

DEFINITIONS

- "City" means The City of Schertz, a home rule charter, located in the Counties of Guadalupe, Bexar and Comal, in the State of Texas.
- "Contractor" means the City's contracted provider under this purchase order.
- "Agreement" means the purchase order issued by City to Contractor.

ACCEPTANCE

- Contractor's action in (a) accepting this order, (b) delivering materials, or (c) performing services called for hereunder shall constitute an acceptance of terms and conditions below on this order.

DELIVERY

- If delay in delivery is foreseen, the Contractor will notify the City Purchasing and Asset Management Department, (210) 619-1160. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the City to purchase supplies elsewhere and charge full increase in cost, if any, to defaulting Contractor.
- No substitutions or cancellations permitted without approval of the City's Purchasing and Asset Management Department.
- Unless otherwise stated, the City shall not be responsible for freight or delivery charges. Prices are to be based upon the supplies or services being offered F.O.B. Destination, freight prepaid and allow to the delivery destination(s) listed on this order. Any shipment marked C.O.D. shall be rejected and returned at the Contractor's expense.

WARRANTY

- Contractor shall warrant that all items or services shall conform to the proposed specifications and all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

PAYMENT

- The City is exempt from State Sales and Federal Excise Tax. Tax Exemption Certificate furnished on request.
- The Contractor will submit an itemized invoice showing purchase order number.
- Materials will be considered received by the City upon final acceptance by the end user.
- All payments will be made in accordance with Texas Government Code, Chapter 2251 (Texas Prompt Payment Act). Standard payment terms in accordance with the Texas Prompt Payment Act are Net 30 from receipt of materials/services, or receipt of invoice, whichever is later, unless otherwise specified by the Agreement.

GENERAL

- Pursuant to Section 2155.004 and 2155.006, Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows: The City of Schertz, Purchasing and Asset Management Department, 1400 Schertz Parkway, Building #2, Schertz, TX 78154, or such other person or address as may be given in writing by the City in accordance with the aforesaid. Such a notice must reference the purchase order number for this Agreement.
- This Agreement supersedes all prior agreements, written or oral, between the Contractor and the City and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by the City and the Contractor.
- Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.
- No elected official, officer or employee of the City shall have a direct or indirect financial interest in the transaction that is the subject of this Agreement.

INSURANCE

In the event the Contractor, its employees, agents or subcontractors enter premises occupied by or under the control of the City in the performance of this Agreement, the Contractor agrees that it will maintain general and automobile liability in reasonable limits covering the obligations set forth in this Agreement, and will maintain workers compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing this Agreement on premises occupied by or under the control of the City. Upon request by City, Contractor shall furnish Certificate of Insurance for, but not limited to, Commercial General Liability, Commercial Auto Liability, Workers Compensation, and Professional Liability Insurance. The City shall be named as an additional insured with respect to General Liability and Auto Liability. A waiver of subrogation in favor of the City of Schertz shall be contained in the

Workers Compensation and all liability policies. All policies, which name the City as an additional insured, must be endorsed to read as primary and non-contributory.

DISPUTE RESOLUTION PROVISION

To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by any other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by the City and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor that cannot be resolved in the ordinary course of business. The City will examine the Contractor's claim and any counterclaim and negotiate with the Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the execution of this Agreement by the City nor any other conduct, action or inaction of any representative of the City relating to this Agreement constitutes or is intended to constitute a waiver of the City's or the state's sovereign immunity to suit; and (ii) the City has not waived its right to seek redress in the courts. Guadalupe County, Texas, will be the proper place of venue for suit on or in respect of this Agreement.

TERMINATION

Termination for Convenience: Upon written notice to the Contractor, the City may terminate this contract, in whole or in part, whenever the City will determine that such termination is in the best interest of the City. The City will pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the Contractor may not be reimbursed for anticipatory profits.

Termination for Default: When the Contractor has not performed or has unsatisfactorily performed the contract, payment will be withheld at the discretion of the City. Failure on the part of a Contractor to fulfill contractual obligations will be considered just cause for termination of the contract and the Contractor is not entitled to recover any costs incurred by the Contractor up to the date of termination.

Termination for Delay: In case of unreasonable delay in delivery of goods or services or the delivery of goods or services inferior to those specified, or in case of any other default of the vendor, the City shall have the right at its option to cancel this order in whole or in part without penalty

NON-APPROPRIATION OF FUNDS

It is understood that the City funds are contingent upon the availability of lawful appropriations by the Schertz City Council. Subject to the applicable provisions of the Schertz Charter, the City represents: that it has adequate funds to meet its obligations under this order for the full price set forth herein; and that it has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during such contract period. However, if the Schertz City Council fails at any time during such contract period(s) to continue funding for any purchase order awarded, the City's obligations under such contract(s) are terminated as of the date that the funding expires without further obligation to the City.

CONFIDENTIAL DATA

If the item(s) or service(s) specified in this Agreement require the Contractor access to confidential data, the Contractor represents, warrants, and certifies that it will: (1) hold information in the strictest confidence and will not use or disclose information except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by the City in writing; (2) safeguard information according to commercially reasonable administrative, physical and technical standards; and (3) continually monitor its operations and take any action necessary to assure the information is safeguarded in accordance with the terms of this Agreement. At the request of the City, the Contractor agrees to provide the City a written summary of the procedures the Contractor uses to safeguard this information. In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if the City reasonably determines that the Contractor has breached any restrictions or obligations set forth in this section, the City may immediately terminate this Agreement without notice or opportunity to cure.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF SCHERTZ, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR - EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.