

CITY OF CHARLESTON
GENERAL TERMS AND CONDITIONS: PURCHASE ORDER

1. **Offer & Agreement:** The following terms together with those on the face of this Agreement, other documents as may be incorporated by reference or attached hereto, and additional terms in any Change Order issued to this Purchase Order ("Order"), constitute the offer of the City of Charleston ("City") to the Vendor and shall, when accepted, constitute the entire Order or contract between the City and Vendor. This Agreement shall be deemed to have been accepted upon commencement of performance. Any reference herein to any proposal, quotation, or other communication by Vendor shall, unless indicated to the contrary herein, be deemed to be limited to the description of the services and to be limited by these terms set forth or incorporated by reference herein. Acceptance by the City of goods, materials or services is not an acceptance of Vendor's other terms.
2. **Assignment;** Neither party may assign this Order or any benefits arising from this Order without the prior written consent of the other, and, unless otherwise agreed in writing, the rights of any assignee shall be subject to all set-offs, counterclaim, and other comparable rights arising hereunder. The City shall not, except as otherwise agreed in writing by the City, delegate or assign all or substantially all of any item or service to be furnished under this Agreement.
3. **Proprietary Information & Confidentiality:** Vendor shall consider all data, documentation, drawings, specifications software and other information furnished by City to be confidential and proprietary and shall not disclose any such information to any other person, or use such information itself for any purpose other than that for which it was intended in completing this Order, unless Vendor obtains written permission from City to do so. Vendor agrees to execute City's standard Non-Disclosure Agreement upon request.
4. **Terms of Payment:** Subject to any superseding terms on the face hereof, Vendor shall invoice City at PO Box 304, Charleston S.C. 29402 and be paid upon completion/acceptance of the required supplies/services. Vendor shall be paid not later than thirty (30) days after City receipt of an acceptable invoice or City receipt of the completed products/services, together with any required documents. Drafts will not be honored. No invoice shall be issued prior to receipt and acceptance of materials or services. City does not authorize or pay interest charges. No invoice shall be paid without the submittal by Vendor of a W-9 form Taxpayer Identification Number and Certification.
5. **Compliance with Law:** Vendor's performance of work hereunder and all products to be delivered hereunder shall be in accordance with any and all applicable executive orders, Federal, State, municipal, and local laws and ordinances, and rules, orders, requirements and regulations. Otherwise agreed, governing law shall be that of the South Carolina.
6. **Title and Risk of Loss:** Title to and risk of loss of, each product and/or service to be delivered hereunder shall, unless otherwise provided herein, pass from Vendor to City upon acceptance of such product/service by City.
7. **Inspection:** (a) Vendor shall work within professional standards and limitations specified on work statements, drawings and specifications covering the work and shall make such inspections as are deemed necessary to insure Vendor compliance, unless deviation there from is authorized in writing by City. (b) All shipments of materials shall be subject to final inspection by City after receipt by City at destination. If material supplied or work performed by Vendor is found to be defective, Vendor shall be given the opportunity to correct any deficiencies within seven (7) days. If correction of such work is impracticable, Vendor shall bear all risk after notice of rejection and shall, if so requested by City, at its own expense, promptly make all necessary replacements. Vendor shall provide immediate notice to City of any potential failure on the part of its suppliers to provide supplies/services required hereunder. Vendor is responsible for any deficiency on the part of its suppliers. Vendor shall be responsible for any costs of re-procurement as may necessary for City to secure the supplies/services as a result of vendor's inability to perform that exceed the agreed upon price herein. (d) Final inspection and acceptance by City shall be conclusive except for latent defects, fraud, or for any rights provided by any product warranty.
8. **Force Majeure:** The Vendor shall not be liable by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of Vendor. Such causes may include, but are not restricted to, acts of God, acts of government or other authorities, fires, floods, epidemics, pandemics, quarantines, strikes, and labor disputes. Such causes do not include deficiencies on the part of its suppliers.
9. **General Warranty:** Vendor warrants all supplies/services to be free from all materials defects and expressly represents that all such required supplies/services are capable of performing the function/service for which they were intended. Vendor agrees to pass on all manufacturer's warranties to City. Equipment, material, and articles incorporated into the work are to be new and of the most suitable grade for the purpose intended.
10. **Liens:** Vendor agrees to deliver the products/services which are the subject-matter of this Order to City free and clear of all liens, claims, and encumbrances.
11. **Stop Work and Termination:** (a) City shall have the right to direct Vendor to stop work at any time. Such direction must be in writing and shall be effective immediately. (b) This Order may be terminated upon default of either party in meeting its obligations hereunder. (c) This Order may be terminated for convenience, without fault of either party, by City with seven (7) days advance written notice to Vendor. Vendor shall be paid for work completed and shall be reimbursed all actual costs for work in process incurred to time of termination notification. Under no circumstances shall Vendor receive more than the original value of this Order (d) This Order may be terminated for constructive default in the event that the City has reasonable cause to believe that the Vendor will not be able to perform in accordance with the terms and conditions of the Order. Vendor shall be given seven (7) days to respond and correct a notice of constructive default termination. In the event of failure of the Vendor to deliver/complete any part of this Order, then City shall, at its sole discretion, have the right to accept any delivered/completed part and unilaterally reduce the agreed upon price accordingly. (e) City acceptance of partial deliveries shall not constitute a waiver of any of the Vendor's remaining obligations hereunder. (f) The preceding paragraph (e) shall not limit any legal rights of either party to cancel this Order by reason of any default, and City further reserves the right to cancel this Order without further liability for articles not accepted by City in the event Vendor commits an act of bankruptcy, files or has filed against the petition of bankruptcy or insolvency or suffers any receivership or other similar petition to be filed for or against it.
12. **Insurance & Work on City:** When Vendor performs work on City premises during the performance of this Order, the Vendor agrees to maintain General Liability Insurance in the amount of at least \$1,000,000 per claim/occurrence and such other insurance as may be required in writing by the City. Vendor, however, shall maintain adequate insurance coverage against claims arising from injuries sustained by Vendor on City property and agrees to be liable for all damages & claims arising against City that arise out of the Vendor's acts or omissions under this Order
13. **Independent Relationship:** Nothing in this Agreement shall be construed as creating anything other than a City/Vendor relationship between City and the Vendor.
14. **Work Product Presumptive City Property:** All writings, books, articles, computer programs, databases, source and object codes, and other material of any nature whatsoever, including trademarks, trade names, and logos, that is subject to copyright protection and reduced to tangible form in whole or in part by Vendor in the course of Vendor's service to City shall be considered a work made for hire, or otherwise City property. During this Agreement and thereafter, Vendor agrees to take all actions and execute any documents that City may consider necessary to obtain or maintain copyrights, whether during the application for copyright or during the conduct of an interference, infringement, litigation, or other matter (City shall pay all related expenses). Vendor shall identify all materials in which Vendor intends to exempt from this provision prior to the use or development of such materials.
15. **Rights in Data:** The Vendor understands and agrees that City may itself and permit others, to reproduce through but not limited to the publication, broadcast, translation, creation of other versions, quotations there from, any provided publications and materials, and otherwise utilize this work and material based on this work. During the Agreement and thereafter, Vendor agrees to take all actions and execute any documents that City may consider necessary to obtain or maintain copyrights, whether during the application for copyright or during the conduct of an interference, infringement, litigation, or other matter (all related expenses to be borne by City Partners). The Vendor shall identify all materials it intends to exempt from this provision prior to the use or development of such materials. The Vendor shall defend, indemnify, and hold harmless City against all claims, suits, costs, damages, and expenses that City may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the work, or any infringement or violation by the work of any copyright or property right; and until such claim or suit has

been settled or withdrawn, City may withhold any sums due the Vendor under this Agreement. Vendor agrees to specifically identify to City any and all computer software licenses as may convey to the City. Vendor agrees that any and all computer software developed in the performance of this Purchase Order using City monies shall, unless otherwise agreed, become and remain the property of City.

16. **Indemnification:** The Vendor shall defend, indemnify, and hold harmless City against all claims, suits, costs, damages, and expenses that City may sustain by reason of Vendor's negligent or unlawful actions resulting from Vendor's performance under this Agreement.

17. **Liquidated Damages:** If the Vendor fails to deliver the supplies or perform the services within the time specified in this Agreement, City may require that Vendor pay, in place of actual damages, liquidated damages in the amount of one percent (1%) of the Agreement value for each day of delay. If City terminates this Agreement in whole or in part for default, as provided under section 12 above, Vendor is liable for liquidated damages accruing until such time that City reasonably obtains delivery or performance from another vendor. These liquidated damages shall be in addition to any excess costs for re-purchase.

18. **Debarment, Suspension, Ineligibility, and Voluntary Exclusion:** Vendor certifies by acceptance of this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government or governmental agency.

19. **Vendor Terms and Conditions:** The terms and conditions of this Order shall supersede any other terms and conditions.

20. **Gratuities:** This agreement shall be terminated for cause in accordance with section 11 above should it be determined by City that Vendor offered or gave a gratuity (e.g. entertainment, gift, services or money) to any City employee or other persons responsible for or connected to those responsible for the decision to award this Agreement or the acceptance of performance under this Agreement and that gratuity was intended to obtain this award or favorable treatment during performance of the award.

21. **Payment for Reimbursable Expenses:** Requests for payment for materials costs, if applicable under a Time and Materials Agreement, must be supported by receipts for all items invoiced.

22. **Computer Software Licenses:** Vendor agrees to specifically identify to City any and all computer software licenses as may be conveyed to City. The Vendor agrees that any and all computer software developed in the performance of this Order using City money shall, unless otherwise agreed, become and remain the property of City.

23. **Organizational Conflict of Interest:** The Vendor warrants that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that might indicate the existence of or give rise to actual or potential organizational conflicts of interest. Organizational conflict of interest, means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

24. **Time is of the essence:** Time is strictly of the essence in this Agreement.

25. **Waiver:** The City's waiver of any term, condition, breach or default of this Agreement shall not be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.

26. **Licenses and Permits:** Vendor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by the State of South Carolina, county, city or other government entity or unit to accomplish this Order.

27. **Modification:** No modification of the Order shall bind the City unless the City agrees to the modification in writing.

28. **Severability:** In the event that any provision of this Agreement is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

29. **Unavailability of Funds:** Payment and performance obligations for succeeding fiscal period shall be subject to the availability and appropriation of funds. Therefore, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Agreement shall be terminated.

30. **M/WBE:** As a matter of policy with respect to City projects and procurements, the City encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In selection of subcontractors, Vendor agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Agreement.

31. **Right to Audit:** Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement have access to and the right to examine directly any pertinent books, documents, papers and records of the Vendor involving transactions relating to this Agreement.

32. **Samples:** Samples, if required, shall be furnished free of expense to the City and if not used or destroyed in examination and testing will be returned to the bidder, if requested, at the bidder's expense. Each sample must be marked with bidder's name, address, and bid number reference.

33. **Headings.** The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.