



## ***PURCHASE ORDER TERMS AND CONDITIONS***

The following terms and conditions shall apply to, and are incorporated into, the transaction(s) described in the accompanying purchase order, as well as any amendments and exhibits thereto ("Purchase Order" or "Order"), issued by the City of Greeley ("CITY"), a Colorado home rule municipality, as buyer, to the entity shown as the vender or supplier stated on the Order ("SUPPLIER"), as seller. CITY and SUPPLIER may each be referred to as a "PARTY" and collectively as the "PARTIES." Whenever a term defined in the Colorado Uniform Commercial Code ("UCC") is used herein, the definition contained in the UCC shall control.

### **1. Definitions.**

- a) "EFFECTIVE DATE" is the date that SUPPLIER manifests its acceptance of the ORDER pursuant to paragraph 3.
- b) "GOODS" shall mean the merchandise, material, wares, and/or other tangible products SUPPLIER is to provide to the CITY by operation of this ORDER.
- c) "SERVICES" shall mean the labor, knowledge, and/or skills SUPPLIER is to provide to CITY by operation of this ORDER.

### **2. Identification of Order.** SUPPLIER's name and CITY's Order numbers must be on all invoices, packages, shipping documents, packaging sheets, quality certifications, and correspondence.

### **3. Acceptance.** This Order shall constitute no more than CITY's offer to purchase GOODS and/or SERVICES from SUPPLIER in accordance with these terms and conditions and any additional terms and conditions expressly set forth or incorporated by express reference on the Order (hereinafter collectively referred to as the "Terms and Conditions"), which when accepted by SUPPLIER shall constitute a binding contract between the parties. Acceptance of this Order is expressly limited to the Terms and Conditions herein, and any terms and conditions proposed by SUPPLIER in SUPPLIER's quotation, invitation, acceptance, acknowledgment, invoice, transmittal or any other document which are different from, conflict with or add to the Terms and Conditions shall be deemed to materially alter the Terms and Conditions and are hereby objected to and rejected by CITY. Acceptance of this Order, including acceptance of the Terms and Conditions herein, shall occur upon the happening of any of the following events: (a) receipt by CITY of an acknowledgment copy of this Order from SUPPLIER without alteration thereto, or (b) receipt by CITY of notification from SUPPLIER that SUPPLIER has commenced performance hereunder or that SUPPLIER intends to deliver or ship the GOODS to CITY or to provide or deliver the SERVICES to CITY. No charges beyond the price specified in the Order shall be allowed except with the written consent of CITY. Acceptance of the GOODS or SERVICES shall not relieve SUPPLIER from any of its obligations and warranties hereunder.

### **4. Sale of Goods or Services and Payments.**

- a) GOODS: SUPPLIER shall sell to CITY, and CITY shall purchase from SUPPLIER the GOODS set forth in the ORDER.
  - i. SUPPLIER shall provide the GOODS in the quantities and at the prices called for by the Order. Any GOODS delivered in excess of the amount stated in the Order shall be returnable at SUPPLIER's expense, provided, however, that CITY shall not be required to return such excess nor shall CITY be liable for the care of any excess or for any damage resulting to such excess. CITY's count shall be accepted as correct as to the quantity it received. SUPPLIER represents that the price charged (exclusive of transportation or shipping charges) is the lowest price charged by SUPPLIER to other customers in substantially similar transactions. Any price reductions made subsequent to placement



of this Purchase Order, but prior to the CITY's acceptance of the delivered items, will be applicable to this Purchase Order.

- ii. SUPPLIER's invoice to CITY shall include all applicable taxes resulting from this Purchase Order except as set forth herein. Such taxes shall not include taxes based on SUPPLIER's income. CITY represents that it is a government entity and is exempt from sales and use taxes in the State of Colorado and, therefore, at least with respect to sales in Colorado, invoices should not include sales or use taxes. For sales of GOODS between within the State of Colorado, CITY's sales and use tax exemption certificate number is **98-03320**.
  - iii. Excepted as otherwise provided in the Order, SUPPLIER shall pack, mark and prepare all shipments to meet the carrier's requirements at SUPPLIER's expense. No charges to CITY shall be allowed for packing, cartage, unloading, assembling or installation unless specified on the face of the Order.
  - iv. GOODS shall be delivered to CITY on or before the date specified for delivery in the ORDER. EXCEPT AS OTHERWISE PROVIDED ON THE FACE HEREOF, THE GOODS SHALL BE DELIVERED F.O.B. CITY'S DELIVERY LOCATION DESIGNATED ON THE FACE HEREOF. ITEMS PURCHASED F.O.B. SUPPLIER'S SHIP POINT SHALL BE SHIPPED IN THE LEAST EXPENSIVE MANNER BY SUPPLIER, UNLESS OTHERWISE INSTRUCTED BY CITY. Shipment and delivery shall be made in accordance with the instructions set forth on the face of the Order. Absent such instructions, delivery shall be made within ten (10) days of the date of this Purchase Order. SUPPLIER shall declare replacement value on all parcel post shipments and shall effect transit insurance on all other shipments. SUPPLIER shall be responsible for asserting claims for loss or damage against the carrier(s) involved.
  - v. Title and risk of loss shall pass from SUPPLIER to CITY upon receipt by CITY at CITY's delivery location designated on the face of the Order.
  - vi. All GOODS sold to CITY are "sale on approval" and may be returned to SUPPLIER at the convenience of CITY any time before use at SUPPLIER's sole risk and expense, or at any time if the GOODS are nonconforming or defective. City will notify SUPPLIER within a reasonable time of its election to return the GOODS. If any requirements of the Order are not complete, SUPPLIER shall promptly rectify all items. When the CITY indicates acceptance of the work, SUPPLIER may requisition or invoice final payment of ORDER price.
- b) SERVICES. SUPPLIER shall provide the SERVICES described on the ORDER.
- i. SUPPLIER shall provide the SERVICES: (a) in a timely, workmanlike, and professional manner; (b) using personnel of requires skill, experience and qualifications; and (c) in accordance with the highest professional standards in SUPPLIER's field.
  - c) Supplier's invoice shall be payable Net 30 Days from the invoice date. The parties agree that SUPPLIER shall not invoice the CITY, and that the CITY shall not be obligated to pay, any invoices submitted more than 180 days after delivery of the GOODS or performance of the SERVICES which are the subject of the invoice.
  - d) CITY certifies that, subject to paragraph 15, an amount of money equal to or greater than the ORDER amount has been appropriated and budgeted for the GOODS or SERVICES.
5. Term and Termination. The ORDER shall commence on the EFFECTIVE DATE and shall continue thereafter until delivery of and final payment for the GOODS or completion of and final payment for the SERVICES, unless earlier terminated. CITY, in its sole discretion, may terminate the ORDER in whole or in part, at any time without cause, and without liability except for payment for GOODS delivered or SERVICES rendered, and reimbursement for authorized expenses incurred, prior to the termination date, effective upon SUPPLIER's receipt of written notice by CITY. Either Party may terminate this ORDER, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party breaches this ORDER, and such breach is incapable of cure or is not cured within a reasonable time.
6. Purchasing Ordinance. This Order is made in accordance with Title 6, Chapter 6 of the Greeley Municipal Code,



which law is incorporated by reference as if fully set forth herein. Time is of the essence hereof.

7. Uniform Commercial Code. The Uniform Commercial Code, Title 4 of the Colorado Revised Statutes, shall prevail as the basis for contractual obligations between the SUPPLIER and CITY for the purchase of GOODS to the extent any terms and conditions are not specifically stated in this ORDER.
8. Non-Exclusivity. Unless specially agreed to by the parties herein, this Purchase Order is a non-exclusive offer by CITY to buy goods from SUPPLIER. CITY is free to contract with any other supplier for products or services that are similar or identical to the goods described in the Order.
9. Compliance with Laws. SUPPLIER warrants that it is in compliance with all applicable federal, state and local laws, regulations and standards relating to the terms of this Purchase Order. SUPPLIER warrants that no product or service provided hereunder infringes, separately or in combination with other materials or processes, any intangible rights of others.
10. Indemnification. Notwithstanding any terms or conditions of this Purchase Order to the contrary, SUPPLIER shall indemnify, defend, and hold harmless CITY from and against any and all liability, loss, damage, expense, claims and demands of every kind and character, including reasonable attorneys' fees, arising out of or related to any claim, suit, action, or proceeding (a) involving the death of or injury to any person or damage to tangible property caused by Seller's breach of the terms of this ORDER, or (b) alleging or asserting in whole or in part (i) any failure of the GOODS to comply with any term of the ORDER, or (ii) any negligent act or omission of SUPPLIER, its agents, subcontractors and suppliers in the performance of SERVICES or the provision of GOODS under this Order. Such duty to indemnify and save harmless CITY shall be for an amount represented by the degree or percentage of negligence or fault attributable to SUPPLIER. SUPPLIER's indemnification obligation shall not be construed to extend to any injury, loss, or damage caused by CITY'S own negligence.
11. Warranties.
  - a) For GOODS, SUPPLIER warrants to CITY:
    - i. For a period of one (1) year after acceptance of the GOODS by CITY that the GOODS (or for such longer time as may be stated on the ORDER) will be free from material defects, operate within the requirements of the performance specifications stated in the ORDER, and be fit for the purpose for which the GOODS are intended;
    - ii. Upon delivery to CITY, the goods shall be free and clear from any lien, encumbrance, security interest, or other adverse interest;
    - iii. VENDOR, in instances of work performed or material or equipment furnished for which warranties are required from third parties by the ORDER, shall procure such warranties and deliver them to CITY upon completion of the work. Such warranties will in no wise lessen VENDOR's responsibilities under the ORDER; and
    - iv. The GOODS conform to the requirements of this Purchase Order, including any drawings or specifications herein incorporated and any samples furnished by CITY or SUPPLIER.
  - b) For SERVICES, SUPPLIER warrants to CITY:
    - i. From the Effective Date and for a period of one (1) year after completion of the SERVICES (or for such longer period as may be stated on the ORDER, that the SERVICES will be performed in a timely, efficient, professional and workmanlike manner, all SUPPLIER'S personnel assigned to perform the SERVICES shall have the necessary skill, background, and training reasonably commensurate with their level of performance or responsibility; and the SERVICES will be performed in a manner consistent with the standard of care in the industry.
  - c) The warranties provided in this Purchase Order are in addition to all other warranties, expressed or implied, and survive any delivery, inspection, acceptance or payment. All warranties shall run to and be enforceable by CITY, its successors, assigns, clients and third parties injured in person or property by any breach thereof. All warranties run from the date of final acceptance by CITY.



12. City's Right to Take Over Work. If VENDOR should fail to provide the SERVICES properly and diligently, or default in performance of any provision of the ORDER, CITY, after written notice to SUPPLIER and its surety (if any) may, without prejudice to any other remedy CITY may have, dismiss SUPPLIER and complete the work or hire other service providers to complete the work and may deduct the cost of so doing from any unpaid balance of the price due or to become due to SUPPLIER. If the cost of completing the SERVICES is in excess of the unpaid balance of the price, SUPPLIER shall reimburse CITY the cost of such excess, which CITY has paid or will pay. CITY shall have a cause of action at law for the amount of such excess and all costs of prosecution of such action, including attorney's fees.
13. Right to Bar Persons from the Work and Site. CITY reserves the right to bar any person, including employees of SUPPLIER and SUPPLIER's subcontractors, from CITY'S work site. This shall not be treated as a request for the employee's termination but a request that the employee not be assigned to work on CITY'S work site. No increase in time or price is authorized.
14. Independent Contractor. SUPPLIER is, and shall be, in the performance of all work services and activities pursuant to the ORDER, an independent contractor, and not an employee, agent, or servant of CITY. All persons engaged in any of the work, or services performed pursuant to this ORDER shall, at all times and in all places, be subject to SUPPLIER'S sole direction, supervision and control. SUPPLIER shall exercise control over the means and manner in which it and its employees perform the work and, in all respects, SUPPLIER'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of CITY. In SUPPLIER's capacity as an independent contractor, they are not eligible for CITY's Worker's Compensation coverage.
15. Insurance. SUPPLIER shall procure, at its own expense, and maintain for the duration of any work, insurance coverage as set forth below. All insurance policies shall be issued by insurance companies approved to do business in the State of Colorado.
  - a) Workers' compensation insurance as required by state statute, and employers' liability insurance covering all SUPPLIER'S employees acting within the course and scope of their employment.
  - b) Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits of \$1,000,000 each occurrence and \$1,000,000 aggregate
  - c) Product liability insurance with limits of \$1,000,000.
  - d) Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
  - e) Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate.
16. Intellectual Property. Supplier hereby assigns to CITY all rights, including, without limitation, copyrights, patents, trade secret rights, and other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, works of authorship, or trade secrets developed or created by the SUPPLIER, solely or jointly with others, during the course of performing the SERVICES for or on behalf of CITY (collectively, the "Work Product"). Without limiting the foregoing, to the extent possible, all software, compilations and other original works of authorship included in the Work Product will be considered a "work made for hire" as that term is defined in Title 17 of the United States Code. If, notwithstanding the foregoing, SUPPLIER for any reason retains any right, title or interest in or relating to any Work Product, SUPPLIER agrees promptly to assign, in writing and without any requirement of further consideration, all such right, title, and interest to CITY.
17. TABOR. The parties understand and acknowledge that each party is subject to Article X, Section 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the performance of this Order. It is understood and agreed that this Order does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Order to the contrary, all payment obligations of CITY are expressly dependent and conditioned upon the continuing availability of funds beyond the term of CITY'S current fiscal period ending upon the next succeeding December 31. Financial obligations of CITY payable after the current fiscal year are contingent upon funds for



that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of CITY and applicable law. Upon the failure to appropriate such funds, this Order shall be deemed terminated.

18. Disputes. Any dispute arising under this ORDER, which is not disposed of by contract, shall be submitted by SUPPLIER to CITY pursuant to Title 6, Chapter 6 of the Greeley Municipal Code. All disputes shall be decided by CITY, who shall reduce its decision to writing and furnish a copy thereof to SUPPLIER. Pending final decision of a dispute hereunder, VENDOR shall proceed diligently with the performance of this ORDER.
19. Remedies. The rights and remedies under this ORDER are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided in this ORDER.
20. Choice of Law. The internal laws of the State of Colorado shall govern this Purchase Order. If any provision shall be deemed invalid or unenforceable, the parties intend that all other provisions shall remain unimpaired and unaffected thereby. The headings used are for convenience only and shall not affect the construction of this Purchase Order. Weld County, Colorado will be the point of venue for any required litigation resulting from this Purchase Order.
21. No Personal Liability. It is expressly understood and agreed by SUPPLIER that none of THE CITY's covenants, undertakings or agreements herein are made or intended as personal covenants, undertakings or agreements by any of the officials or employees of CITY, and any liability of CITY for damages or nonperformance or otherwise arising under or in connection with this Purchase Order is hereby expressly waived by SUPPLIER against each and every one of the officials and employees of CITY personally and individually, and in such instance SUPPLIER shall look solely to CITY and its assets and not to any individual officials or employees, or any individual official's or employee's assets for discharge of any such liability.
22. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. In addition to other provisions contained herein, all purchases by CITY under a Federal award must contain provisions covering the following, as applicable: [Contract Provisions for Non-Federal Entity Contracts under Federal Awards](#).
23. Force Majeure. In the event either of the parties is unable to perform or is delayed in its performance of a non-monetary obligation hereunder as a result of Force Majeure, the time within such obligation shall be performed shall be extended for a period equal to the amount of time that the Force Majeure event delayed performance, provided that such party makes diligent and continuous efforts to perform, and gives the other party reports at least once a month outlining its efforts to perform. Force Majeure shall be defined for purposes herein as wars, terrorism, explosion, fires, floods, labor disputes, hurricane, restraint of government, governmental acts, injunctions, labor strikes, extraordinary delays in transportation, epidemics, pandemics, earthquakes, adverse severe weather conditions not normally experienced in the area and season, acts of God, other property insurance perils and other events which render a party's performance commercially impracticable.
24. Miscellaneous. This Purchase Order and the rights or duties arising hereunder may not be assigned, nor may the work contemplated be subcontracted without CITY's prior written consent. SUPPLIER shall not use CITY's name, logos or trademarks in any marketing and/or advertising media without prior written approval from CITY. Orders not fulfilled within 6 months from order date are null and void unless otherwise noted in the body of the Purchase Order. This ORDER is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this ORDER. If any term or provision of this ORDER or any portion of a term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this ORDER shall not be affected thereby, and each term and provision of this ORDER and each portion thereof shall be valid and be enforced to the fullest extent permitted by law. In accordance with C.R.S. §8-17-101, all parties contracting with the City of Greeley on public works projects shall employ Colorado labor to perform the work to the extent of not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on this project.