



EXHIBIT B TERMS AND CONDITIONS

1. Acceptance-Agreement. Seller's commencement of work on the goods and/or services 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 Seller to vary in any degree from any of the terms of this purchase order in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this purchase order 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 purchase order shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and on the back of this purchase order. Additional or different terms or any attempt by Seller to vary in any degree from 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 Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.
2. Termination for Convenience. The City reserves the right to terminate this purchase order or any part hereof for its sole convenience or for any reason that makes it impossible or against the City's interest to complete the order. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller 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. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.
3. Termination for Cause. The City may also terminate this purchase 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. In addition to other causes, 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 Seller, for any amount, and Seller 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. Seller expressly warrants that all goods or services furnished under this purchase order shall conform to all specifications and appropriate standards, will be new and in box, and will be free from defects in material or workmanship. Seller 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. Seller 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 Seller knows or has reason to know the particular purpose for which the City intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller 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 Seller's obligation under this warranty and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to the City, its successors, assigns and customers, and users of products sold by the City. Seller 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 Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, the City, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller 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 purchase order, 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. Seller 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 Seller further agrees to indemnify the City, its agents and customers 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 Seller.
7. Independent Contractor and Insurance. Seller agrees that all services contemplated by this purchase order shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the City. Seller shall maintain all necessary insurance coverages, including public liability and Workmen's Compensation insurance. Seller shall indemnify and save harmless and defend the City from any and all claims or liabilities arising out of the work covered by this paragraph.
8. Indemnification Seller 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 Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.



9. Changes. The funds appropriated for this purchase order are equal to or exceed the purchase order amount.
 - a. Seller and the City agree and acknowledge as a part of this purchase order, 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 purchase order to exceed the amount appropriated for this purchase order as listed above, unless the Seller 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. Seller and the City further agree and acknowledge as a part of this purchase order that no change order or other form or order or directive which requires additional compensable work to be performed under this purchase order 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 purchase order, Seller shall not be entitled to any additional compensation for any additional compensable work performed under this purchase order, and expressly waives any rights to additional compensation, whether by law or equity, unless prior to commencing the additional work, Seller 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 an authorized City representative. It is the Sellers sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this purchase order.
 - 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 purchase order shall be modified in writing accordingly. Seller 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 Seller at its expense and, in addition to the City's other rights, the City may charge Seller 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 Seller 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 Seller 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 set-off by the City by reason of any counterclaim arising out of this or any other transaction with Seller.
14. Shipment. If in order to comply with the City's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller 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. Time is of the essence of this purchase order, 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 purchase order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred.
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 purchase order 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. Contract Interpretation. Except as otherwise provided herein, no amendment or modification of this purchase order shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this purchase order. 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. Any judicial action under the terms of this agreement shall be exclusively in the District Court for El Paso County, Colorado.
19. Intellectual Property Rights The parties hereby agree, and acknowledge, that all products, items, writings, designs, models, examples, or other work product of the Seller produced pursuant to this purchase order 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 Seller made under this purchase order, including any and all copyrights, trademark, or patent rights, and that compensation to the Seller for agreement and acknowledgement of this INTELLECTUAL PROPERTY RIGHT section of this purchase order is included in any compensation or price whatsoever



paid to the Seller under this purchase order. It is the intent of the parties that the City shall have full ownership and control of the Seller's work products produced pursuant to this purchase order, and the Seller specifically waives and assigns to the City all rights which Seller 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 purchase order 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 Seller of any and all copyrights, trademark rights, or patent rights in the Seller's products, items writings, designs, models, examples, or other work product produced pursuant to this purchase order, including all rights in perpetuity. Under this irrevocable assignment, the Seller hereby assigns to the City the sole and exclusive right, title, and interest in and to the Seller's products, items writings, designs, models, examples, or other work product produced pursuant to this purchase order, 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 Seller's products, items writings, designs, models, examples, or other work product in any and all countries. It is the Seller's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Seller's products, items writings, designs, models, examples, or other work product produced pursuant to this purchase order, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Seller agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the City as Seller's agent and attorney-in-fact to act for and in Seller'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 Seller; 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, Seller 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 purchase order.

20. Appropriation of Funds. In accord with the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this purchase order, or appropriated funds may not be expended due to City Charter spending limitations, then the City may terminate this purchase order without compensation to the Contractor.
21. Compliances. In the conduct of the services/work of the supplies equipment or materials contemplated hereunder, the Seller shall comply with all applicable state, federal and local law, rules and regulations, technical standards or specifications issued by the City. Seller must qualify for and obtain any required licenses prior to commencement of work.
22. Independent Contractor. Seller understands and agrees that Seller and Seller's employees, agents, servants or other personnel are not City employees. Seller shall



be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Seller or any of Seller's employees, agents, servants or other personnel performing the services or work supplying equipment or materials specified herein, whether it be of a direct or indirect nature. Further in that regard it is expressly understood and agreed that for such purposes neither Seller nor Seller's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

23. Compliance with Immigration and Control Act. Seller certifies that Contractor has complied with the United States immigration and Control Act of 1986. All persons employed by Seller for performance of this purchase order have completed and signed Form I-9 verifying their identities and authorization for employment.
24. Taxes. Seller shall pay all sales and use taxes required to be paid to the State of Colorado on the work covered by this purchase order. 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.
25. 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.
26. Books of Account and Auditing. Seller 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. Seller agrees that it will keep and preserve for at least seven (7) years all documents related to this purchase order, which are routinely prepared, collected or compiled by Seller during the performance of this purchase order. The City's Auditor and the Auditor's authorized representatives shall have the right at any time to audit all of the Seller's documentation related to this purchase order. Seller shall make all documentation available for examination at the Auditor's request at either the Auditor or Seller's office and without expense to the City.
27. Payment Terms. The City will pay the vendor, upon submission of proper invoices, the prices stipulated in the purchase order for goods provided and accepted, less any deductions provided in purchase order within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.