



## Purchase Order Terms & Conditions

The following terms, conditions and instructions apply to all City of Parkland ("CITY") Purchase Orders. The fulfillment of a Purchase Order means that the vendor understands and agrees with CITY's "Purchase Order Terms & Conditions." Any amendment to the CITY Purchase Order Terms & Conditions is to be discussed and decided with CITY prior to fulfillment of a Purchase Order.

### TERMS AND CONDITIONS, OBLIGATIONS, RIGHTS AND REMEDIES

**ACCEPTANCE:** This Purchase Order is CITY's offer to purchase the goods and/or services described on the Purchase Order from the vendor. Vendor's written acceptance or commencement of work or shipment or delivery of an item or service call shall constitute acceptance by the vendor of the Purchase Order, its terms and conditions and applicable law.

**ALTERATIONS OR AMENDMENTS:** Alterations, amendments, changes, modifications or additions to the Purchase Order shall not be binding without the prior written approval of CITY.

**APPROPRIATION:** In the event funds are not appropriated by CITY for the goods or services in any fiscal year or services in any fiscal year or insufficient funds exist to purchase the goods or services, then the Purchase Contract shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.

**ASSIGNMENTS:** Vendor shall not assign the agreement its obligations or rights hereunder to any party, company, partnership, incorporation or person without the prior written specific consent of CITY.

**AUDIT RIGHT AND RETENTION OF RECORDS:** CITY shall have the right to audit the books, records, and accounts of CONSULTANT and its subCONSULTANTS that are related to this Purchase Order. CONSULTANT and its subCONSULTANTS shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACOR and its subCONSULTANTS shall be kept in written form, or in a form capable of conversion into writing form within a reasonable time, and upon request to do so, CONSULTANT or its subCONSULTANT, as applicable, shall make same available at no cost to CITY in written form.

The CONSULTANT shall comply with public records laws, as set forth in Chapter 119, Florida Statutes; and shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONSULTANT does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the CONSULTANT or keep and maintain public records required by the City to perform the service. If

the CONSULTANT transfers all public records to the City upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

5. REQUEST FOR RECORDS; NONCOMPLIANCE.—

- (a) A request to inspect or copy public records relating to a City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- (b) If a CONSULTANT does not comply with the City's request for records, the City shall enforce the contract provisions in accordance with the contract.
- (c) A CONSULTANT who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954 757 4132, CITY CLERK Jennifer L. Johnson [jljohnson@cityofparkland.org](mailto:jljohnson@cityofparkland.org)).**

**CHILD LABOR:** Vendor agrees that no products will be provided under the Purchase Order which have been manufactured or assembled by child labor.

**COMPLIANCE WITH ALL LAWS:** Vendor is assumed to be familiar with and agrees to observe and comply with all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary permits.

**CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION:** The vendor agrees that all information, data, findings, recommendations, bids, et cetera by whatever name described and in whatever form secured, developed, written or produced by the vendor in furtherance of this contract shall be the property of CITY. The vendor shall take such action as is necessary under law to preserve such property rights of CITY while such property is within the control and/or custody of the vendor. By this contract, the vendor specifically waives and/or releases to CITY any cognizable property right of the vendor to copyright, license, patent or otherwise use such information, data, findings, recommendations, responses, et cetera.

The vendor understands and agrees that data, materials, and information disclosed to vendor may contain confidential and protected data. Therefore, the vendor promises and assures that data, material, and information gathered, based upon or disclosed to the vendor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the CITY.

**DEFAULT:** If vendor fails to perform or comply with any provision of the Purchase Order or the terms or conditions of any documents referenced and made a part hereof, CITY may terminate the contract, in whole or in part, and may consider such failure or noncompliance a breach of contract. CITY expressly retains all its rights and remedies provided by law in case of such breach, and no action by CITY shall

constitute a waiver of any such rights or remedies. In the event of termination for default, CITY reserves the right to purchase its requirements elsewhere, with or without competitive bidding, and vendor agrees to pay any difference in costs above those conditions in the order.

**DEFINITION OF PURCHASE ORDER:** CITY issues Purchase Orders as permission for the vendor to ship goods or perform services as indicated on the Purchase Order and according to the terms and conditions of the Invitation to Bid, Bid Response and attachments thereto (if applicable), Bid Award, and the CITY Procurement Code. The terms and conditions of the Invitation to Bid, Bid Response, Bid Award, and the CITY Procurement Code are incorporated herein and made a part hereof by reference. Vendor shall not supply the goods or services if in disagreement with these terms. Vendor's provision of goods and services pursuant to this Purchase Order is evidence of its agreement with these terms and conditions and shall conform to same.

**DELIVERY:** Delivery of all goods shall be FOB to final destination, paid by the shipper, unless otherwise set forth on the Purchase Order. If complete deliveries are not made at the time agreed, CITY reserves the right to cancel the Purchase Order and/or hold the vendor accountable. If the delivery dates cannot be met, the vendor agrees to notify the Purchasing Department, in writing, of the earliest suggested delivery date. CITY will then decide whether the proposed delivery date is acceptable.

**FORCE MAJEURE:** If either party is prevented from performing its obligations hereunder as a result of government regulations, fires, strikes, or other causes beyond the control of such party, the obligation to so perform shall be suspended for a reasonable time during which such condition continues to exist. If an actual or potential labor dispute delays or threatens to delay vendor's timely performance, vendor shall immediately notify CITY in writing.

**GOVERNING LAW:** The Purchase Order shall be governed by the laws of the State of Florida and all applicable federal laws and regulations. All obligations of the parties are performable in Broward County, Florida. The appropriate state court located in Broward County, Florida, shall have exclusive and concurrent jurisdiction of any disputes which arise hereunder.

**INCORPORATION:** All specifications, drawings, technical information, invitation to bid, bid, award and similar items referred to or attached or which are the basis for the Purchase Order are deemed incorporated by reference as if set out fully herein.

**INDEMNIFICATION/HOLD HARMLESS:** Vendor shall indemnify, defend, save and hold harmless CITY, its officers, agents and employees from all suits, claims, actions or damages of any nature, including any attorney's fees, paralegal expenses, and court costs incurred at either the trial or appellate levels brought because of, arising out of, or due to breach of the agreement by Vendor, its subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of Vendor, its subcontractors, suppliers, agents or employees. NOTHING HEREIN SHALL BE DEEMED TO WAIVE THE CITY'S SOVEREIGN IMMUNITY.

**INDEPENDENT CONTRACTOR:** Vendor shall acknowledge that it and its employees serve as independent contractors and that CITY shall not be responsible for any payment, insurance or incurred liability.

**INSPECTION AND ACCEPTANCE:** Final inspection of any goods or services delivered or performed hereunder shall be made at final destination, the receiving department. CITY reserves the right to reject any or all items not in conformance with applicable specifications, and vendor assumes the costs

associated with such nonconformance. Acceptance of goods does not constitute a waiver of latent or hidden defects or defects not readily detectable by a reasonable person under the circumstances. CITY reserves the right to inspect the goods at a reasonable time subsequent to deliver.

**INVOICING:** Vendors are required to submit invoices within 90 days of the date the goods or services were delivered to CITY. CITY reserves the right to not pay invoices submitted after the 90 day threshold.

**MATERIAL SAFETY DATA SHEETS:** The vendor must supply proper Material Safety Data Sheets in compliance with OSHA's Hazard Communications Standard to CITY at the time of purchase.

**NONDISCRIMINATION AND NON-CONFLICT STATEMENT:** Vendor agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the agreement, or in the employment practices of Vendor. Vendor shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Vendor covenants that it complies with the Fair Wage and Hour Laws, the National Labor Relations Act, and other federal and state employment laws as applicable. Vendor covenants that it does not engage in any illegal employment practices. Vendor covenants that it has no public or private interest, and shall not acquire directly or indirectly any interest, that would conflict in any manner with the provision of its goods or performance of its services.

**NON-WAIVER OF RIGHTS:** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms thereof.

**OFFICIALS NOT TO BENEFIT:** Employees or officials of CITY shall not be permitted to any share or part of the Purchase Order or any benefit that may arise therefrom. Vendor agrees not to provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of CITY, with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of any contract.

**ORDER OF PRECEDENCE:** In the event of inconsistent or conflicting provision of the Purchase Order and referenced documents, the following descending order of precedence shall prevail: (1) Item Description, (2) Invitation to Bid, (3) Bid, (4) Bid Award, (5) Special Terms and Conditions, (6) General Terms and Conditions, (7) Specifications, (8) Drawings.

**PACKING LISTS:** An itemized packing list, bearing the Purchase Order number shall be attached to the outside of every shipping container.

**PATENTS AND COPYRIGHTS:** If an article sold and delivered to CITY hereunder shall be protected by any applicable patent or copyright, the vendor agrees to indemnify and save harmless CITY, from and against any all suits, claims, judgments and costs instituted or recovered against it by any person whomever on account of the use or sale of such articles by CITY in violation or right under such patent or copyright.

**PAYMENTS:** Payments shall be made by CITY upon satisfactory delivery and acceptance of all items or service, and submission of a proper invoice(s) bearing the purchase description, delivery date, and/or

contract number. Each Purchase Order shall be covered by separate invoice(s). Invoices are to be mailed to the address indicated on the Purchase Order.

**REMEDIES:** CITY shall have all rights and remedies afforded under the U.C.C. and Florida law in contract and in tort, including but not limited to rejection of goods, rescission, right of act-off, refund, incidental, consequential and compensatory damages and reasonable attorney's fees.

**RIGHT TO INSPECT:** CITY reserves the right to make periodic inspection of the manner and means the service is performed or the goods are supplied.

**SEVERABILITY:** If any provision of the Purchase Order is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.

**SUB-CONTRACTING:** Vendor shall not sub-contract the Purchase Order to any other vendor without the expressed written consent of CITY.

**TAXES:** All prices included in the Purchase Order are exclusive of any Federal, State or local taxes. CITY is exempt from sales tax and federal excise taxes.

**TERMINATION:** CITY may terminate this agreement, in part or in whole, for its convenience or the failure of the vendor to fulfill contractual obligations. CITY shall terminate by delivering to the vendor a written Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the vendor shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise).
2. Deliver to CITY all information, papers, reports and other materials accumulated or generated in performing the contract, whether completed or in progress.

If the termination is for the convenience of CITY, CITY shall only be liable for payment for services rendered before the effective date of the termination.

If the termination is due to the failure of the vendor to fulfill its obligations under the contract, CITY may:

1. Require the vendor to deliver any work described in the Notice of Termination.
2. Take over and prosecute the same to completion by contract or otherwise and the vendor shall be liable for any additional cost incurred by CITY.
3. Withhold any payments to the vendor for purpose of set-off or partial payment, as the case may be, of amounts owed by CITY to the vendor.

In the event of termination for cause, CITY shall be liable to the vendor for reasonable costs incurred by the vendor before the effective date of the termination.

**VARIATION IN QUANTITY:** Variation in the quantity of any item called for by the Purchase Order shall not be allowed, unless such variation is caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, set forth herein.

**WARRANTY:** Vendor warrants to CITY that all items delivered and all services rendered shall conform to the specifications, drawings, bid and/or other descriptions furnished and/or incorporated by reference,

and will be fit for the particular purpose purchased, of merchandisable quality, good workmanship, and free from defects. Vendor extends to CITY all warranties allowed under the U.C.C.

Vendor shall provide copies of warranties to CITY with invoice. Return of merchandise not meeting warranties shall be at vendor's expense.