

**CITY OF SANTA ROSA
PURCHASE ORDER
TERMS AND CONDITIONS**

1. ORDER ACKNOWLEDGEMENT: Seller's (or Contractor in the event services are being provided) commencement of work or delivery shall be deemed acceptance of the terms and conditions of the Purchase Order ("Order"). The Seller shall furnish the City of Santa Rosa ("City") Purchasing Agent, within ten days of the Order date, written Order acceptance. The Order, and these "Terms and Conditions," together with any attachments, constitutes the entire agreement between the parties. Any terms proposed in Seller's acceptance of City's Order which add to, vary from or conflict with the terms herein are null and void. No waiver, modification or addition to the terms of this Order shall be valid unless in writing and made in accordance with Section 2, CHANGE ORDER below.
2. CHANGE ORDER: The City may at any time prior to the delivery date specified herein, issue a written change order for the modification of the Order. Such modification(s) shall be the result of negotiation and agreement between both parties. No change in this Order shall be made unless the City gives its prior written approval. Seller shall be liable for all direct and consequential damages resulting from any unauthorized changes to the Order.
3. ASSIGNMENT AND SUBCONTRACTING: Seller shall not assign or subcontract the Order, or any part thereof, without the previous written consent of City, nor shall Seller assign, by power of attorney or otherwise, any of the money payable under this Order unless the prior written consent of the City has been obtained. No right under this Order, nor any claim for money due, or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so called assignment of this Order or any part thereof, or to become due under this Order. The instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or goods supplied.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by subcontractor, the subcontract shall be immediately terminated by Seller upon notice from the City. Seller shall be fully responsible and accountable to the City for the acts and omissions of any subcontractors, and of persons directly or indirectly employed by the subcontractor, as it is for the acts and omissions of persons directly employed by Seller. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

4. DELIVERY: All ordered goods shall be delivered F.O.B. destination, delivery charges prepaid, unless otherwise shown on the front of the Order. The goods shall be delivered to the location below unless otherwise shown on the front of the Order:

CITY OF SANTA ROSA
MUNICIPAL SERVICE CENTER WAREHOUSE
55 STONY POINT ROAD
SANTA ROSA, CA 95401

Delivery will be made on or before the date indicated on the front of the Order. Seller shall be liable for damages resulting from Seller's failure to deliver by the delivery date or in conformance with this Order. Goods or the tender of delivery that fail in any respect to conform to the Order will not be accepted unless the City gives its written acceptance.

5. INSPECTION: The City reserves the right before payment or acceptance to inspect all goods and workmanship, and shall have the right to reject all goods and workmanship that do not conform to the Order, provided; however, the City is under no duty to make such inspection. The City reserves the right to extend the date of acceptance of goods or workmanship in the event it determines that the nonconforming goods or workmanship can be seasonably cured.
6. TITLE: Title to goods shall pass to the City at the F.O.B. point designated under Section 4 DELIVERY, subject to the City's right to reject the goods.
7. ACCEPTANCE AND PAYMENT: Acceptance shall be made when the City determines the goods or services conform to the Order, or when City notifies Seller that it will accept the goods or services despite nonconformity. Unless otherwise stated in the Order, payment terms are net 30 days. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Seller's invoice. Payment will be scheduled upon complete delivery and acceptance of all goods or services and receipt of an original and one copy of an invoice acceptable to the City. Invoices for goods or services provided in June or for any goods or services not previously invoiced shall be submitted to City no later than July 10 to facilitate City fiscal year end closing. The City reserves the right to withhold up to ten (10%) percent of the Order price in the event it conditionally accepts nonconforming goods or services. In connection with any cash discount specified in the Order, time will be computed from the date of the complete acceptance of the goods or services, or from the date correct invoices are received at the location specified on the Order, whichever date is later. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.
8. MATERIALS: Unless otherwise specified in the Order, materials used shall be of new and recent manufacture and of best quality.

9. WARRANTY: Seller warrants that all goods and services provided to City are free from defects. At no cost to the City, Seller shall furnish and install all parts and pay any costs to repair goods or materials damaged by defective workmanship during Seller's and Manufacturer's warranty periods.
10. TERMINATION OF CONTRACT TO PURCHASE: If at any time: 1) Seller fails to conform to the requirements of the Order or breaches any of these Terms and Conditions; 2) Seller seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Seller which may interfere with Seller's performance hereunder; or 4) Seller has failed to supply an adequate working force, or material of proper quality, or has failed to deliver goods or in any other respect to prosecute the work with the diligence and force specified and intended herein, notice thereof may be served in writing upon Seller, and should Seller reject or refuse to provide the means for the satisfactory conformance with the Order as directed by the Purchasing Agent within the time specified in such notice, the City in any such case shall have the right and power at its option and without prejudice to any other right it may have, to terminate the Order.
11. TERMINATION FOR CONVENIENCE: The Order may be terminated by the City by giving ten (10) days notice to Seller in writing of its intent to terminate the Order. Upon such termination, Seller shall submit to the City an itemized statement of services performed or goods delivered as of the termination date. City shall not in any manner be liable for lost profits that might have been made by Seller had the Order not been terminated or had Seller completed the services required by the Order.
12. LEGALITY: If any provision of the Order is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
13. CALIFORNIA LAW; VENUE: The Order shall be governed according to the laws of the State of California. The adjudication of any disputes related to the Order shall occur exclusively and solely in Sonoma County.
14. COMPLIANCE WITH LAWS AND REGULATIONS: Seller represents and warrants that Seller has all licenses, permits, a City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Seller to provide goods and/or services under the Order. Seller shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) California Occupational Safety and Health Administration (Cal/OSHA) regulations; and (iv) the Immigration Reform and Control Act of 1986. Seller shall, if requested by City, provide certification and evidence of compliance. If Seller is an out-of-state corporation, Seller warrants and represents that it possesses a valid certificate of qualification to transact

business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

15. PATENTS AND ROYALTIES: All costs, fees, royalties and claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of goods herein shall be paid by Seller. Should Seller, its agents or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the terms herein, Seller shall promptly substitute other articles, materials or appliances in lieu thereof of equal finish, efficiency, quality, suitability and market value and satisfactory in all respects to City. In the event that City elects, in lieu of such substitution, to have supplied and to retain and use any inventions, articles, materials, or plans as may be required to be supplied, Seller shall pay such royalties and secure such valid licenses as may be requisite for City, its officers, agents and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding at law or equity on account thereof. Should Seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then City shall have the right to make such substitution or City may pay such royalties and secure such licenses and charge the Seller even though final payment under the contract may have been made.
16. INDEMNIFY AND HOLD HARMLESS AGREEMENT: Seller shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same arises out of the performance of this Order by Seller, its officers, employees, agents, or subcontractors, excepting only that resulting from the sole active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Seller or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts. Seller shall be liable to City for any loss of or damage to City property arising from Seller's negligence or willful misconduct.
17. RETENTION OF RECORDS: Seller shall be required to retain any records necessary to document the charges for goods provided and services performed and make such records available to City for inspection at the City's request for a period of four years.
18. PERFORMANCE OF SERVICES: With respect to the performance of services under this Order, Seller shall perform all services in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Seller's trade or profession. Seller hereby warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood

that acceptance of Seller's work by City shall not operate as a waiver or release. Seller shall assign only competent personnel to perform services hereunder. In the event that at any time the City, in its sole discretion, desires the removal of any person or persons assigned to perform services hereunder, Seller shall remove such person or persons immediately upon written notice from City. Seller shall perform the services described on the Order within the time or dates set forth therein.

19. INSURANCE REQUIREMENTS: Seller shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated and made part of the Order by this reference. Maintenance of the insurance coverage as set forth in Attachment One is a material element of this Order and a material part of the consideration provided by Seller in exchange for City's agreement to make the payments prescribed hereunder. Failure by Seller to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of the Order by Seller, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to the immediate termination of the Order. Notwithstanding the foregoing, any failure by Seller to maintain required insurance coverage shall not excuse or alleviate Seller from any of its other duties or obligations under the Order. In the event Seller, with approval of City pursuant to Section 3 above, retains or utilizes any subcontractors or sub-consultants in the provision of any goods or services to City under the Order, Seller shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in the Insurance Requirements in Attachment One.
20. INDEPENDENT CONTRACTOR: The parties intend that Seller, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with City. Seller is not to be considered an agent or employee of City and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by City for its employees.
21. BUSINESS TAXES: Seller shall pay to City, when due, all business taxes payable by Seller under the provisions of Chapter 6-04 of the Santa Rosa City Code. City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Seller.
22. NON-DISCRIMINATION: With respect to the provision of goods or services under the Order, Seller agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.