

I. DEFINITIONS:

1. “BUYER” or “CITY” means the City of Centennial, Colorado.
2. “VENDOR” means the party, its agents, employees, contractors or subcontractors, with whom the BUYER is contracting. Any reference to “Seller”, “Subcontractor”, “Contractor” or “Supplier” shall also mean “VENDOR”.
3. “ORDER” means the name or title of the instrument for contracting, including all documents, exhibits and attachments referenced therein, and, once accepted by VENDOR, constitutes the entire agreement between BUYER and VENDOR for the sale and purchase of those goods, supplies, materials, articles, items, parts, components or services herein specified.

II. CONDITIONS OF PERFORMANCE:

(A) ACCEPTANCE:

1. This ORDER is BUYER'S offer to purchase the goods and/or services described as attached or on the reverse hereof from VENDOR. BUYER'S placement of this ORDER with VENDOR is expressly conditioned upon VENDOR'S acceptance of all terms and conditions of purchase contained in or attached to this ORDER.
2. Any additional or different terms or conditions which may appear in any communication from VENDOR are hereby expressly objected to by BUYER, and no such additional or different terms or conditions in any printed form of VENDOR'S shall become part of this contract despite BUYER'S acceptance of goods or services unless agreed to in writing by BUYER. All products and/or services shall be furnished in strict accordance with the specifications, and at the price set forth for each item. Nothing in the ORDER may be added to, modified, superseded or altered except in writing signed by the CITY's Purchasing Manager and acknowledged by VENDOR.
3. Any goods and/or services provided by VENDOR prior to issuance of a valid ORDER by BUYER shall be at VENDOR'S risk.
4. VENDOR'S commencement of work or delivery of the goods or services subject to this ORDER shall be deemed an effective mode of acceptance of this ORDER.
5. When required, VENDOR shall obtain, at its own expense, proof of insurance coverage, to include worker's compensation, property damage, public liability, personal injury and employer's liability, and any other applicable insurance deemed necessary by BUYER. The Certificate of Insurance shall name the CITY as additional insured and shall contain a notice of cancellation date of not less than thirty (30) days. The BUYER's agent responsible for this ORDER must receive this Certificate of Insurance before an ORDER will be issued to VENDOR.

(B) INSPECTION/REJECTION:

1. Payment for any goods delivered hereunder shall not constitute acceptance thereof. CITY shall have the right to inspect such goods and to reject any or all of said goods which are in CITY's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to VENDOR at its expense and, in addition to the CITY's other rights, CITY may charge VENDOR all expenses of unpacking, examining, repacking and reshipping such goods. In the event CITY receives goods whose defects or nonconformity is not apparent on examination, CITY reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way VENDOR from the obligation of testing, inspection and quality control. All products delivered against this purchase order shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.
2. In the case of services, CITY reserves the right to inspect services provided under this ORDER at all reasonable times and places. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to ORDER requirements, the City may require VENDOR to perform the services again in conformity with ORDER requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, CITY may (1) require VENDOR to take necessary action to ensure that the future performance conforms to ORDER requirements and (2) equitably reduce the payment due VENDOR to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to CITY in the termination provisions of this ORDER, or remedies otherwise available at law.

(C) TERMINATION:

1. Convenience. CITY reserves the right to terminate this ORDER or any part for its sole convenience. In the event of such termination, VENDOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. VENDOR 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. CITY may terminate the agreement at any time if it is found that reasons beyond the control of either CITY or VENDOR make it impossible or against the CITY's interest to complete the agreement. VENDOR shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by VENDOR's suppliers or subcontractors which VENDOR could reasonably have avoided.
2. Cause. CITY may also terminate this ORDER or any part hereof for cause in the event of any default by VENDOR, or if VENDOR fails to comply with any of these terms and conditions. Late deliveries, deliveries of products which are defective or which do not conform to this ORDER, and failure to provide CITY, upon

request, reasonable assurances of future performance shall all be causes allowing CITY to terminate this ORDER for cause. In the event of termination for cause, CITY shall not be liable to VENDOR for any amount, and VENDOR shall be liable to CITY for any and all damages, sustained by reason of the default which gave rise to the termination.

(D) SHIPPING INSTRUCTIONS and DELIVERY: Unless specified in the solicitation or this ORDER, delivery shall be F.O.B. Destination. If, in order to comply with the CITY's required delivery date, it becomes necessary for VENDOR to ship by a more expensive way than specified in this ORDER, any increased transportation costs resulting therefrom shall be paid for by VENDOR unless the necessity for such has been caused by the CITY. Time *is of the essence*. In the event of VENDOR's failure to deliver or perform as and when promised, the CITY reserves the right to cancel its order, or any part thereof, without prejudice to its other rights, and VENDOR agrees that the CITY may return all or part of any shipment so made, and may charge VENDOR with any loss or expense sustained as a result of such failure to deliver or perform as promised. Please advise the CITY Purchasing Manager immediately of any delays in shipping.

(E) INVOICING AND PAYMENT TERMS: VENDOR shall submit invoices to the CITY Finance Department at 13133 East Arapahoe Road, Centennial, CO 80112. Include the ORDER number on all invoices against this ORDER. Funds appropriated for the contract created hereby are equal to or exceed the awarded amount. Payment in full or partial shall be made within forty five (45) days after receipt of invoice from VENDOR (Net 45). No late fees shall apply.

(F) TAXES: BUYER is exempt from all Federal, State and local taxes. A tax-exempt certificate will be supplied upon request.

(G) ASSIGNMENT: VENDOR shall not assign this ORDER, or the right to payment due hereunder, without CITY's prior written consent.

(H) LIENS, CLAIMS AND ENCUMBRANCES: VENDOR warrants and represents that all goods will be free and clear of all liens, claims or encumbrances of every kind.

(I) WARRANTIES: VENDOR warrants and guarantees that the items furnished under this ORDER are free from all defects in workmanship and materials. VENDOR further warrants and agrees to remedy any defects found and replace the item(s), if necessary, at its sole expense.

(J) INTELLECTUAL PROPERTY INDEMNIFICATION AND GENERAL INDEMNIFICATION: In the event any article sold or delivered under this ORDER is covered by any patent, copyright, trademark, or application therefor, VENDOR will indemnify and hold harmless the CITY from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions, or judgments arising out of manufacture, sale or use of such article in violation, infringement or the like of rights under such patent, copyright, trademark or application. VENDOR shall defend, indemnify and hold harmless 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 VENDOR, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of VENDOR.

(K) OTHER CONDITIONS:

1. VENDOR shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and, upon completion, shall remove all equipment and unused materials from the project.
2. VENDOR shall abide by BUYER'S work and safety rules when work or services are performed on BUYER'S premises. BUYER has the right to exclude personnel from BUYER'S premises who do not abide by such rules, and at BUYER'S election, to declare a default under the ORDER.
3. VENDOR shall comply with all applicable requirements contained in federal, state and local government statutes and their rules, regulations and ordinances while performing on this project.

(L) OTHER PROVISIONS:

1. The laws of the State of Colorado shall govern this ORDER, and the venue of any action brought hereunder may be laid in or transferred to the County of Arapahoe, State of Colorado.
2. 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.
3. This ORDER, and any documents referred to on the face hereof, constitute the entire agreement between CITY and VENDOR and any prior written or oral agreements which are different from the terms, conditions and provisions hereof shall be of no effect and shall not be binding upon either party.
4. No amendment or modification of this ORDER shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this contract.