

**PURCHASE ORDER ("PO") TERMS AND CONDITIONS-TRAVIS COUNTY PURCHASING OFFICE**

**(These terms and conditions do not apply to Delivery Orders issued against existing contracts)**

- 1. ACCEPTANCE OF PO:** Seller accepts this Purchase Order by commencing work, by delivering in whole or part any Item to be provided under it or by agreeing to it in writing. By accepting this Purchase Order, Seller agrees to all terms and conditions in it.
- 2. DESCRIPTION OF ITEMS:** Any brand name, catalog or manufacturer's reference used in describing any Item is intended to be restrictive, unless otherwise noted. All Items supplied shall be the latest improved model meeting specifications in production at the time of delivery and shall be delivered completely assembled, adjusted, serviced, and ready for use. Seller warrants that it has adhered to all applicable patents, copyrights, trade or service marks, or other proprietary or intellectual property rights that may exist on Items provided under this PO and Seller indemnifies County against any claims or liability for infringement of those rights arising out of County's use or possession of the Items in accordance with the terms and conditions imposed by Seller on such use or possession.
- 3. VARIATION IN QUANTITY:** County does not permit any variation in the quantity of any Item to be supplied under this PO, unless the variation is stated in this PO and caused by conditions of loading, shipping, packing, or allowances in manufacturing processes.
- 4. DELIVERY:** Seller shall make its best efforts to use recycled boxes, water soluble peanuts, and other environmentally beneficial materials to package Items. Seller shall attach an itemized packing list bearing Delivery, or Purchase Order Number to the outside of every shipping container delivered against this PO. Seller shall deliver all Items Free on Board to final destination, unless otherwise stated in this PO. If the County department receiving Items under this PO does not accept any Items because the Items are not satisfactory, or damaged or do not conform to specifications, Seller is liable for all costs associated with the nonconformance.
- 5. WARRANTY:** County does not waive any implied warranties. In addition, Seller warrants to County that all Items delivered conform to the specifications, drawings, or other descriptions, furnished or incorporated by reference in this PO, and are of merchantable quality, of good workmanship, and free from defects. Seller shall provide copies of applicable warranties, including manufacturers' warranties, to the Purchasing Agent. Seller shall pay for return of defective Items under warranty. Seller certifies that a) it is a qualified, capable, and otherwise eligible business entity, b) it is not in receivership and does not contemplate receivership, c) it has not filed for and is not in a state of bankruptcy, and d) it is not delinquent in paying property taxes to the Travis County Tax Assessor Collector.
- 6. PAYMENT CONDITIONS:** Before any funds are payable under this PO, Seller shall provide County with an IRS Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the IRS regulations. For determining applicability of payment discounts, time begins upon the later of a) satisfactory delivery and acceptance of items and services or b) submission of an invoice that includes at least the PO number, description of Items, quantity, unit price, total per Item and total invoice amount. As authorized by Texas Tax Code section 151.309, Seller shall not include any state or local taxes in the price stated in this PO or any invoice. County pays Seller after satisfactory delivery and acceptance of all items and services and after Seller submits an invoice as described in b) above. County does not make partial payments unless payment terms are specifically stated in this PO. Texas Government Code Chapter 2251 (the "Prompt Payment Act") governs interest on overdue payments. If Seller is delinquent in paying property taxes to the Travis County Tax Assessor Collector at the time of invoicing, Seller assigns any payments due under this PO to the Travis County Tax Assessor-Collector for the delinquent taxes.
- 7. INFORMATION AND REPORTS:** Seller shall provide all information and reports required by the Regulations or directives issued pursuant to them. Seller shall permit access to its books, records, accounts, other sources of information and its facilities as County may determine to be pertinent to ascertain compliance with these Regulations, orders, and instructions. Where any information required of Seller is in the exclusive possession of another who fails or refuses to furnish this information, Seller shall so certify to County, as appropriate, and shall state what efforts it has made to obtain the information.
- 8. NONDISCRIMINATION:**
  - a. Compliance with Regulations: Seller shall comply with the requirements relative to nondiscrimination in Federally-Assisted programs, including Title VI of the 1964 Civil Rights Act (42 USC Section 2000d, et. seq.), and 49 CFR Part 21, both as explained in Federal Transit Administration (FTA) Circular 4702.1A, as they may be amended (the "Regulations") which are herein incorporated by reference and made a part of this PO.
  - b. Nondiscrimination: Regarding the work performed by Seller under this PO, Seller shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Seller shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices.
  - c. Sanctions for Noncompliance: If Seller does not comply with the nondiscrimination provisions of this PO, County shall impose the sanctions that it determines are appropriate, including, but not limited to, withholding of payments to Seller under the PO until Seller complies, or cancellation, termination or suspension of the PO, in whole or in part.
  - d. Incorporation of Provisions: Seller shall include the provisions of sections 7 ("INFORMATION AND REPORTS") and 8 ("NONDISCRIMINATION") in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant to them.
- 9. CERTIFICATION OF ELIGIBILITY:** Seller certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Seller shall include this certification requirement in all subcontracts related to this PO that exceed \$25,000.00.
- 10. OFFICIALS NOT TO BENEFIT:** Seller shall not provide any employee or official of County any share or portion of this PO, or any benefit that may arise from it. Seller shall not provide any gratuity in any form, including entertainment and gifts, to any County employee, official, buyer, or agent to secure this PO or an amendment to it, or any determination about performance under it. County, at its sole discretion, may rescind or terminate this PO if Seller violates this provision.
- 11. COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no one, except its bona fide employees and its commercial selling agencies, has been employed or retained to solicit or secure this PO for a commission, percentage, brokerage, or contingent fee. For breach of this warranty, County may, in its sole discretion, terminate this PO without liability or deduct the full amount of the commission, percentage, brokerage, or contingent fee from the PO price, or otherwise recover the full amount.
- 12. CHANGE OF NAME AGREEMENTS:** If Seller requires a change of name agreement for any reason, Seller shall notify the Purchasing Agent immediately. County does not recognize any change in the Seller's obligations until the Commissioners Court or Purchasing Agent approves the change. Approval modifies this PO to reflect the change.
- 13. SUCCESSORS AND ASSIGNS:** This PO is binding upon and inures to the benefit of County and Seller and their respective successors, executors, administrators, and assigns. Neither County nor Seller may assign, sublet, or transfer its interest in or obligations under this PO without the written consent of the other. However, Purchasing Agent will prepare a modification to allow Seller to assign this PO to a company controlling,

controlled by, or under common control with Seller or to an entity acquiring substantially all of the assets of Seller, provided Seller guarantees the performance of and causes the assignee to assume in writing all obligations of Seller under this PO.

**14. FORCE MAJEURE:** If the performance is interrupted or delayed by any occurrence not within the control of the County or Seller, whether caused by an act of God, war, riot, civil commotion, sovereign conduct, natural disaster, or the conduct of any other person, then the interrupted or delayed party is excused from performance for the time reasonably necessary to remedy the effects of the cause of the interruption or delay.

**15. NON-WAIVER OF DEFAULT:** All rights of County under this PO are specifically reserved and a payment, act, or omission shall not impair or prejudice any remedy or title to County under it. No right or remedy in this PO precludes the exercise of any other right or remedy under it or under any law, except as expressly provided in this PO, and any action taken in the exercise of any right or remedy shall not be deemed a waiver of any other rights or remedies.

**16. MEDIATION:** When mediation is acceptable to both County and Seller, they will use a mutually acceptable mediator, or a mediator appointed by a court of competent jurisdiction. Mediation is conducted in compliance with Chapter 154 of the Texas Civil Practice and Remedies Code. Unless both County and Seller are satisfied with the mediated resolution, that resolution is not a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential in compliance with section 154.073 of the Texas Civil Practice and Remedies Code, unless both County and Seller waive the confidentiality in writing.

**17. ENTIRE AGREEMENT AND MODIFICATION:** This PO contains the entire agreement between the County and Seller relating to the rights granted and the obligations assumed under it. Any prior agreements or representations not expressly stated in this PO are of no force. Only a subsequent modification in writing signed by the Purchasing Agent may change the terms and conditions of this PO. Seller acknowledges that no County official, representative, employee, or agent has any authority, either express or implied, to change this PO, unless the Commissioners Court has expressly granted that person specific authority to do so.

**18. ORDER OF PRECEDENCE:** If any provisions of this PO or referenced documents are inconsistent or conflicting, the following descending order of precedence shall apply: (i) Specifications, (ii) Drawings, (iii) Special Terms and Conditions, (iv) General Terms and Conditions, and (v) Item Description.

**19. INTERPRETATION OF PURCHASE ORDER:**

- a. **General.** In this PO, words are given their ordinary meaning unless the word is connected with and used with reference to a particular trade or subject matter or is used as a word of art, and then the word has the meaning given by experts in the particular trade, subject matter, or art. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular unless expressly provided otherwise. The masculine gender includes the feminine and neuter genders.
- b. **Definitions.** In this PO, the following have the meanings indicated: (i) "County" = Travis County, State of Texas, (ii) "Commissioners Court" = Travis County Commissioners Court, (iii) "IRS" = Internal Revenue Service, (iv) "Item" = any service, equipment, good, or other tangible or intangible property described in this PO, (v) "Purchasing Agent" = Travis County Purchasing Agent duly appointed and acting as agent in administering this Purchase Order, (vi) "Seller" = the entity subject to this Purchase Order and contract from County, and (vii) "Subcontractor" = any entity that Seller relies on for any portion of its performance under this Purchase Order.
- c. **Severability:** If any provision in this PO is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this PO, and this PO shall be interpreted as if the invalid, illegal, or unenforceable provision had not been included.
- d. **Governing Law and Venue:** This PO is governed by and shall be interpreted under the laws of the United States of America and the State of Texas, and all obligations under this PO are performable in Travis County, Texas. Venue for any dispute arising out of this PO lies in the appropriate court in Travis County, Texas.

*(Revised 12-2014)*