

## CONDITIONS OF PURCHASE

1. **ACCEPTANCE.** This Purchase Order can be accepted only on the conditions set forth herein. Vendor shall be bound by this Purchase Order upon Vendor commencing performance. City shall be bound by this Purchase Order only upon receipt of the materials or services as identified on the Purchase Order executed by Vendor. The Conditions of the Purchase Order shall be the exclusive agreement between City and Vendor with respect to the material/services ordered hereunder. In no event shall any modification be effective or different terms be imposed by the terms and conditions of any acknowledgement order or other form submitted by Vendor. Materials/services which are accompanied or preceded by documents which attempt or purport to change or modify the "Conditions of Purchase" incorporated by reference into each and every Purchase Order shall at City's option, be treated as unsolicited goods/services.

2. **PRICES.** Vendor shall not provide the materials/services ordered under this Purchase Order at prices higher than those specified herein.

3. **INVOICES.** Payment of invoice shall not constitute acceptance of the material and shall be subject to adjustments for errors, shortages, defects in the material or other failure of Vendor to meet the requirements of this Purchase Order.

4. **CASH DISCOUNTS.** Time in connection with any discount offered will be computed from the date of actual delivery at City's specified location, or the date and invoice conforming with Paragraph 3 is received, whichever is later.

5. **TAXES.** The City of Englewood is exempt from Federal and State taxes and will provide the required exemption certificates.

6. **OVERSHIPMENTS.** City shall pay only for maximum quantities ordered. Vendor shall pay return shipping charges for excess quantities delivered to City.

7. **PACKING AND SHIPMENT.** Vendor shall mark all containers with necessary lifting, handling and shipping information as well as purchase order numbers, date of shipment and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment unless otherwise specified. No partial or complete delivery shall be made hereunder prior to the date or date or dates shown without prior written consent of the City.

8. **MSDSs.** An appropriate Material Safety Data Sheet ("MSDS") and labeling, as and if required by law will precede or accompany each shipment. Further, Vendor shall send to City updated MSDSs and labeling by law.

9. **F.O.B. POINT.** The price includes delivery of the material F.O.B., freight and cartage prepaid at City's designated location(s) unless otherwise specified.

### 10. WARRANTIES.

a. Vendor warrants that all material delivered hereunder shall comply fully with the requirements of this Purchase Order. Vendor further warrants that all material purchased hereunder shall be of merchantable quality, new and unused (unless specified in this Purchase Order), and shall be fit and suitable for the intended use by the City. The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether expressed or implied, and shall survive any delivery, inspection, acceptance or payments by the City.- City approval of Vendor material or design shall not relieve Vendor of the warranties set forth in this clause.

b. If any material delivered hereunder does not meet the warranties specified herein or otherwise applicable, City may elect any or all remedies at law, in equity or under this Purchase Order and the election of a remedy shall not be deemed exclusive. Vendor agrees to defend and indemnify City against all damages occasioned by or arising as a consequence of any breach of the warranties set forth herein, including injuries to employees and other persons and the cost of replacing City materials which may be damaged or rendered defective by materials furnished or work done in breach of such warranties.

c. Vendor warrants to City that all material furnished to City hereunder shall conform to and comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and Toxic Substances Control Act of 1976. Vendor agrees to defend and indemnify the City against danger or liability occasioned by or arising as a consequence of any breach of the warranties of this paragraph.

### 11. INSPECTION.

a. All material purchased hereunder shall be subject to inspection and test by City to the extent practicable at all times and places including the period of manufacture and, in any event prior to final acceptance. If inspection or test is made by City on Vendor's premises, without additional charge, Vendor shall provide all reasonable facilities at any time during business hours either announced or unannounced. No inspection or test made prior to final inspection and acceptance shall relieve Vendor from responsibility for defects or other failure to meet the requirements of this Purchase Order. Notwithstanding any prior inspections or payments made hereunder by City, all material shall be subject to final inspection and acceptance at City's location within a reasonable time after delivery.

b. In the event any material is found defective or not in conformity with City specifications per the requirements of this Purchase Order prior to final inspection. City shall have the right either to reject the material and require Vendor to replace it within the delivery schedule or accept it with an adjustment in price, all at the expense of Vendor, including any transportation and handling costs. If Vendor fails to replace or correct material which has been rejected or required to be corrected within the delivery schedule, or the City rejects material at final inspection as not conforming to this purchase order, City may: (a) replace or correct such material and charge vendor with the expense incurred thereby, or (b) cancel this Purchase Order and cancel any outstanding deliveries hereunder, without prejudice to City's rights to claim damages or to enforce any other remedy provided by law. Nonconforming material may be returned at Vendor's expense, including any transportation and handling costs.

12. **DELIVERY.** Time is of the essence, if any shipment is made which is not in all respects in accordance with the provisions of this Purchase Order (including time of shipment or delivery), City reserves the right without liability to reject such delivery and, if City so elects, City may treat this Order as repudiated by Vendor and cancel any outstanding deliveries hereunder, without prejudice to City's rights to claim damages or to enforce any other remedy provided by law. All expenses for transportation and storage, shall be borne by Vendor.

13. **TERMINATION.** City may, at any time, terminate this Purchase Order, in whole or in part by written notice, or verbal notice confirmed in writing. If City terminates this Purchase Order prior to City's receipt of the materials purchased hereunder, and if such termination is based solely on City's convenience, then Vendor shall be entitled only to any shipping and handling costs engendered by this Purchase Order prior to City's termination thereof. If there is a cancellation by City occasioned by Vendor's breach of any condition hereof, including breach of warranty, or by Vendor's delay, except delay due to considerations beyond the Vendor's control and without Vendor's fault or negligence, Vendor shall not be entitled to any claim of costs and City shall have against Vendor all remedies provided

by law and equity. In no event and under no circumstances shall Vendor have any rights to claim from City consequential or indirect damages (including lost profits) hereunder or otherwise.

14. **TITLE.** The property or title to it, and the risk of loss of materials purchased under this Purchase Order, shall remain in Vendor and not transfer to City until such materials are delivered and unloaded at the F.O.B. point specified in the Purchase Order. Further, Vendor shall defend and indemnify City against any damages caused or engendered by, or traceable to, materials purchased hereunder (whether or not hazardous), or the transportation or handling thereof, prior to the completion of unloading and acceptance by the City at City's location.

15. **WAIVER.** The failure of City to enforce at any time any of the provisions of this Purchase Order, or exercise any election or option provided herein, or to require at any time performance by Vendor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions and shall not affect the right of the City thereafter to enforce each and every provision.

16. **CHANGES.** City shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destinations, specifications, designs and delivery schedules, but no additional charges shall be allowed unless authorized in writing by City. If such changes affect the amount to be paid by City, Vendor shall notify City immediately and negotiate an adjustment.

17. **ASSIGNMENT, SUBCONTRACTING.** Vendor shall not assign this Purchase Order or any part thereof, or subcontract or delegate any performance hereunder without first obtaining City's written consent.

18. **PATENT INFRINGEMENT.** Vendor shall, at its own expense, defend and indemnify City and its employees with respect to any and all claims that the material furnished by Vendor under this Purchase Order infringes upon any United States Letters Patent, or any other proprietary rights and with respect to any and all suits, controversies, demands and liabilities arising out of such claims, provided that the foregoing shall not apply to any infringement claim necessarily resulting from Vendor's adherence to written specifications or drawings submitted by City.

19. **LABOR.** If this Purchase Order covers the performance of labor on Vendor or City's premises, Vendor agrees to defend and indemnify City against all damages for injury to any person or property arising out of the performance of this Order. Vendor also agrees, if requested, to furnish City with a certificate from Vendor's insurance carriers showing that it carries adequate Workers' Compensation (if Vendor is a self-insurer, it shall arrange to have the Department of Labor or other appropriate agency furnish a certificate of same to City) public liability, and property damage insurance, all amounts required by the City as an additional insured and showing the amount of coverage, number of policy and date of expiration.

20. **EXCUSABLE DELAYS.** If Vendor should be unable to meet all of its delivery commitments for the material ordered herein as it becomes due, Vendor shall not discriminate against City or in favor of any other customer in making deliveries of such material. If City believes that the delay or anticipated delay in Vendor's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operation, City may at its option and without liability to Vendor cancel outstanding deliveries hereunder wholly or in part.

21. **APPLICABLE LAW.** This Purchase Order shall be governed by, subject to, and construed in accordance with the laws of the State of Colorado. This Purchase Order shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not made a part of this Purchase Order by its express terms.

22. **COMPLIANCE WITH LAWS.** Vendor shall in the performance of this Purchase Order comply with all laws, ordinances, rules and regulations, federal state and local, applicable thereto.

23. **EQUAL EMPLOYMENT OPPORTUNITY.** The VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and will comply with the Americans with Disabilities Act.

24. **ENTIRE AGREEMENT.** This Purchase Order represents the entire understanding as of the effective date hereof between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, understandings, representations, statements and writings between the parties relating thereto. No modification, alteration, waiver or change in any of the terms of this Purchase Order shall be valid or binding upon the parties hereto unless made in writing and duly executed by each of the parties hereto.

### 25. VERIFICATION OF COMPLIANCE WITH C.R.S. 8-17.5-101 ET.SEQ. REGARDING ILLEGAL ALIENS

(a) Employees, Contractors and Subcontractors: Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Contract or (ii) fails to certify the same to the Contractor

(b) Verification: Contractor has verified or attempted to verify through participation in the "basic pilot program" (authorized by P.L.204 of 104<sup>th</sup> Congress and amended by P.L.156 of 108<sup>th</sup> Congress) that Contractor does not employ any illegal aliens. And, if not accepted into the "basic pilot program", Contractor further verifies. Contractor will apply to participate in this program every three months until Contractor is accepted or this Contract is completed, whichever is earlier.

(c) Limitation regarding the "Basic Pilot Program: Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while performing this Contract.

(d) Duty to Terminate a Subcontract: If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall;

(1) Notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if, within three days of receiving notice that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien.

(3) Exception: If the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien and the subcontractor stops employing or contracting with the illegal alien.

(e) Duty to Comply with State Investigation: Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5).

(f) Damages for Breach of Contract: The City may terminate this contract for a breach of contract, in whole or in part, due to Contractor's breach of any section of this paragraph. Contractor shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract.