

1. **PURPOSE & SCOPE:** Under the authority of the City of Lake Worth's purchasing code and policies, the purpose of this Purchase Order (PO) is to establish terms and conditions for the sale and purchase of commodities and/or services between you (Vendor) and the City of Lake Worth (City). This PO does not establish Vendor as the exclusive source of the items under contract. Unless otherwise stated on this PO, the terms and conditions of this PO shall supersede any terms and conditions in Vendor's bid, quote or other written materials submitted to the City by Vendor.

2. **TERMINATION:** This PO may be terminated in whole or in part by the City at any time by written notice to Vendor. The effective date of termination shall be stated in the notice. If terminated prior to complete delivery and/or acceptance of commodities and/or services, Vendor shall be paid by City for commodities and/or services provided to the date of termination without penalty, indirect costs or expense to the City whatsoever. The City shall be entitled to a right of offset if it determines that the commodities or services delivered are rejected as unsatisfactory; Vendor causes an unreasonable delay in delivery; or, erroneous payments have been made to Vendor.

3. **INVOICING AND PAYMENT:**

(a) Taxes: The City does not pay Federal Excise and State taxes on direct purchases.

(b) Cost and Risk of Loss: Unless specifically agreed to by City in this PO, City terms are "F.O.B. Destination".

(c) Invoicing and Payment: Vendor shall be paid upon submission of one original and one copy of an invoice clearly referencing this PO with a sufficient salient description to identify the commodities and/or services for which payment is requested. The invoice must contain the Vendor's Federal Employer Identification Number. The City's payment terms are "Net Thirty Days" after delivery, inspection and acceptance or final inspection of commodities and/or services. Any other terms of payment must be approved by the City and appear on this PO to be binding upon the City.

(d) Budgeting and Appropriations: The City's performance and obligation to pay under this PO is contingent upon appropriate budgeting and appropriations by the City Commission.

4. **INSPECTION AND ACCEPTANCE OF COMMODITIES:**

(1) For Vendor-installed products, the date of acceptance is the date the City accepts the product as installed and in good working order, as determined by any appropriate acceptance testing, and the City shall certify in writing to the Vendor when the product is accepted (if training or other post-installation services are included in the PO, the acceptance shall be conditional). Until acceptance, risk of loss or damage shall remain with the Vendor.

(2) For City-installed products, the date of acceptance shall be the delivery date. Until acceptance, risk of loss or damage shall remain with the Vendor.

(3) When the City rejects a product, the Vendor shall remove it from the premises within ten days after notification of rejection. If rejected, risk of loss shall remain with the Vendor. If Vendor fails to remove the product within ten days after notification of rejection, the product shall be deemed abandoned by the Vendor and the City shall have the right to dispose of the product as its own property. Vendor shall reimburse the City for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

5. **INSPECTION AND ACCEPTANCE OF SERVICES:** Each phase of services, including quality of work, rendered under this PO is subject to the City's inspection during both the Vendor's operations and after completion of the tasks. When Vendor is satisfied with the completion of the contracted work, and prior to acceptance of any phase, Vendor shall submit a written request for inspection to City. After inspection, City will issue a punch-list of unfinished items or deficiencies as applicable. Once the punch-list is complete, Vendor shall submit written request for final inspection. If contracted work passes final inspection, services will be deemed acceptable.

6. **WARRANTY:** Unless a longer period is provided herein, applicable manufacturer, for the contracted commodities and/or services, Vendor shall provide to the City a one year warranty as follows:

(a) against poor workmanship for all services rendered by Vendor;

(b) for all products, materials or equipment provided by the Vendor in the course of providing services to the City; and,

(c) for all commodities sold to the City.

The warranty period shall begin on the date of acceptance by the City.

7. **INDEMNITY:** The Vendor shall be fully liable for the action of its agents, officers, employees, partners or subcontractors and shall fully indemnify, defend and hold harmless the City and its officers, agents and employees from suit, action, damages and costs of every name and description, including attorney's fees, arising from or relating to personal injury, damage to real or personal property and infringement of a trademark, copyright, patent trade secret or intellectual property, that is alleged to be caused in whole or in part by Vendor, its agents, officers, employees, partners or subcontractors; provided however, that the Vendor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the City, its officers, agents or employees.

8. **COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, rules, codes, ordinances and licensing requirements that are applicable to the

conduct of its business and this PO, including those of federal, State and local agencies having jurisdiction and authority.

9. **WARRANTY OF ABILITY TO PERFORM:** The Vendor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133, Florida Statutes, or on any similar list maintained by any other state or federal government.

10. **DISPUTE RESOLUTION:** Any dispute concerning performance of this PO shall be decided by the City's Director of Finance or his or her designee, who shall reduce the decision to writing and serve a copy on the Vendor. The decision of the Finance Director (or designee) shall be final and conclusive unless within ten days from the date of receipt, the Vendor files an appeal to the City Manager. The decision of the City Manager on the appeal shall be final. Without limiting the foregoing, the exclusive venue of any legal or equitable litigation that arises out of or relates to this PO shall be the appropriate state court in Palm Beach County, Florida; in any such action, Florida law shall apply without reference to conflicts of law principles, and the Vendor waives any right to jury trial that it may have.

11. **MISCELLANEOUS PROVISIONS:**

(a) Independent Contractor: The Vendor, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under this PO the legal status of independent contractor, and in no manner shall they be deemed employees, joint venture, partner, agent, representative or other relationship of the City.

(b) Confidential Data: If during the course of providing the contracted commodities and/or services, either party becomes aware of or comes into possession of certain confidential or proprietary information or documents of the other party, the receiving party shall not use, copy or disclose such information or documents unless required by Florida law or court order.

(c) Insurance: Unless otherwise stated in this PO, the Vendor shall maintain (i) general liability insurance (including coverage for death, bodily injury, products and completed operations liability and property damage) in an amount no less than \$1M/occurrence, \$2M/aggregate; (ii) worker's compensation and employees' liability insurance in compliance with Chapter 440, Florida Statutes; (iii) business automobile liability insurance (occurrence form policy) in an amount of \$500,000/occurrence (combined single limit for bodily injury and property damage); or, as mutually agreed by the City in writing. The City may require that it be named as additional insured on all policies (except Workers' Compensation) and proof of same shall be submitted prior to delivering any commodities or services to the City.

(d) Sovereign Immunity: This PO shall not be construed as constituting a waiver of any rights to sovereign immunity granted to City under the laws and Constitution of the State of Florida.

(e) Entire Agreement: This PO shall constitute the entire agreement between the parties in regard to its subject matter. Neither party has relied on verbal or other statements, inducements or representations in entering into this PO.

(f) Attorney Fees: Except as it relates to indemnification, each party shall pay its own costs in proceeding to interpret or enforce this PO in any dispute.

(g) Severability: If any term or condition of this PO is held invalid or unenforceable, it shall not effect any other term or condition of this PO.

(h) Notice: Any notice required by this PO shall be delivered by hand delivery or certified mail and address to the party to whom such notice is intended to be given as the last known address of the party's place of business.

(i) Assignment: This PO may not be assigned in whole or in part by Vendor without the City's prior written consent.

(j) Waiver: The failure of any party to enforce at any time any of the terms or conditions of this PO shall in no way be construed to be a waiver of any such term or condition or any right of any party thereafter to enforce each and every term and condition of this PO.

(k) Third-Party Beneficiaries: This PO is not intended to nor shall it create any third-party beneficiaries.

(l) Survival: Termination of this PO by the City shall terminate each party's obligations under this PO except for the terms in sections 6, 7 and 10.

(m) Discrimination: Vendor doing business with the City is prohibited from discriminating against an employee or client because of race, color, religion, disability, sex, age, origin, marital status or sexual orientation.

(n) MSDS: If Vendor is delivering any toxic substance as part of this PO, the Vendor must comply with Chapter 442, Florida Statutes, and the order must be accompanied by a Material Safety Data Sheet (MSDS).

(o) Modification: This PO may not be modified unless agreed to in writing by the City's authorized representative.

**CITY SHALL CHECK THE FOLLOWING IF APPLICABLE:**

Longer Warranty is applicable and shall be (define warranty period): \_\_\_\_\_

Insurance is NOT required as stated herein (identify changes): \_\_\_\_\_