for CITY's convenience.

17. Laws, Venue, and Attorneys' Fees. This purchase order 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 purchase order, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

18. Contract Terms. Nothing herein shall be construed to give any rights or benefits to anyone other than CITY and the Vendor. The unenforceability, invalidity or illegality of any provision(s) of this purchase order 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 purchase order. Vendor shall not assign, sublet, or transfer this purchase order, or any rights under or interest in this purchase order, 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 agreement/purchase order 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. This Contract may not be modified or altered except in writing signed by both parties hereto.

19. Damage to City Facilities. Damage to CITY or public facilities or private property caused by the Vendor or by its subcontractors during delivery or installation shall be repaired and/or replaced in kind at no cost to the CITY.

20. Site Safety and Cleanup. The delivery and installation site shall be kept clean and free of hazards at all times during delivery and installation. After and installation is completed at the site, as applicable, Vendor shall clean the surrounding area to the condition prior to delivery and installation.

21. Installation. If the Vendor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the CITY.

22. Wage Theft Prevention. Vendor, and any subcontractor it employs to complete work under this purchase order, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance. By entering into this purchase order, Vendor affirms that it has disclosed any final judgments, decisions or orders from a court or investigatory government agency, finding in the five (5) years prior to the date of this purchase order that Vendor or its subcontractor(s) has violated any applicable wage and hour laws. Vendor further affirms that it or its subcontractor(s) has either fully satisfied each judgment, decision or order, or, if any judgment, decision or order has not been fully satisfied, Vendor affirms that it or its subcontractor(s) is currently satisfying said judgment, decision or order through a payment or alternative plan approved by the applicable court/government agency and that Vendor or its subcontractor(s) are in compliance with

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said plan as of the date of this purchase order. If at any time during the term of this purchase order, a court or investigatory government agency issues a final judgment, decision or order finding that Vendor or a subcontractor it employs to perform work under this purchase order has violated any applicable wage and hour law, or Vendor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Vendor shall inform the CITY no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Vendor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the CITY, either (i) fully satisfy any such judgment, decision, or order and provide the CITY with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the CITY documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Vendor or its subcontractor is subject to a payment or other alternative plan, the Vendor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the purchase order demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied. For purposes of this provision, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant

investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the CITY, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws. Failure to comply with any part of this provision constitutes a material breach of this purchase order. Such breach may serve as a basis for immediate termination of this purchase order and/or any other remedies available under this purchase order and/or law. Notice provided to the CITY shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd., Milpitas, CA 95035. The notice provisions of this paragraph are separate from any other notice provisions in this purchase order and, accordingly, only notice provided to the above address satisfies the notice requirements in this provision.

**\*OPTIONAL TERMS:** Check box if applicable

- Custom Design: If the goods are produced by Vendor in accordance with designs, drawings or blueprints provided by CITY, Vendor shall return same to CITY upon completion or cancellation of this order. Any materials, equipment, tools, artwork, designs or other property furnished by or specifically paid for by CITY shall be CITY's property.