

PURCHASE ORDER AGREEMENT FOR THE CITY OF BLOOMINGTON

The following are the standard Terms and Conditions which shall apply to all Purchase Orders (terms and conditions and PO collectively referred to as "the Agreement") issued by the City of Bloomington ("City"). These Terms and Conditions apply and are in force unless the City enters into a separate written agreement that modifies the Agreement.

Article 1. GOODS OR SERVICES: Supplier shall provide the Goods or Services as specified in the Purchase Order (PO) attached hereto and incorporated into this Agreement. Supplier shall diligently provide the Goods or Services under this Agreement and shall complete the delivery of Goods or Services described in this Agreement in a timely manner, consistent with the Standard of Care identified in Article 2, and on the agreed upon delivery date(s), unless the parties mutually agree to a later delivery or completion date. Completion shall mean completion of all work related to the Services. In the performance of Supplier's work, Supplier agrees to maintain such coordination with the City as may be requested and desirable, including primary coordination with the City's designated and approved purchaser. Title and risk of loss for Goods shall pass to the City upon delivery and acceptance of the Goods.

Article 2. STANDARD OF CARE Supplier shall be responsible for completion of the Services or delivery of Goods in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The City shall be the sole judge of the adequacy of Supplier's work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Supplier's performance. Upon notice to Supplier and by mutual agreement between the parties, Supplier will, without additional compensation, correct or replace any and all Services or Goods not meeting the Standard of Care.

Article 3. RESPONSIBILITIES OF THE CITY The City shall provide all necessary information regarding requirements for the Services or specifications for the Goods. The City shall furnish such information as necessary for the orderly progress of the work or delivery of goods, and Supplier shall be entitled to rely upon the accuracy and completeness of such information. The City's designated purchaser shall act on its behalf with respect to this Agreement.

Article 4. COMPENSATION The City shall pay Supplier for all fees and expenses in an amount not to exceed the amount indicated on the face of this PO. This price is the final, unconditional price. Supplier shall submit an invoice to the City upon the completion of the Services or delivery of Goods described in Article 1. The invoice shall be sent to: City of Bloomington, noting the City Name, to the address under the **SHIP TO** as shown on the face of the PO. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Supplier within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services, must be authorized in writing by the City or its designated purchaser prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized Goods or Services, or any Goods or Services delivered without a PO or PO number. As a tax-exempt entity, the City will not pay any taxes, regardless of whether Supplier includes them on invoices. Tax Exemption Number is 0036987180-010, and Federal Tax ID Number is 35-60000954.

Article 5. APPROPRIATION OF FUNDS Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. SCHEDULE Supplier shall perform the Services according to the schedule mutually agreed upon by both parties. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 7. TERMINATION In the event of a Supplier's substantial failure to perform in accordance with the terms or obligations of this Agreement, the City shall have the right to terminate the Agreement upon written notice. The Supplier shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the City.

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Supplier. If the Supplier is performing Services, the Supplier shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay the Supplier for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Supplier's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished goods, reports, drawings, collections of data and other documents generated by Supplier in connection with this Agreement shall become the property of the City, as set forth in Article 10 herein.

Article 8. IDENTITY OF THE SUPPLIER Supplier acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Supplier. Supplier thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Supplier. Supplier shall not subcontract any part of the Services without the prior written permission of the City. The City reserves the right to reject any of the Supplier's personnel or proposed outside professional sub-Suppliers, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. OPINIONS OF PROBABLE COST All opinions of probable cost to be provided by Supplier shall represent the best judgment of Supplier based upon the information currently available and upon Supplier's background and experience with respect to projects of this nature. It is recognized that neither Supplier nor the City has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, City does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

Article 10. REUSE OF INSTRUMENTS OF SERVICE Supplier agrees that any information or documents supplied by the City pursuant to Article 3 above shall be used by Supplier for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the City. All documents, including but not limited to, drawings, specifications and computer software prepared by Supplier pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the City or others on modifications or extensions of this project or on any other project. The City may elect to reuse such documents; however any reuse or modification without prior written authorization of Supplier will be at the City's sole risk and without liability or legal exposure to Supplier. The City shall indemnify, defend, and hold harmless the Supplier against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

Article 11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY All documents, drawings and specifications, including digital format files, prepared by Supplier and furnished to the City as part of the Services shall become the property of the City. Supplier shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Supplier.

Article 12. INDEPENDENT CONTRACTOR STATUS During the entire term of this Agreement, Supplier shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Supplier shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

Article 13. INDEMNIFICATION Supplier shall defend, indemnify, and hold harmless the City, and the officers, agents and employees of the City from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Supplier or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

Article 14. INSURANCE During the performance of any and all Services under this Agreement, Supplier shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Supplier shall provide evidence of each insurance policy to the City prior to the commencement of work under this Agreement. Approval of the insurance by the City shall not relieve or decrease the extent to which Supplier may be held responsible for payment of damages resulting from Supplier's provision of the Services or its operations under this Agreement. If Supplier fails or refuses to procure or maintain the required insurance, or fails or refuses to furnish the City's required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

Article 15. CONFLICT OF INTEREST Supplier declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Supplier agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 16. WAIVER No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 17. SEVERABILITY The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 18. ASSIGNMENT Neither the City nor the Supplier shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. THIRD PARTY RIGHTS Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

Article 20. GOVERNING LAW AND VENUE This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 21. NON-DISCRIMINATION Supplier shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

Article 22. COMPLIANCE WITH LAWS Supplier shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Supplier shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the City in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. E-VERIFY For Public Contracts for Services the Supplier is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Supplier shall be required to sign an affidavit affirming that Supplier does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code chapter 12 or by the U.S. Attorney General. Supplier and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Supplier or subcontractor subsequently learns is an unauthorized alien.

Article 24. NOTICES Any notice required by this Agreement shall be made in writing to the City designated purchaser at the address shown under the SHIP TO on the face of the PO. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Supplier.

Article 25. INTENT TO BE BOUND The City and Supplier each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 26. INTEGRATION AND MODIFICATION This Agreement represents the entire and integrated agreement between the City and the Supplier. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 27. NON-COLLUSION Supplier may be required to certify that it has not, nor has any other member, representative, or agent of Supplier, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer.

Article 28. WARRANTIES SUPPLIER WARRANTS THAT ALL GOODS OR SERVICES WILL CONFORM TO ANY AND ALL DRAWINGS, SPECIFICATIONS OR SAMPLES PROVIDED BY THE CITY, WILL BE MERCHANTABLE, OF GOOD MATERIAL AND WORKMANSHIP AND FREE FROM ANY AND ALL DEFECTS. SUPPLIER ALSO EXPRESSLY WARRANTS THAT THE GOODS OR SERVICES WILL BE FIT AND SUFFICIENT FOR THE PURPOSE INTENDED, AND WILL BE SUBJECT TO THE CITY'S INSPECTION. Payment for, inspection of or receipt of any or all of the Goods or Services shall not constitute a waiver of any breach of warranty. Defective Goods may be returned to Supplier for full credit or for replacement with new Goods, at the City's option and at Supplier's risk and expense, including all charges for handling, packaging and transportation (each way). In no event shall Supplier attempt to limit damages or remedies available under applicable law for any rejection, revocation of acceptance or breach of warranty, and the parties agree that any such limitation shall be void and without effect. No replacement of defective Goods or Services shall be attempted or made except as authorized by the City. The Warranties described herein shall be applicable to the Goods or Services regardless of whether Supplier subcontracts for the production and/or acquisition of all or any part of the Goods or Services.