

HORIZON CITY

PURCHASE ORDER TERMS AND CONDITIONS

Following are the standard terms and conditions that apply to contracts entered into with the Town of Horizon City through the initiation of a Purchase Order, unless otherwise noted on the Purchase Order.

1. INVOICES AND PAYMENTS

- A. The Contractor will submit invoices, in single copy, on each contract after delivery or completion of services, unless otherwise provided in the quote or solicitation.
- B. Invoices will be itemized, including serial numbers; transportation charges, if any, will be listed separately.
- C. Invoices will reflect the bid number and any purchase order number.
- D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
- E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- F. A copy of the bill of lading and the freight waybill when applicable will be attached to the Invoice.
- G. Payment will not be due until the above instructions are submitted after delivery and acceptance.
- H. Payment will be made in the manner required under the Texas Prompt Payment Act, unless otherwise stated in the solicitation.
- I. Mail invoices to the Town of Horizon City, ATTN: Accounts Payable, 14999 Darrington Road, Horizon City, Texas 79928.
- J. Contractor shall advise the Accounts Payable Section of any changes in its remittance addresses.

2. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Worker's Compensation Program.

3. PROVISIONS APPLICABLE TO THE PROVISION OF SERVICES

- A. The Contractor shall have the full and direct responsibility for the performance and completion of the work under this contract and for any act or neglect of the Contractor. The Contractor shall provide an adequate staff for the coordination and expediting of his work. Contractor shall keep any work and storage areas related to the provision of work or services under this contract, free of accumulations of waste materials, rubbish, trash and debris.
- B. Unless otherwise provided in the bid or solicitation, the Contractor shall provide and pay

for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

C. The Contractor for himself or any of his subcontractors shall pay all indebtedness which may become due to any person, firm or corporation having furnished labor, material or both in the performance of this contract and no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds held by the City in connection with the work.

4. PROVISIONS APPLICABLE TO A PROCUREMENT OF GOODS

A. Contractor to Package Goods. The Contractor will package goods according to good commercial practice. The Contractor will bear cost of packaging unless otherwise provided. Goods will be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. The City's count or weight will be final and conclusive on shipments not accompanied by packing lists.

B. Shipment Under Reservation Prohibited. The Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

C. Delivery Terms and Transportation Charges. F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; the City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided the City will have the right to designate what method of transportation will be used to ship the goods.

D. Title and Risk of Loss. The title and risk of loss of the goods will not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery.

E. Right of Inspection. The City will have the right to inspect the goods at delivery before accepting them.

F. No Replacement of Defective Tender. Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and the Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Contractor may reasonably notify the City of his intention to cure and may then make a conforming tender within the contract time but not afterward.

G. Place of Delivery. The place of deliver will be as set forth in the Solicitation. The terms of this contract are "no arrival, no sale."

5. WARRANTY-PRICE

A. The price to be paid by the City that will be contained in the Contractor's bid which the Contractor warrants to be no higher than the Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, the City may cancel this contract without liability to

Contractor for breach or Contractor's actual expense.

B. If during the life of the contract, the Contractor's net prices to other customers for items are reduced below the prices contained herein, it is agreed that the benefits of such reduction shall be extended to the City.

C. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

6. WARRANTY-PRODUCT

Unless otherwise expressly provided in the contract drawings, if any, or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The designee of the Mayor shall judge and determine the Contractor's compliance with these requirements.

The Contractor warrants to the City that all materials and equipment furnished under this contract shall be new unless otherwise specified in the contract documents; and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the contract documents.

7. SAFETY WARRANTY

Contractor warrants that the product sold to the City will conform to the standards promulgated by the US Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the product does not conform to OSHA standards, the City may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by the City will be at the Contractor's expense.

8. INDEMNIFICATION

The Contractor or his insurer will INDEMNIFY, DEFEND AND HOLD the City and all of its officers, agents and employees, including any member of its governing body, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE OR LOSS OF PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RESULTING FROM CONTRACTOR'S WORK AND/OR ACTIVITIES CONDUCTED IN CONNECTION WITH OR INCIDENTAL TO THIS CONTRACT AND FROM ANY LIABILITY ARISING OUT OF OR RESULTING FROM THE INTENTIONAL ACTS OR NEGLIGENCE, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS,

EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.

With respect to the above INDEMNITY, CONTRACTOR OR HIS INSURER WILL PAY ALL JUDGMENTS FINALLY ESTABLISHING LIABILITY OF THE CITY IN ACTIONS DEFENDED BY CONTRACTOR PURSUANT TO THIS ARTICLE ALONG WITH ALL ATTORNEY'S FEES AND COSTS INCURRED BY THE CITY, INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY CONTRACTOR OR HIS INSURER, AND PREMIUMS ON ANY APPEAL BONDS. THE CITY, AT ITS ELECTION, WILL HAVE THE RIGHT TO PARTICIPATE IN ANY SUCH NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST.

It is further agreed with respect to the above INDEMNITY, THAT CITY AND CONTRACTOR WILL PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY EVENT COVERED WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, CONTINGENTLY OR OTHERWISE, AFFECTS OR MIGHT AFFECT THE CONTRACTOR OR CITY, AND CITY SHALL HAVE THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS; THE INDEMNITY HERE SHALL SURVIVE THE TERMINATION OF THE CONTRACT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK ON THE PROJECT. THE CITY WILL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO THE CONTRACTOR'S PROPERTY FROM ANY CAUSE.

9. INSURANCE

When specified in the solicitation or request for bids, Contractor, for the duration of this contract, shall carry in a solvent company authorized to do business in the State of Texas and satisfactory to the City, comprehensive general liability insurance in the following amounts:

- \$500,000.00 – Per Occurrence
- \$500,000.00 – General Aggregate
- \$500,000.00 – Products/Completed Operations-Occurrence & Aggregate

The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work or products, with evidence of same filed with Planning Director or her designee. With respect to the above-required insurance, the Town of Horizon City and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

Notices and Certificates required by this clause shall be provided to:

Town of Horizon City
Planning Director

14999 Darrington Road
Horizon City, Texas 79928
Please refer to Bid Number and Title in all correspondence.

10. ASSIGNMENT-DELEGATION

No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of the city. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

11. INTERPRETATION-PAROL EVIDENCE

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

12. WAIVER

No right or interest arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

13. COMPLIANCE WITH LAWS - GOVERNING LAWS

This contract shall be governed by the laws and court decisions of the State of Texas, and legal venue for any court action filed pertaining to this contract shall exclusively lie in El Paso County, Texas. In any such proceeding brought to enforce the terms of this contract, the City shall be entitled to attorney's fees, court costs, expert witness fees and consultant's fees in the event the City prevails in said proceeding.

The Contractor shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

The Contractor shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions.

14. RIGHT TO ASSURANCE

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as anticipatory repudiation of the contract.

15. TERMINATION

A. Termination for Convenience. The City may terminate this contract, in whole or in part,

at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

B. Termination for Default. If the Contractor fails to comply with any provision of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this contract.

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Planning Director describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this contract as of such date.

C. Additional Remedies. If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to a buyer pursuant to the UNIFORM COMMERCIAL CODE including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

16. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

If the Planning Director determines that Contractor's default constitutes an immediate threat to the health or safety of City employees or members of the public she may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, the City shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the contract price from Contractor as damages. The City may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of the City to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

17. FORCE MAJEURE

In the event any party to this contract is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this contract, excluding the obligation to make the payments required under this contract, then the obligations of such party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure," as used herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or damage to machinery or equipment, which are not within the control of the party claiming such inability and such problem could not have avoided by the exercise of due diligence and care. It is understood and agreed that any force majeure shall be remedied with all reasonable dispatch.

18. SERVICE OF NOTICES

The City and the Contractor shall each designate addresses where all notices, directions or other communication may be delivered, or to which they may be mailed. Unless otherwise designated, notices to the Contractor shall be directed as set forth in the bid or solicitation.

Notices to the City shall be directed to:

Town of Horizon City
ATTN: Planning Director
14999 Darrington Road
Horizon City, Texas 79928

Actual delivery of any such notice, direction or communication to the aforesaid places, or depositing it in a postpaid wrapper addressed thereto in any post office regularly maintained by the United States Postal Service shall be conclusively deemed to be sufficient service thereof upon the above persons as of the date of such delivery or deposit.

The designated addresses may be changed at any time by an instrument in writing executed by the party changing the addresses and delivered to the other party.

Nothing herein contained shall, however, be deemed to preclude or tender inoperative the service of any notice, direction or communication upon the above parties personally, or, if the Contractor be a corporation, upon any officer or director thereof.

19. CONFLICT OF INTEREST

Contractor certifies that he has not and shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City.

20. ADVERTISING

Contractor will not advertise or publish, without the City's prior consent, the fact that the

City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

21. AVAILABILITY OF FUNDS

The awarding of this contract is dependent upon the availability of funding. In the event that funds do not become available, the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty or removal charges incurred by the City.