

PURCHASE ORDER / CONTRACT TERMS AND CONDITIONS

1. Acceptance-Agreement. Contractor's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this offer in Contractor's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Contractor without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Contractor, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Contractor's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

2. Termination for Convenience of the City. City reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Contractor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination. The City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Contractor make it impossible or against the City's interest to complete the Agreement. Contractor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided.

3. Termination for Cause. The City may also terminate this order or any part hereof for cause in the event of any default by the vendor, or if the vendor fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide the City, upon request, of reasonable assurances of future performance shall all be causes allowing the City to terminate this order for cause. In the event of termination for cause, the City shall not be liable to Contractor, for any amount, and Contractor shall be liable to the City for any and all damages, sustained by reason of the default which gave rise to the termination.

4. Warranty. Contractor expressly warrants that all goods or services furnished under this Agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which the City intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to the City, its successors, assigns and customers, and users of products sold by the City. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly without expense to the City, when notified of such nonconformity by the City, provided the City elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, the City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the City in doing so.

5. Force Majeure. In the event of either party being rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, then on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied on, the obligation of the party giving such notice, so far as it is affected by force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, as far as possible, be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of the public enemies, wars, blockages, insurrections, landslides, earthquakes, fires, and floods.

6. Patents. Contractor agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against the City or its agents, customers, or other vendors, for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Contractor further agrees to indemnify the City, its agents and customer against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. The City may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Contractor.

7. Insurance. In the event that Contractor's objections hereunder require or contemplate performance of services by Contractor's employees, or persons under contract to Contractor, to be done on the City's property, or property of the City's customers, the Contractor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the City. Contractor shall maintain all necessary insurance coverages, including public liability and workers' compensation insurance. Contractor shall indemnify and hold harmless and defend the City from any and all claims or liabilities arising out of the work covered by this paragraph.

8. Indemnification. Contractor shall defend, indemnify and hold harmless the City against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Contractor, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Contractor.

9. Changes. The funds appropriated for this Contract are equal to or exceed the awarded contract amount.

a. The Contractor and the City agree and acknowledge as a part of this Contract, that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for this Contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Contract.

b. The Contractor and the City further agree and acknowledge as a part of this Contract that no change order or other form or order or directive which requires additional compensable work to be performed under this Contract shall be issued by the City unless funds are available to pay such additional costs, and, regardless of any remedy-granting provision included within this Contract, the Contractor shall not be entitled to any additional compensation for any additional compensable work performed under this Contract, and expressly waives any rights to additional compensation, whether by law or equity, unless prior to commencing the additional work, the Contractor was given a written change order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which change order was signed by the authorized City representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

c. The City shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Contractor agrees to accept any such changes subject to this paragraph.

10. Inspection/Testing. Payment for the goods delivered hereunder shall not constitute acceptance thereof. The City shall have the right to inspect such goods and to reject any or all of said goods which are in the City's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Contractor at its expense and, in addition to the City's other rights, the City may charge Contractor all expenses of unpacking, examining, repacking and reshipping such goods. In the event the City receives goods whose defects or nonconformity is not apparent on examination, the City reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Contractor from the obligation of testing, inspection and quality control.

11. Entire Agreement. This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

12. Assignments and Subcontracting. No part of this order may be assigned or subcontracted by the Contractor without prior written approval of the City.

13. Setoff. All claims for money due or to become due from the City shall be subject to deduction or setoff by the City by reason of any counterclaim arising out of this or any other transaction with Contractor.

14. Shipment. If in order to comply with the City's required delivery date it becomes necessary for Contractor to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Contractor unless the necessity for such rerouting or expedited handling has been caused by the City.

15. Waiver. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

16. Delivery and Taxes. Time is of the essence of this Contract, and if delivery of items or rendering of services is not completed by the time promised, the City reserves the right without liability in addition to its other rights and remedies to terminate this Contract by notice effective when received by Contractor as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Contractor with any loss incurred. The Contractor shall pay all sales and use taxes required to be paid to the State of Colorado on the work covered by this Agreement. The Contractor shall execute and deliver and shall cause his subcontractors to execute and deliver to the City, certificates as required, to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and therefore, not subject to state and local sales tax, use tax, or federal excise taxes.

17. Limitation on the City's Liability - Statute of Limitations. In no event shall the City be liable for anticipated profits or for incidental or consequential damages. The City's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach thereof shall in no case exceed

the price allocable to the goods or services or unit thereof which gives rise to the claim. The City shall not be liable for penalties of any description. Any action resulting from any breach on the part of the City as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

18. Interpretation and Integration. No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this contract. This is a completely integrated agreement and contains the entire agreement of the parties, and any prior written or oral agreements which are different from the terms, conditions and provisions of this Agreement shall be of no effect and shall not be binding upon either party. This Agreement and its provision shall be binding upon and to the benefit of the parties and their respective successors or assignees.

19. Intellectual Property Rights. The Parties hereby agree, and acknowledge, that all products, items, writings, designs, models, examples, or other work product of the Contractor produced pursuant to this Contract are works made for hire, and that the City owns, has, and possesses any and all ownership rights and interests to any work products of the Contractor made under this Contract, including any and copyrights, trademark, or patent rights, and that compensation to the Contractor for Agreement and acknowledgement of this intellectual property right section of this Contract is included in any compensation or price whatsoever paid to the Contractor under this Contract. It is the intent of the parties that the City shall have full ownership and control of the Contractor's work products produced pursuant to this Contract, and the Contractor specifically waives and assigns to the City all rights which Contractor may have under the 1990 Visual Artists Rights Act, federal, and state law, as now written or later amended or provided. In the event any products, items writing, designs, models, examples, or other work product produced pursuant to this Contract is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this intellectual property rights provision shall act as an irrevocable assignment to the City by the Contractor of any and all copyrights, trademark rights, or patent rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, including all rights in perpetuity. Under this irrevocable assignment, the Contractor hereby assigns to the City the sole and exclusive right, title, and interest in and to the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, without further consideration, and agrees to assist the City in registering and from time to time enforcing all copyrights and other rights and protections relating to the Contractor's products, items writings, designs, models, examples, or other work product in any and all countries. It is the Contractor's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Contractor agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the City as Contractor's agent and attorney-in-fact to act for and in Contractor's behalf and stead to execute, register, and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by the Contractor; further, the parties expressly agree that the provisions of this intellectual property rights section shall be binding upon the parties and their heirs, legal representatives, successors, and assigns. Further, Contractor shall indemnify and hold the City harmless from any and all claims or actions brought against the City with regard to intellectual property rights which may result from any work product produced under this Contract.

20. Appropriation Of Funds. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

21. Compliances. In the conduct of the services/work of the supplies, equipment or materials contemplated hereunder, the Contractor shall comply with all applicable state, federal and local law, rules and regulations, technical standards or specifications issued by the City. Contractor must qualify for and obtain any required licenses prior to commencement of work.

22. Independent Contractor. In the performance of the obligations under this Agreement, the parties agree Contractor is at all times acting and performing as an independent contractor. The City shall neither have, nor exercise, any control or direction over the manner and means by which Contractor performs its obligations, except as otherwise stated in this Agreement. Contractor understands and agrees that its employees are not City employees. Contractor is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for

benefit to its employees under this Agreement. Further, it is expressly understood and agreed that Contractor employees are not entitled to any City payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits.

23. Compliance With Immigration And Control Act. Contractor certifies that Contractor shall comply with the provisions of C.R.S. Sec. 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor represents, warrants, and agrees that it (i) has confirmed that it does not employ any illegal aliens, either through participation in the eVerify program administered by the Social Security Administration and Department of Homeland Security or by means of the Colorado Department of Labor program, and (ii) otherwise will comply with the requirements of C.R.S. Sec. 8-17.5-102(2)(b). Contractor will comply with all reasonable requests made in the course of an investigation under C.R.S. Sec. 8-17.5-102 by the Colorado Department of Labor and Employment. If Contractor fails to comply with any requirement of this provision or C.R.S. Sec. 8-17.5-101 et seq., the City may terminate this contract for breach.

24. Law. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

25. Books of Account and Auditing. The Contractor shall make available to the City, if requested, true and complete records which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven (7) years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this Contract.