

CITY OF CHARLESTON

GENERAL TERMS AND CONDITIONS: PURCHASE ORDER

1. **Offer & Agreement:** These General Terms and Conditions, other documents as may be incorporated by reference or attached to this Purchase Order ("Order"), and additional terms in any Change Order issued pursuant to this Order, constitute the offer of the City of Charleston ("City") to the Vendor and will, when accepted, constitute the entire Order or contract between the City and Vendor (collectively, "The Agreement"). This Order is accepted upon the earlier of Vendor accepting or fulfilling the terms of the Order. Any reference to any proposal, quotation, or other communication by Vendor is limited to the description of the services, and all terms and conditions in Vendor's proposal, quotation, or pricing sheet, etc. are void.
2. **Assignment:** Neither party may assign this Agreement or any benefits arising from this Agreement 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 out of this Agreement.
3. **Proprietary Information & Confidentiality:** All data, documentation, drawings, specifications, software, and other information furnished by City is confidential and proprietary, and Vendor must 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 Agreement, unless Vendor obtains written permission from City to do so. Vendor will execute City's standard Non-Disclosure Agreement upon request.
4. **Terms of Payment:** (a) Vendor will be paid within thirty (30) days after the City's Accounts Payable department receives an acceptable invoice, together with any required documents. (b) Vendor must invoice City at PO Box 304, Charleston S.C. 29402 after the City receives and accepts the services or supplies. For projects through the Capital Projects Division, Vendor must also submit the invoice to the appropriate Project Manager. (c) Requests for reimbursable expenses of materials costs, if applicable, must be supported by receipts for all items invoiced. (d) Drafts will not be honored. City does not authorize or pay interest charges. No invoice will 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 and all products to be delivered must be in accordance with any and all applicable executive orders, Federal, State, municipal, and local laws and ordinances, and rules, orders, requirements and regulations.
6. **Title and Risk of Loss:** Title to and risk of loss of each product and/or service to be delivered passes from Vendor to City upon acceptance of such product/service by City.
7. **Standard of Work/Product and Inspection:** (a) Vendor will provide the services in a manner that meets or exceeds the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. (b) All shipments of materials are subject to final inspection by City after receipt by City at their destination. (c) If material supplied or work performed by Vendor is found to be defective, Vendor will be given the opportunity to correct any deficiencies within seven (7) days. If correction is impracticable, Vendor bears all risk after notice of rejection and shall, if so requested by City, at its own expense, promptly make all necessary replacements. (d) Vendor must provide immediate notice to City of any potential failure on the part of its suppliers to provide supplies/services. Vendor is responsible for any deficiency on the part of its suppliers. Vendor is responsible for any costs of re-procurement as may be necessary for City to secure the supplies/services as a result of vendor's inability to perform that exceed the agreed upon price. (e) Final inspection and acceptance by City is conclusive of acceptance, except for latent defects, fraud, or for any rights provided by any product warranty.
8. **Force Majeure:** The Vendor is not 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 cases 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 or subcontractors.
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 will transfer 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 to City free and clear of all liens, claims, and encumbrances.
11. **Stop Work and Termination:** (a) City has the right to direct Vendor to stop work at any time, which must be in writing. (b) This Agreement may be terminated upon actual default of either party in meeting its obligations. (c) This Agreement may be terminated upon constructive default if City has reasonable cause to believe that the Vendor will not be able to perform in accordance with the terms and conditions of this Agreement. Vendor will be given seven (7) days to respond and correct a notice of constructive default termination. City has at its sole discretion, the right to accept any delivered/completed part and unilaterally reduce the agreed upon price accordingly. (d) This Agreement may be terminated due to unavailability of funds. Payment and performance obligations for the succeeding fiscal period is 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, this Agreement is terminated immediately.
12. **Termination / Cancellation / Partial Performance.** (a) This Agreement may be terminated for convenience, without fault of either party, by City with seven (7) days advance written notice to Vendor. Vendor will be paid for work completed and reimbursed all actual costs for work in process incurred until the date of termination notification. (b) City acceptance of partial deliveries does not constitute a waiver of any of the Vendor's remaining obligations and does not limit any legal rights of either party to cancel this Agreement by reason of any default. (c) City reserves the right to cancel this Agreement 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.

13. Insurance & Work on City:

- a) The following vendors must maintain insurance with an insurance company authorized to transact business in the State of South Carolina and with a current Best's rating of A+, A, or A-, and with the following minimum coverages:

Vendors who must provide coverage	Coverage	Minimum Limits
Commercial General Liability:		
Any vendor who performs a service for the City or who comes onto City property	General Aggregate (per project)	\$ 2,000,000
	Each Occurrence	\$ 1,000,000
Any vendor who comes onto City property	Products/Completed Operations	\$ 1,000,000
	Medical Expense (any one person)	\$ 5,000
Providing construction services	Fire Damage	\$ 50,000
Business Auto Liability (including all owned, non-owned, and hired vehicles):		
Any vendor who comes onto City property	Combined Single Limit -OR- Bodily Injury & Property Damage (each)	\$ 1,000,000
		\$ 1,000,000
Workers Compensation		
All Vendors	State	Statutory
Any vendor who performs a service for the City or who comes onto City property	Employer's Liability	\$ 100,000 Per Accident
Professional Liability		
Architects, Engineers, and other vendors providing mechanical, engineering, and plumbing design services	General Aggregate (per project)	\$2,000,000
	Each Occurrence	\$1,000,000
Builder's Risk (fire and extended coverage)		
Any vendor providing construction services, if Agreement Amount is over \$100,000	All work in place and/or materials stored at Owner's Property	Full cash value of completed construction, as well as materials in place and /or stored at Owner's Property

- b) The insurance coverage must be in force for the duration of this Agreement. The Vendor is responsible for any deductibles or self-insured retentions.
- c) The insurance coverage must provide that the City of Charleston as an additional insured.
- d) All liability insurance coverage must include a rider or endorsement that provides that at all levels of coverage, there must be notification to the city in writing not less than thirty (30) days before canceling or making a material change in the policy, except for cancellation for non-payment, which written notice to the city shall be not less than ten (10) days.

- e) Provide that coverage is primary and noncontributory with, and is not excess over any other valid, applicable insurance.
- 14. **Independent Relationship:** Nothing in this Agreement gives any rights, contractual relationship, or benefit to a third party against either City or Vendor.
- 15. **Work Product is 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 and after this Agreement, Vendor must 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 will pay all related expenses). Vendor must identify all materials in which Vendor intends to exempt from this provision prior to the use or development of such materials.
- 16. **Rights in Data:** The 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 Agreement using City monies shall, unless otherwise agreed, become and remain the property of City.
- 17. **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.
- 18. **Limitation of Liability.** Under no circumstances will Vendor receive more than the original value of this Agreement.
- 19. **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.
- 20. **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.
- 21. **Governing Law.** This Agreement is construed and governed in accordance with the laws of the State of South Carolina. Vendor and the City: (1) submit to the jurisdiction of the state and federal courts located in Charleston County, South Carolina; (2) waive any and all objections to jurisdiction and venue; (3) and will not raise forum *non conveniens* as an objection to the location of any litigation.
- 22. **Gratuities:** This agreement shall be terminated for cause if City determines 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.
- 23. **Computer Software Licenses:** Vendor must specifically identify to City any computer software licenses available to be conveyed to City. All

computer software developed in the performance of this Agreement will become and remain the property of City.

24. **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.
25. **Time is of the essence:** Time is strictly of the essence in this Agreement.
26. **Waiver:** The City's waiver of any term, condition, breach, or default of this Agreement is not a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.
27. **Licenses and Permits:** Vendor is responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each license, permit, or inspection required by the State of South Carolina, county, city or other government entity or unit to accomplish this Agreement.
28. **Modification:** No modification of this Agreement binds the City unless the City agrees to the modification in writing. Any modification of this Agreement must be noted on Vendor's proposal, quotation, or pricing sheet with the words, bolded and underlined, "**This modifies the Purchase Order Terms and Conditions.**"
29. **Severability:** If any provision of this Agreement is determined to be void or unenforceable, all other provisions remain in full force and effect.
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:** Until the expiration of three (3) years after final payment under this Agreement, the Vendor will give the City 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, will be furnished free of expense to the City and if not used or destroyed in examination and testing will be returned to Vendor, if requested, at Vendor's expense. Each sample must be marked with Vendor's name, address, and bid number reference.
33. **Headings.** The headings of this Agreement are for convenience of reference only and do not affect in any manner any of the terms and conditions.