

CITY OF BRIGHTON PURCHASE ORDER TERMS AND CONDITIONS

The following Terms and Conditions shall apply to every purchase of Goods and Services acquired through a properly authorized Purchase Order.

GENERAL TERMS AND CONDITIONS: 1. **ENTIRE AGREEMENT:** The Purchase Order ("PO") constitutes the entire agreement between the City of Brighton ("City") and the Vendor. The terms and conditions set forth herein may not be superseded, altered, deleted or added to without the express written consent of the City. In case of conflict, the following order of precedence shall prevail: 1. Change Orders; 2. City Contract, if issued; 3. Expressly approved written exceptions as noted on the face of the PO; 4. City of Brighton Purchase Order Terms and Conditions; 5. Vendor Proposal. In no event shall any modification be effective or different terms be imposed by the terms and conditions of any acknowledgement order or other forms submitted by Vendor. Commencement of performance by Vendor constitutes agreement to these terms and conditions. The City shall have no responsibility or liability for products or services delivered or performed prior to proper execution thereof. Each shipment received by the City from Vendor shall be solely upon the terms contained in the PO and any signed contract between the parties. 2. **LAWS AND JURISDICTION:** Any legal action shall be maintainable only in the Adams County District Court for the State of Colorado and shall be governed by Colorado Law. All references in the PO to the Uniform Commercial Code shall mean the Uniform Commercial Code as adopted by the State of Colorado at Title 4, C.R.S., as amended. Vendor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back and collusion. a. **Modifications:** The PO can be modified or rescinded only in writing signed by the City's authorized representative. Vendor may not transfer the PO to a third party nor in any way amend the PO without prior written consent of the City. 3. **REMEDIES:** City shall have rights and remedies afforded by the Colorado Uniform Commercial Code and other applicable laws. 4. **PAYMENT:** To ensure prompt payment, mail invoices to the City at 500 S. 4th Avenue, Brighton, CO 80601. Invoices not sent as directed may delay payment. A. The City's standard payment terms are net 30 days upon receipt of invoice. Payment of invoice shall not constitute acceptance of the material and shall be subject to adjustment for errors, shortages, defects in the material, or other failure of Vendor to meet requirements of this PO. Final acceptance is dependent upon completion of all applicable required inspection procedures. Should the merchandise furnished fail to meet all inspection requirements, the City reserves the right to reject all or some of the goods or exercise any other remedies provided by law. 5. **TERMINATION:** a. **For Default/Cause:** The City shall have the right to terminate this PO upon three (3) days' notice if Vendor fails to comply with the terms and conditions set forth in this PO. For breach of any other term or condition of this PO, the City may terminate the PO upon ten (10) days' notice to cure and failure by the Vendor to so cure. Vendor shall have the right to terminate this PO for failure of the City to comply with the terms and conditions of the PO upon ten (10) days' notice to cure and failure by the City to so cure. b. **For Convenience:** At the City's discretion, the PO may be canceled by written or oral notice to the Vendor prior to shipment of goods or delivery of services. The City may terminate this PO, in whole or in part, for convenience at any time by providing not less than 15 days' written notice to the Vendor prior to the termination date. In the event of termination for convenience by the City, the Vendor shall be paid for services satisfactorily rendered and/or accepted goods delivered prior to the date of termination. Such payment shall be the sole right and remedy for such termination. 6. **FUND AVAILABILITY:** Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If the PO contemplates the purchase of goods/services to be delivered in a single installment, the City represents that it has set aside sufficient funds to make payment under the PO in accordance with its terms. 7. **BLANKET PURCHASE ORDERS:** The City is obligated only to the extent of purchases actually made and received under a Blanket PO. A Blanket PO is intended to authorize the purchase of goods or services from the vendor as needed for a fiscal year, and is not a guarantee of quantities or actual work required. 8. **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 changes 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. 9. **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 PO infringes 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. 10. **ACCESSIBILITY:** Vendor shall comply with and the Work Product (deliverables) provided under this PO shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Vendor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. The City may require Vendor's compliance to the State's Accessibility Standards to be determined by a third party selected by the City to attest to Vendor's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. a. **Accessibility Indemnification.** Vendor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts, including attorneys' fees and related costs, incurred by any of the Indemnified Parties in relation to Vendor's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. 11. **WAIVER:** The failure of City to enforce at any time any of the provisions of this PO, 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. 12. **DELIVERY OF GOODS:** Time is of the essence in this PO if any shipment is made which is not in all respects in accord with the provisions of this 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 of transportation and storage, if any, resulting therefrom shall be charged to Vendor's account. City may refuse any delivery if prevented by strikes, casualties or other causes beyond its control from receiving or using it. Nonconforming material may be rejected by the City and returned to the Vendor and Vendor shall pay return shipping charges for excess quantities, defective, and unordered goods delivered to the City. **Excusable Delays:** Neither party shall be liable for any delay or failure of performance due solely to fires or other causes beyond its control and without fault or negligence, provided that Vendor shall have given notice in writing to the City of any such delay within 24 hours after first obtaining notice thereof, and shall have used its best efforts to make deliveries as expeditiously as possible taking such cause for delay into account. If Vendor should be unable, due to such a cause, to meet all 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 such deliveries of material. If City believes the delay or anticipated delay in Vendor's deliveries may impair City's ability to meet its production schedules or may otherwise interfere with its operations, City may at its option and without liability to Vendor cancel outstanding deliveries hereunder wholly or in part. 13. **WARRANTIES:** a. Vendor warrants that all material delivered hereunder shall comply fully with the requirements of this PO. Vendor further warrants that all material purchased hereunder shall be of merchantable quality, new and unused (unless specified in this PO), and shall be fit and suitable for the purposes intended by City, such purposes are known to Vendor. All provisions and remedies of the Uniform Commercial Code relating to implied and expressed warranties are herewith referred to and made part of this PO. The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether expressed or implied, and shall survive

any delivery and/or inspection, acceptance or payments by 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 specific herein or otherwise applicable, City may elect any or all remedies at law, in equity or under this PO 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 the regulations and standards issued thereunder. Vendor further warrants that no material shipped or delivered and on the order of City is, as of the date shipped and delivered, adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act as amended, or any substantially similar state law, or is an article which may not under such Act or law be introduced into manufactured, processed or imported in compliance with all requirements of the Toxic Substance Control Act of 1976. Vendor agrees to defend and indemnify City against any claims occasioned by or arising as a consequence of any breach of the warranties of this paragraph 13(c). 14. RIGHT OF 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 PO. Notwithstanding any prior inspections or payments made hereunder by City, all material shall be subject to final inspection and acceptance of 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 or requirements of this PO prior to final inspection, City shall have the right either to reject the material and require Vendor to replace within the delivery schedule or to accept it with an adjustment in price, all at the expense of Vendor, including any transportation and handling cost. 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 PO, City may (I) replace or correct such material and charge vendor with the expense incurred thereby, or (II) cancel this PO 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. 15. SALES TAX: No sales tax or use tax shall be included or added to prices of materials on the order. The City is tax exempt from state and local taxes. 16. QUALITY: The City will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified. 17. SAFETY INFORMATION: All chemicals, equipment and materials proposed and/or used in the performance of the PO must conform to the standards required by the Occupational Safety and Health Act of 1970. Vendors must furnish Safety Data Sheets (SDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery. 18. PACKING AND SHIPMENT: Unless otherwise specified, the price includes the costs of boxing, crating, handling, damage claims, carting, drayage, storage, or other packing requirements. Unless otherwise specified, all material shall be packaged, marked and otherwise prepared for shipment in a manner which is (I) in accordance with good commercial practice, (II) acceptable to common carriers for shipment at the lowest rate for the particular material and in accordance with I.C.C. regulations, and (III) adequate to insure safe arrival of the material at the named destination. Vendor shall mark all containers with necessary lifting, handling and shipping information and also purchase order numbers, date of shipment and the names of the consignee and consignor. An itemized packaging sheet showing the purchase order number must accompany each shipment unless otherwise specified. No partial or complete delivery shall be made hereunder prior to the date or dates shown without prior written consent of the City. 19. STATION OF WORK: The Vendor shall provide and furnish at its own proper cost and expense all materials, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to provide services in strict accordance with the conditions and prices stated in the PO and applicable documents. 20. INSURANCE: The Vendor shall obtain, at Vendor's own expense, all required insurance as specified below. Deviations from the requirements listed below must be submitted to and approved by the City. At a minimum, the City, its officers, agents and employees shall be listed as "Additional Insureds" on General and Automobile Liability, and other insurance policies as required. a. Commercial General and Automobile Liability insurance must cover bodily injury, property damage and personal injury with limits of no less than \$1,000,000 per

occurrence. Liability insurance must be of the occurrence form. b. Worker's Compensation coverage must be provided, as statutorily required for persons performing work under the PO. Vendor shall carry Employer's Liability coverage with limits of at least \$500,000. Vendor shall require any subcontractor hired by the Vendor to carry Workers' Compensation and Employer's Liability coverage. c. Certificate of Insurance: At the City's discretion, the City may request from any vendor providing services, a certificate of insurance as proof of required coverages. If requested, the COI shall be provided to: City of Brighton Procurement and Contracts Division, 500 South 4th Avenue, Brighton, CO 80601. d. Professional Liability or other insurance coverage as required. 21. RESPONSIBILITY FOR PAYMENT OF DAMAGES: Nothing contained in these insurance requirements shall limit the Vendor's responsibility for damages resulting from Vendor's operations under this contract. 22. INDEMNITY: The Vendor hereby releases and agrees to indemnify, defend and save harmless the City and its officers, employees and agents from and against all claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by and on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this Contract and their officers, employees and agents arising out of or connected with, in any manner, directly or indirectly, the Vendor's operations. Indemnification shall be in addition to the warranty obligations of the Vendor. 23. STATUS OF VENDOR: The Vendor shall perform all work under this Contract as an independent Vendor and not as an agent or employee of the City. The Vendor shall not represent that Vendor is an employee or agent of the City in any capacity. 24. OPEN RECORDS REQUESTS: The City is obligated to comply with the Colorado Open Records Act, C.R.S. § 24-72-200.1 et seq. ("CORA"), which may require the City to disclose this PO, all or a portion of communications relating to the PO, any transaction under the PO, and other related matters. Vendor shall be responsible for clearly identifying information that is reasonably considered proprietary. Vendor has been advised to familiarize itself with CORA. Any confidentiality provisions in any PO documents are subject to the provisions of CORA. 25. NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing contained in this PO shall be construed as a waiver of any of the immunities, limitations, privileges, rights, procedures, or requirements contained in the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

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