

## CITY OF RIDGEFIELD

### GENERAL TERMS AND CONDITIONS

**Acceptance of this Purchase Order by Contractor by either Contractor's written acknowledgment thereof or commencement of performance under the Purchase Order shall create a binding and shall be conclusive evidence of the Contractor's acceptance of these Terms and Conditions, hereinafter referred to as "Contract". The Contractor certifies that it is legally authorized to enter into a Contract with the City and warrants that such individuals are duly authorized to execute and deliver this Contract on behalf of the Contractor. The Contractor and City are hereinafter referred to as "Parties."**

**Work.** The Contractor shall do all work and furnish all tools, materials, supplies, equipment labor, and all other items incidental thereto necessary for delivery of the goods or performance of the services in accordance with the terms of this Contract, which are by this reference incorporated herein and made a part hereof, hereinafter the "Work".

**Compliance with Law.** All duties of the Contractor shall be performed in accordance with all applicable federal and state laws and city ordinances as now existing or hereafter adopted or amended.

**Amendments/Change Orders.** City may make reasonable changes and Contractor shall accommodate without additional expense to the City, such as the place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, and ancillary matters. This Contract shall not be otherwise altered, changed, or amended except by an instrument in writing executed by the legally authorized parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between City and the Contractor and shall be incorporated in written revisions to this Contract.

**Assignment.** This Contract may not be assigned in any manner or by any means by Contractor without the express written consent of the City.

**Shipments.** Deliveries shall be made F.O.B. Destination. Delivery shall not be deemed complete until goods have been actually received and accepted by the City. Any unauthorized advance or excess shipment is returnable at Contractor's expense.

**Schedule.** Unless the City requests a change in schedule, the Contractor shall deliver the items or render the services by the as stated on the Purchase Order. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City of such difficulty and the length of the anticipated delay. The Contractor shall be responsible for all additional costs due to their failure to meet the mutually agreed upon delivery or performance schedule.

**Waiver and Remedies.** City's failure to enforce 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 term, condition, or privilege, whether of the same or similar type. Remedies under this Purchase Order are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

**Binding Effect.** The provisions, covenants and conditions in this Purchase Order bind the parties, their legal heirs, representatives, successors, and assigns.

**Ratification.** Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

**Termination.** City, at its sole discretion, may terminate this Contract for convenience at any time for any reason. Termination is effective immediately upon notice of termination given by the City. In the event this Contract is terminated prior to the full delivery of goods and/or services, Contractor will only be paid for the work or goods accepted, at the City's sole discretion, at the time of termination of the Contract.

**Payments.** City will pay Contractor submitted invoices within thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services, provided that Contractor has listed all appropriate information on the invoice and complied with all contractual requirements. Payment shall be full compensation for goods delivered, work performed or services rendered, including all labor, materials, supplies, equipment and other expenses. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City. The total on the Purchase Order is to be the not-to-exceed amount and is not to be construed as a guaranteed amount due to Contractor.

**Warranties.** Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.

**Ownership of Records and Documents.** All materials, writings and products produced by Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for this Contract, the Contractor hereby further assigns all copyright interests in such materials, writing and products to the City. A copy may be retained by the Contractor.

**Non-Discrimination and Equal Employment Opportunity.** During the term of this Purchase Order, Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.

**Proprietary and Confidential Information.** Contractor should be aware that any records they submit to the City or that are used by the City even if the Contractor possesses the records, may be public records pursuant to Chapter 42.56 RCW. The City must promptly disclose public records upon request unless a statute exempts them from disclosure. Also, Contractor should be aware that if even a portion of a record is exempt from disclosure, generally, the rest of the record must be disclosed.

**E-Verify.** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by the Contractor to comply with this subsection shall be considered a material breach.

**Jurisdiction/Venue.** This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and

enforced in accordance with, and governed by, the laws of the State of Washington, without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Clark County, Washington.

**Attorney Fees.** In the event either party brings a lawsuit to enforce the terms of this Contract, or arising from a breach of this Contract, the prevailing party shall be entitled to its costs and attorneys' fees for bringing or defending against the action.

**Indemnification and Hold Harmless.** The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all liability including but not limited to demands, claims, causes of action, suits or judgments, claims of copyright or patent infringement, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract, except for injuries and damages caused by the sole negligence of the City. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this Section shall survive the expiration or termination of this Contract.

**Insurance.** Including any deletions or additions noted on the Purchase Order, the Contractor shall obtain and keep in force during the entire term of this Contract, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor. The amount of coverage provided by such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury and property damage nor less than Three Hundred Thousand Dollars (\$300,000) combined single limit for automobile liability.

The Contractor agrees to the following requirements relating to insurance coverage:

- a. **Liability Insurance.** All liability insurance required herein shall be under a comprehensive or commercial general liability and business, automobile policy or policies. The City shall be named as a Certificate Holder and an additional insured with respect to all such policies. Copies of all such policies shall be furnished to the City upon request.
- b. **Worker's Compensation.** Contractor shall take out and maintain during the life of the Contract, Worker's Compensation, including Washington State Stop Gap, insurance for all its employees engaged in work under or pursuant to this Contract who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Contractor shall require the subcontractor to provide worker's compensation insurance for all of its employees unless or to the extent that such employees are covered by the protection provided by the Contractor.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

**Discrimination Statement.** In the performance of all work under this Contract, the Contractor, or its employees, agents, subcontractors or representatives, shall not discriminate against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental, or physical handicaps, based upon a bona fide occupational qualification in relationship to hiring and employment. The Contractor shall comply with the Washington Law Against Discrimination (Chapter 49.60 RCW) and with any other applicable federal or state law or local ordinance regarding nondiscrimination, including but not limited to 23 USC 3; 29 USC 12 (V); 42 USC 21(V); 42 USC 76; 42 USC 126; 49 CFR 21; and 23 CFR 200. Any material violation of this provision shall be grounds for immediate termination of this Contract by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

**Use of City's Name.** Contractor may not use any of City's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of City, which permission may be withheld for any or no reason and may be subject to certain conditions.

**Prevailing Wages.** If indicated on the Purchase Order the Contractor and any subcontractors shall be bound by the provisions of Chapter 39.12 RCW, as amended, that no workman, laborer, or mechanic employed in the performance of any Public Work as defined by RCW 39.12 shall be paid less than the "prevailing rate of wage" including fringe benefits as determined by the Industrial Statistician of the Department of Labor and Industries. The Contractor shall submit those forms as required by the Department of Labor and Industries.

**Conflicting Provisions.** In the event of a conflict between the terms of any Contract Documents, the City Manager or designee shall issue an interpretation to resolve the conflict, which shall be final and binding.

**Entirety of Agreement.** This Purchase Order incorporates all covenants and understanding between the parties hereto. Other than the execution of a separate Contract, no other prior agreements or understandings, verbal or otherwise, shall be valid or enforceable.

**Notices.** Any notices required to be given by the Contractor shall be delivered as set forth below:

Attn: Mr. Kirk Johnson, Finance Director, PO Box 608, Ridgefield, WA 98642  
Email: kirk.johnson@ci.ridgefield.wa.us