



**CITY OF ROCKVILLE
MARYLAND**

PURCHASE ORDER AND MASTER AGREEMENT TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS** The terms and conditions of this document govern in event of conflict with any terms of the bidder's proposal, the terms and conditions of a contract being used for a cooperative purchase, or which the City is riding, and are not subject to change by reasons of written or verbal statement by the contractor unless accepted in writing. Words and abbreviations which have well known technical, or trade meanings are used in accordance with such meanings.
2. **CONTRACT** in these terms and conditions, the word "**Contract**" means the Agreement pursuant to which the City is issuing this Purchase Order. This includes any cooperative purchase agreement, rider contract, master agreement, or contract issued pursuant to a request for purchase or invitation for bid or other agreement as authorized by Chapter 17 of the Rockville City Code.
3. **TAX EXEMPTION** The City is exempt from the payment of any federal excise or any Maryland sales tax.
4. **MAYOR AND COUNCIL** Mayor and Council of Rockville is the legal name for the City of Rockville. When the term "**City**" is used in this Purchase Order or related Contract it means Mayor and Council of Rockville.
5. **INTERPRETATION** Any questions concerning terms, conditions and definitions of the Purchase Order or the Contract under which the City is issuing the Purchase Order, shall be directed in writing to the Purchasing Agent. The Contractor shall take no advantage of any error or omission in the contract documents and the Purchase Order.
6. **BRAND NAME OR EQUAL** Identification of an item by manufacturer's name, trade or brand name, or catalog number is for information and establishment of a quality level desired and is not intended to restrict competition. Contractors may offer any brand which meets or exceeds the specification, unless 'brand name only' is specified. The City reserves the right to accept or reject items offered as an equal.
7. **EXECUTION OF AGREEMENT** Subsequent to award and within 15 calendar days after the prescribed forms are presented to the Contractor, the Contractor shall execute and deliver to the City the required Agreement and other forms as requested. Failure to execute the Agreement and supply other required forms within 15 calendar days shall constitute a default.
8. **PLACING OF ORDERS** Orders against Contracts will be placed with the Contractor on a Purchase Order (or Procurement Card - Mastercard) executed by the Purchasing Agent or designee. Where Master Agreements have been released by the City, orders may be placed directly with the Contractor by authorized personnel in the ordering Department(s).
9. **MATERIALS** All materials shall be new and free from defects. They shall be standard products of current manufacture. Unless otherwise noted in the Contract documents, the Contractor shall abide by specific manufacturer instructions and recommendations on installation and operation.
10. **DELIVERY** Time is of the essence. All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information: 1) the Purchase Order number, 2) Name of the Article and Stock Number, 3) Quantity Ordered, 4) Quantity Shipped, 5) Quantity Backordered, and 5) Name of Contractor.
11. **TRAVEL TIME**
No payment for travel time to or from the job site shall be charged. Charges begin when the Contractor arrives at each job site and end when the Contractor leaves the job site. The Contract Administrator will verify time records.
12. **BILLING** Unless otherwise specified invoices are to be submitted to the "Bill To" address on the Purchase Order immediately upon completion of the shipment or services.
13. **PAYMENT** Payment shall be made after satisfactory performance of the contract/complete delivery in accordance with all of the provisions of the contract, and upon receipt of a properly completed invoice. The City reserves the right to withhold any or all payment or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modification thereto. The acceptance by the Contractor of the final payment made as stated, shall operate

as and be a release to the City and every officer and agent of the City, from all claims by and liabilities to the Contractor for anything done or furnished for or relating to or affecting the work under the Contract.

14. **TRANSFER OF TITLE** The Contractor warrants that title to all work, materials and equipment will pass to the City upon the receipt of payment by the Contractor, free and clear of all liens, claims, interests or encumbrances.
15. **DEFECTIVE MATERIALS/WORKMANSHIP** Defective or unsuitable materials or workmanship shall be rejected and shall be made good by the Contractor. If the work shall be found to be defective or to have been damaged before final acceptance, the Contractor shall make good such defect in a manner satisfactory to the City, without extra compensation even though said defect or injury may have not been due to any act or negligence of the Contractor.
16. **CHANGES IN QUANTITIES/ITEMS** The City reserves the right to add or delete any item(s) in whole or in part at the City's discretion wherever it deems it advisable or necessary so to do and such changes shall in no way invalidate the contract nor affect the prices quoted for any item or remaining work. Unit prices shall not be increased or decreased regardless of changes in quantity. The City may waive minor differences in specifications provided these differences do not violate the specifications' intent nor materially affect the operation for which the items or services are being purchased.

The Contractor will be paid for the actual amount of authorized work done or material furnished under any item of the Contract. In case any quantity is increased, the Contractor shall not be entitled to any increased compensation over and above the unit price for such item, or any claim for damages on account of loss of anticipated profits should any quantities be decreased. The Contractor shall be responsible for confirming the accuracy of the specified quantities prior to ordering materials or supplies and the City's payment shall be based on the actual quantities incorporated in the work. The quantities must not exceed the Contract specified quantities without specific written authorization of the Purchasing Agent and it is the Contractor's responsibility to obtain said authorization.

17. **DISPUTES** Except as may otherwise be provided by the final Agreement, any dispute concerning a question of fact arising under the agreement signed by the City and the Contractor which is not disposed of by the final Agreement shall be decided by the City Manager. The Contractor shall be afforded the opportunity to be heard and offer evidence in support of the claim. Pending final decision of the dispute herein, the Contractor shall proceed diligently with performance under the Agreement signed by the City and the Contractor. The decision of the City Manager shall be final and conclusive.
18. **EXTRA COSTS** If the Contractor claims that any instructions in the Contract documents or otherwise involve extra compensation or extension of time, a written protest must be submitted to the Purchasing Agent within 10 calendar days after receipt of such instructions and before proceeding to execute the work, stating in detail the basis for objection. No such claim will be considered unless so made.
19. **LEGAL REQUIREMENTS** All materials, equipment, supplies and services shall conform to applicable Federal, State, County and City laws, statutes, rules, and regulations. The Contractor shall observe and comply with all Federal, State, County and City laws, statutes, rules, and regulations that affect the work to be done. The provisions of this Contract shall be governed by the laws of the State of Maryland.
20. **INDEMNIFICATION OF THE MAYOR AND COUNCIL** The Contractor shall indemnify and save harmless the Mayor and Council from all suits, actions and damages or costs, of every name and description to which the Council may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on the part of the Contractor, or subcontractors or agents thereof.
21. **ETHICS REQUIREMENTS** In accordance with the City's financial disclosure and ethical conduct policy and/or ordinances a prerequisite for payment pursuant to the terms of this Contract is that the Contractor may be required to furnish explicit statements, under oath, that the City Manager, and/or any other officer, agent, and/or employee of the City, and any member of the governing body of the City of Rockville or any member or employee of a Commission, Board, or Corporation controlled or appointed by the City Council, Rockville, Maryland has not received or has not been promised directly or indirectly any financial benefit by way of fee, commission, finder's fee, or in any other manner, remuneration arising from directly or indirectly related to this contract, and that upon request by the City Manager, or other authorized agent, as a prerequisite to payment pursuant to the terms of this contract, the Contractor will furnish to the Mayor and Council of the City of Rockville, under oath, answers to any interrogatories to a possible conflict of interest has herein embodied.
22. **TERMINATION FOR CAUSE** The Contract may be cancelled or annulled by the City in whole or in part by written notice of default to the Contractor upon nonperformance or violation of Contract terms.
23. **TERMINATION FOR CONVENIENCE** This Contract may be terminated, in whole or in part, upon written notice to the Contractor when the City determines that such termination is in its best interest. The termination is effective 10 days after the notice is issued, unless a different time is given in the notice. The City is liable only for payment for goods and services delivered and accepted or approved by the City prior to the effective date of the termination.

24. **EMPLOYEES** The Contractor shall employ only competent, skillful persons to do the work, and whenever the Project Manager shall notify the Contractor in writing that any person employed on the work is, in the Project Manager's opinion, incompetent, disobedient, disorderly, discourteous or otherwise unsatisfactory, such person shall be discharged from the work and shall not again be employed for this Contract except with the consent of the Project Manager.
25. **LANGUAGE** If applicable, the Contractor shall appoint one or more crewmembers or supervisors to act as liaison with the City and emergency services personnel. All liaisons shall be fluently bilingual in English and the Contractor's employees' language(s), and at least one liaison shall be present at each work site at all times when any of the Contractor's employees or agents are at the site.
26. **SENSITIVE DOCUMENTS** Sensitive documents (either electronic or hardcopy documents dealing with critical facilities or sensitive information) received from the City must be handled consistent with the terms of non-disclosure required for application. Contractor is responsible to restrict use of sensitive documents to project participants only and shall take appropriate measure to prevent distribution of sensitive document to anyone inside or outside of the Contractor's company except Contractor's project participants. After completion of the project, all sensitive documents remaining in the Contractor's possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner. After such records are no longer needed for record purposes, the records shall be destroyed or returned to the City.
27. **DOCUMENTS, MATERIALS AND DATA** All documents materials or data developed as a result of this contract are the City's property. The City has the right to use and reproduce any documents, materials and data, including confidential information, used in the performance of, or developed as a result of this Contract. The City may use this information for its own purposes, including reporting to state and federal agencies. The Contractor warrants that it has title to or right to use all documents, materials or data used or developed in connection with this contract. The Contractor must keep confidential all documents, materials and data prepared or developed by the Contractor or supplied by the City.
28. **IMMIGRATION REFORM AND CONTROL ACT** Contractor warrants that it does not and shall not hire, recruit or refer for a fee, for employment under the Contract, an individual knowing the individual is an unauthorized individual and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 ("the Act"), including but not limited to any verification and record keeping requirements. Contractor further assures the City that, in accordance with the Act, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or person intending to become a citizen, because of such individual's citizenship status.
29. **EQUAL EMPLOYMENT OPPORTUNITY** The Contractor will not discriminate against any employee or applicant for employment because of age (in accordance with applicable law), ancestry, color, national origin, race, ethnicity, religion, disability, genetics, marital status, pregnancy, presence of children, gender, sexual orientation, gender identity or expression, or veteran status. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated fairly and equally during employment with regard to the above. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, layoff or termination, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractors must also include the same nondiscrimination language in all subcontracts.
- If the Contractor fails to comply with nondiscrimination clauses of this Contract or fails to include such Contract provisions in all subcontracts that subcontractors will not discriminate against any employee or applicant for employment in the manner described above, this contract may be declared void AB INITIO, cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts with the City of Rockville. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Contractor will permit access to the Contractor's books, records, and accounts. If the City Manager concludes that the Contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.
30. **PERMITS AND REGULATIONS** Unless stipulated elsewhere in these specifications, the Contractor shall be responsible for obtaining and paying for all applicable permits. Where signatures of the City are required in connection with the obtaining of such permits, certificates, etc., the Contractor shall prepare the proper paperwork and present it to the City for signature. City of Rockville Permit fees shall be waived. If the Contractor ascertains at any time that any requirement of this Contract is at variance with applicable laws, ordinances, regulations and/or building codes, notification to the Project Manager shall be made immediately and any necessary adjustment to the contract shall be made. Without proper notice to the Project Manager, the Contractor shall bear all costs arising from the performance of work the Contractor knows to be contrary to such laws, ordinances, etc.
31. **SERVICE OF NOTICES** The mailing of a written communication, notice or order, addressed to the Contractor at the business address filed with the City, or to the Contractor's office at the site of the work shall be considered as sufficient

service upon the Contractor of such communication, notice or order; and the date of said service shall be the date of such mailing. Written notice shall also be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended if delivered or sent by registered or certified mail to the last known address.

32. **PATENT RIGHTS** Whenever any article, materials, equipment, process, composition, means, or things called for by these specifications is covered by letters of patent or copyright, the Contractor must secure, before using or employing such article, material etc., the assent in writing of the Owner or Licensee of such Letters of Patent or copyright and file the same with the City.

The said assent is to cover not only the use, employment, and incorporation of said article, material, equipment, process, composition, combination, means, or thing in the construction and completion of the work but also the permanent use of said article, material, etc., thereafter by or on behalf of the City, in the operation and maintenance of the project for the purposes for which it is intended or adapted. The Contractor shall be responsible for any claims made against the City, its agents and employees or any actual or alleged infringement of patents by the use of any such patented articles, etc., in the construction and completion of the work, and shall save harmless and indemnify the City, its agents and employees from all costs, expenses, and damages, including Attorney's fees which the City may be obligated to pay by reason of any actual or alleged infringement of patents used in the construction and completion of the work herein specified.

33. **ABANDONMENT OF OR DELAY IN WORK** If the work under the Contract shall be abandoned by the Contractor, or if at any time the City shall be of the opinion and shall so certify, in writing, to the Contractor, that the performance of the contract is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the contract or is executing the same in bad faith or if the work is not fully completed within the time specified for its completion, together with such extension of time as may have been granted, the City by written notice, may order the Contractor to discontinue all work there under, or any part thereof, within the number of days specified on such notice. At the expiration of said time the Contractor shall discontinue the work, or such part thereof, and the City shall have the power, by Contract, or otherwise, to complete said work and deduct the entire cost thereof from any monies due or to become due the Contractor under the Contract. For such completion of work the City may, for itself or its Contractor, take possession of and use or cause to be used any or all materials, tools, and equipment found on the site of said work. When any part of the Contract is being carried on by the City, as herein provided, the Contractor shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as not to interfere with the City's workmen.

34. **SUBLETTING OR ASSIGNING OF CONTRACT** The City and the Contractor each bind themselves, their partners, successors, assigns and legal representatives of such other parties in respect to all covenants, agreements, and obligations contained in the contract documents. Neither party to the Contract shall sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of the work provided for therein, or of the party's right, title or interest therein to any person, firm or corporation without the written consent of the other party, nor shall the Contractor assign any monies due or to become due hereunder without the previous written consent of the City.

35. **SUBCONTRACTING** When allowed, Contractors who intend to subcontract any portion of the work including delivery, installation or maintenance will submit to the City prior to the start of work: 1) a description of the items to be subcontracted, 2) all subcontractor names, addresses and telephone numbers and 3) the nature and extent of the work utilized during the life of the Contract. This does not relieve the Contractor from the prime responsibility of full and complete performance under the contract. There shall be no contractual relationship between the City and any subcontractor.

36. **NO WAIVER OF CONTRACT** Neither the acceptance by the City nor any order, measurement, certificate, or payment of money, of the whole or any part of the work, nor any extension of time nor possession taken by the City shall operate as a waiver of any portion of the Contract, or any right to damage therein provided. The failure of the City to strictly enforce any provision of this Contract shall not be a waiver of any subsequent breach of the same or different nature.

37. **MEASUREMENT OF WORK AND MATERIAL** The work and material to be paid for will be measured and determined by the City according to the specifications and drawings. No allowance will be made for any excess above the quantities required by the specifications and drawings on any part of the work, except where such excess material has been supplied or work done by order of the City and in the absence of default or negligence on the part the Contractor. Should the dimensions of any part of the work or of the materials be less than those required by the drawings or the directions of the City, only the actual quantities placed will be allowed in measurement.

38. **CONTINGENT ITEMS & QUANTITIES** Items and quantities identified as being contingent are provided in the Contract for use when and as directed by the City. These items are established for the purpose of obtaining a bid price. The quantities for these contingent items may be increased or decreased without any adjustment to the contract unit price bid or the contingent items may be deleted entirely from the contract by the City. The Contractor shall submit no claim against the City for any adjustment to the Contract unit price bid, should the contingent items be increased, decreased or eliminated entirely. Payment for any contingent items used will be made on the basis of the quantities as actually measured and as specified in the Specifications.

39. **WARRANTIES AND GUARANTEES** Unless a longer period is stated in the Contract, the Contractor shall warrant and guarantee the work required under this Contract for a period of 12 months from the date of Final Acceptance. The Contractor warrants and guarantees to the City, that goods, materials, services, and equipment furnished under the Contract shall be of good quality and the goods and materials new unless otherwise required or permitted by the Contract documents, that all work will be in accordance with the Contract documents, and that all work will be of good quality, free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor's obligation to perform and complete the work in a workmanlike manner, free from faults and defects and in accordance with the Contract documents shall be absolute. The Contractor shall remedy, at the Contractor's own expense, and without additional cost to the City, all defects arising from either workmanship or materials, as determined by the City, or City's representative. The obligations of the Contractor under this Paragraph shall not include normal wear and tear under normal usage.

If the Contractor does not, within 10 days after notification from the City, signify the intent in writing or in action to correct work, as described above, then the City may proceed with the work and charge the cost thereof to the account of the Contract as herein before provided.

Warranty documents shall be furnished by the Contractor and shall be delivered to the City before final payment is made.

INSURANCE REQUIREMENTS

Prior to the execution of the Contract by the City, the Contractor must obtain at their own cost and expense and keep in force and effect during the term of the contract including all extensions, the following insurance with an insurance company/companies licensed to do business in the State of Maryland evidenced by a certificate of insurance and/or copies of the insurance policies. The Contractor's insurance shall be primary.

The Contractor must submit to the Purchasing Division, 111 Maryland Avenue, Rockville, MD 20850 a certificate of insurance prior to the start of any work. In no event may the insurance coverage be less than shown below. Unless otherwise described in this contract, the successful contractor and subcontractors will be required to maintain for the life of the contract and to furnish the City evidence of insurance as follows:

MANDATORY REQUIREMENTS FOR INSURANCE

Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, consultants, agents and employees and any insurance or self-insurance maintained by the City, shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

Type of Insurance	Amounts of Insurance	Endorsements and Provisions
1. Workers' Compensation 2. Employers' Liability	Bodily Injury by Accident: \$100,000 each accident Bodily Injury by Disease: \$500,000 policy limits Bodily Injury by Disease: \$100,000 each employee	Waiver of Subrogation: WC 00 03 13 Waiver of Our Rights to Recover From Others Endorsement – signed and dated.
3. Commercial General Liability a. Bodily Injury b. Property Damage c. Contractual Liability d. Premise/Operations e. Independent Contractors f. Products/Completed Operations g. Personal Injury	Each Occurrence: \$1,000,000	City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage. CG 20 37 07 04 and CG 20 10 07 04 forms to be both signed and dated.
4. Automobile Liability a. All Owned Autos b. Hired Autos c. Non-Owned Autos	Combined Single Limit for Bodily Injury and Property Damage - (each accident): \$1,000,000	City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage. Form CA20 48 02 99 form to be both signed and dated.
5. Excess/Umbrella Liability	Each Occurrence/Aggregate: \$1,000,000	City to be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.
6. Professional Liability	Each Occurrence/Aggregate:	

	\$1,000,000	
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Alternative and/or additional insurance requirements, when outlined under the special provisions of this Contract, shall take precedence over the above requirements in part or in full as described therein.

POLICY CANCELLATION

No change, cancellation or non-renewed shall be made in any insurance coverage without a 30-day written notice to the City Purchasing Division. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments and cessation of on-site work activities until a new certificate is furnished.

ADDITIONAL INSURED

The Mayor and Council of Rockville, which includes its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on the Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods, and services provided under this Contract. Additionally, The Mayor and Council of Rockville must be named as additional insured on the Contractor's Automobile and General Liability Policies. Endorsements reflecting the Mayor and Council of Rockville as an additional insured are required to be submitted with the insurance certificate.

SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

CERTIFICATE HOLDER

The Mayor and Council of Rockville
(Purchase Order # or Contract #, title of services)
City Hall
111 Maryland Avenue
Rockville, MD 20850