

**CITY OF GRAND PRAIRIE
STANDARD TERMS AND CONDITIONS OF PURCHASE ORDER**

- I. ACCEPTANCE:** VENDOR hereby accepts the terms and conditions as identified in this purchase order, vendor quote, and as applicable City contract, City bid documents, Interlocal contract, Interlocal bid documents, Cooperative contract, and/or Cooperative bid documents (collectively the "Contract"). This Purchase Order is binding when it is accepted by VENDOR. VENDOR will be deemed to have accepted this Purchase Order when it (i) sends CITY notice of acceptance in writing, (ii) starts to perform the Services in accordance with the terms of this Purchase Order, and/or (iii) delivers any or all of the Goods covered by this Purchase Order, whichever occurs first. CITY does not agree to any additional terms and conditions purported to be used by VENDOR. Any such additional terms and conditions shall have no force or effect. CITY may withdraw this Purchase Order at any time before it is accepted by VENDOR.
- II. DESCRIPTION OF SERVICES:** VENDOR hereby covenants and agrees to work closely with CITY officials to fulfill the purposes of this contract as outlined in the CITY's purchase order, VENDOR quote, and if applicable CITY bid document, CITY contract, interlocal agency bid document and contract, or Cooperative entity and contract, as applicable.
- III. ORDER OF PRECEDENCE:** The parties agree that should there be any conflict between the terms of the VENDOR quote and this contract the conflict shall be resolved by giving precedence in the following order:
- a. CITY contract / Interlocal agency contract / Cooperative entity contract as referenced above
 - b. CITY bid documents / Interlocal agency bid documents / Cooperative entity bid documents
 - c. CITY purchase order
 - d. VENDOR quote
- IV. PERFORMANCE OF WORK:** VENDOR or VENDOR's associates (which shall include VENDOR's subcontractors, sub-VENDORS, authorized resellers, or affiliates under common control or ownership, or who own a majority interest in VENDOR's business), and employees shall perform all the work called for in this Contract. VENDOR hereby covenants and agrees that all of VENDOR's associates and employees who work on this project shall be fully qualified to undertake same and competent to do the work described in this Contract, and the services performed shall be performed in a good and workmanlike manner, and that the finished product shall be fit for the particular use(s) contemplated by this agreement.
- V. TERM:** This purchase order will be in full force and effect through the expiration date as identified by the City contract or delivery date identified on this purchase order. Purchase order shall terminate upon completion of all requirements for orders placed by said date, unless the parties mutually agree in writing to extend the term of the purchase order through allowable renewal option, or, unless otherwise terminated as provided in Paragraph XVI herein. The parties shall evidence the renewal in writing, with any additional terms set out in the said writing.
- VI. ASSIGNMENT:** VENDOR and the CITY hereby covenant and agree that if this purchase order provides for services, that these services are not to be assigned or sublet in whole or part without the prior written consent of the CITY.
- VII. PAYMENT AND INVOICING:** The CITY shall pay to VENDOR a sum not to exceed those unit prices, or percentage discount from list price where applicable in the submittal for the purchase of services designated herein, and in no event shall total payments exceed the total stated on this purchase order without additional approval. Invoice must be delivered to the attention of the department placing the order. Payments will be made as work is completed and certification by the CITY that the work is performed in a good and workmanlike manner within 30 days of certification or receipt of invoice, whichever is later. VENDOR will render invoices that reflect the items and unit pricing stated on this purchase order. All invoicing must reference the purchase order number provided by the CITY.
- VIII. MODIFICATIONS:** Changes, modifications, waivers, additions or amendments to the terms and conditions of this purchase order shall be binding on the CITY only if in writing and signed by a duly authorized representative of the CITY. No oral statement shall modify terms and conditions of this purchase order. All changes will be made in writing by the CITY.
- IX. OWNERSHIP OF DOCUMENTS:** VENDOR acknowledges that CITY owns all notes, reports, or other documents, intellectual property or documentation produced by the VENDOR pursuant to this purchase order or in connection with its work which are not otherwise public records. VENDOR acknowledges that CITY shall have copyright privileges to those notes, reports, documents, processes, and information. VENDOR shall provide CITY a copy of all such notes, reports, documents, and information (except to the extent that they contain confidential information about third parties) at CITY expense upon written request. VENDOR acknowledges that all records held or maintained by the CITY, or to which CITY has a right of access, are subject to disclosure under the Texas Public Information Act (the "Act"). VENDOR shall mark any information submitted to the CITY it deems confidential and/or proprietary. In the event CITY receives a request for VENDOR's confidential or proprietary information, CITY agrees to cooperate with VENDOR in protecting its information from release; however, it shall be VENDOR's responsibility to comply with requirements of the Act and seek protection of its confidential or proprietary information from disclosure.
- X. WARRANTY, HOLD HARMLESS, AND INDEMNITY:** VENDOR warrants that the services it performs for CITY will be done in a good and workmanlike manner and that any items delivered to the CITY under this purchase order will be fit for the particular purpose for which it was furnished. VENDOR shall defend, indemnify, and hold the CITY whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by, the execution or performance of this purchase order or any of VENDOR'S activities or any act of commission or omission related to this Contract of any representative, agent, customer, employee, sub-VENDOR or invitee of VENDOR. In no event shall City's liability exceed the amount of fees paid by the City under this Contract for the previous twelve-month period. If an item is covered by a manufacturer's warranty, it is the responsibility of the VENDOR to obtain the information for CITY and ensure that the manufacturer honors the warranty.
- XI. INSURANCE:** Prior to the commencement of work under this Contract, VENDOR shall obtain and shall continue to maintain at no cost to the CITY, in full force and effect during the term of this Contract, comprehensive liability insurance policies with a companies licensed to do business in the State of Texas and rated not less than "A/X" in the current AM Best Rating Guide, which shall include bodily injury, death, automobile liability, worker's compensation, and property damage coverage, in accordance with any CITY ordinance or Directive. The minimum limits for this coverage shall be \$1,000,000.00 per occurrence / \$2,000,000 aggregate for general liability and for property damage, and \$1,000,000 combined single limit for automobile liability unless modified in accordance with any ordinance or directive. If this Contract includes Professional Services, VENDOR shall also obtain and shall continue to maintain at no cost to the CITY, in full force and effect during the term of this Contract a professional liability (errors and omissions) insurance policy placed with a company rated at

CITY OF GRAND PRAIRIE
STANDARD TERMS AND CONDITIONS OF PURCHASE ORDER

least A/X by AM Best Rating Guide, authorized to do business in Texas, in an amount not less than \$1,000,000. If this Contract involves the purchase of software, VENDOR shall also obtain and shall continue to maintain at no cost to CITY, in full force and effect during the term of this Contract, crime insurance and cyber liability policies placed with companies rated at least A/X by the AM Best Rating Guide, authorized to do business in Texas, and with minimum limits of not less than \$1,000,000. The general liability and automobile liability policies obtained by VENDOR shall be primary and noncontributory and name CITY as an additional insured. A provision shall be incorporated into the policies whereby CITY shall be given at least thirty (30) days prior notice of any material change in coverage, non-renewal, or of cancellation of such policies, and VENDOR shall provide CITY with a copy of any such notice of material change in coverage, non-renewal, or cancellation within three (3) business days of its receipt of such a notice. For purposes of this section, a material change in coverage includes, but is not limited to, a reduction in coverage below the amounts required under this Contract. VENDOR shall provide a waiver of subrogation in favor of the City on all coverages except professional liability. VENDOR shall furnish the CITY with original copies of the policies or certificates evidencing such coverage prior to commencement of any work under this Contract.

- XII. NO VERBAL AGREEMENT:** This purchase order contains the entire commitments and agreements of the parties to the Contract. Any verbal or written commitment not contained in this Contract or expressly referred to in this purchase order and incorporated by reference shall have no force or effect.
- XIII. DELIVERY:** Deliveries will be acceptable only during normal working hours, at the designated Municipal Facility unless otherwise agreed by the CITY. Delivery shall be F.O.B destination, and risk of loss shall transfer to the CITY upon delivery.
- XIV. TAX EXEMPTION:** The CITY is exempt from State Sales taxes. Tax shall not be included on orders. Tax exemption certificates will be provided upon request.
- XV. TERMINATION:** The CITY may, at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, terminate further work under this purchase order, in whole or in part, by giving at least thirty (30) days prior written notice thereof to VENDOR with the understanding that all services being terminated shall cease upon the date specified in such notice. The CITY shall equitably compensate VENDOR, in accordance with the terms of this Contract for the services properly performed prior to the date specified in such notice following inspection and acceptance of same by the CITY. VENDOR shall not, however, be entitled to lost or anticipated profits should the CITY choose to exercise its option to terminate. If the Grand Prairie City Council does not appropriate funds sufficient to make any payment for a fiscal year after the CITY'S fiscal year in which the Contract becomes effective, the CITY shall have the right to terminate this Contract at the end of the fiscal year for which funds were appropriated, in accordance with Section 5, Article XI of the Texas Constitution. The City shall have the right to terminate this Contract at the end of any City fiscal year, without any penalty to the CITY. CITY shall provide VENDOR with as much advance written notice of such termination as is reasonably possible, but not less than thirty (30) days.
- XVI. TERMINATION FOR DEFAULT:** The CITY reserves the right to enforce the performance of this purchase order in any manner prescribed by law or deemed to be in the best interest of the CITY in the event of breach or default. The CITY reserves the right to terminate the purchase order immediately in the event the VENDOR fails to: (1) meet delivery schedules, or (2) otherwise perform in accordance with this Contract and incorporated documents. Breach of contract or default authorizes the CITY to award to another VENDOR, purchase elsewhere and charge the full increase in cost and handling to the defaulting VENDOR.
- XVII. VENUE, CONTRACT INTERPRATION, WAIVER OF ATTORNEY'S FEES:** The parties to this purchase order agree and covenant that this purchase order will be performable in Grand Prairie, Texas, and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Dallas County, Texas. This purchase order is made subject to and governed by the existing provisions of the Charter of the CITY of Grand Prairie, its rules, regulations, procedures and ordinances, present and future, and the laws of the State of Texas and the United States. VENDOR and CITY expressly covenant and agree that in the event of any litigation arising between the parties to this purchase order, each party shall be solely responsible for payment of its attorneys and that in no event shall either party be responsible for the other party's attorney's fees regardless of the outcome of the litigation.
- XVIII. RIGHT OF REVIEW:** VENDOR covenants and agrees that the CITY, upon reasonable notice to VENDOR, may review any of the work performed by VENDOR under this purchase order. VENDOR agrees that until the expiration of three (3) years after final payment under this Contract, or the final conclusion of any audit or records review commenced during the said three year period, CITY, or CITY representatives, shall have access to and the right to audit at reasonable times, all records, hard copy or electronic, involving transactions relating to this Contract necessary for the CITY to determine compliance herewith, at no additional cost to the CITY. VENDOR may exclude any information that reveals confidential or proprietary information or trade secrets of VENDOR, unless such information is directly related to amounts invoiced and/or paid by the CITY or the fulfillment of other duties or obligations under this Contract. CITY shall provide VENDOR with advance notice of any intended audits, not less than ten (10) calendar days, unless a shorter time-period is agreed to by the parties or required by law.
- XIX. SEVERABILITY:** In the event that any one or more of the provisions contained in this purchase order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this purchase order shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in the purchase order.
- XX. INDEPENDENT VENDOR:** By the execution of this purchase order, the CITY and VENDOR do not change the independent vendor status of VENDOR. No term or provision of this purchase order or any act of VENDOR in the performance of this contract may be construed as making VENDOR the agent or representative of the CITY. All employees of VENDOR shall perform their duties under the supervision of VENDOR, which shall have the exclusive right to dictate to the VENDOR'S employees how to perform their tasks. VENDOR agrees and covenants that each of its employees will be properly qualified and will use reasonable care in the performance of the assigned duties. VENDOR shall post all applicable warning signs if such work will disrupt normal traffic or workplace activities.
- XXI. PACKAGING:** All goods must be packaged in the manner as specified by CITY and shipped in the manner and by the route and carrier designated by CITY. If CITY does not specify the manner in which the goods must be packaged, VENDOR shall package the goods so as to avoid any damage in transit. If CITY does not specify the manner of shipment, route or carrier, VENDOR shall ship the goods at the lowest possible transportation rates, consistent with VENDOR's obligation to meet the delivery schedule set forth in this Order.
- XXII. INSPECTION:** All goods and services will be subject to inspection and testing by CITY prior to acceptance. Goods rejected and goods supplied in excess of quantities ordered may be returned to the VENDOR at its expense. If any of the goods or services are found at any time

CITY OF GRAND PRAIRIE
STANDARD TERMS AND CONDITIONS OF PURCHASE ORDER

to be defective in material or workmanship, or otherwise not in conformity with the requirements of this purchase order, including any applicable drawings and specifications, then CITY, in addition to such other rights and remedies it may have by contract or by law or equity, at its sole discretion may reject and return such goods at VENDOR's expense, require VENDOR to inspect the goods and remove nonconforming goods and/or require VENDOR to replace nonconforming goods or services with conforming goods or services.

- XXIII. NON-DISCRIMINATION:** The VENDOR agrees to comply with all applicable Federal, State and local statutes, rules and regulations prohibiting discrimination in employment.
- XXIV. CONFLICT OF INTEREST:** VENDOR hereby covenants and agrees that during the Contract period that VENDOR and any of VENDOR'S associates and employees will have no interest nor acquire any interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this purchase order. VENDOR agrees to be in full compliance with federal, state, and City charter in regards to conflict of interest.
- XXV. DRUG FREE WORKPLACE:** VENDOR hereby covenants and agrees that during the Contract period that VENDOR and any of VENDOR's associates and employees shall be in compliance with the CITY'S drug free workplace policy.
- XXVI. STORMWATER REQUIREMENTS:** The Contractor shall implement Best Management Practices (BMPs) and good housekeeping measures to prevent stormwater pollution in accordance with the current City of Grand Prairie Stormwater Discharges Ordinance (Article XXIII, Section 13).
- XXVII. INTERLOCAL/COOPERATIVE CONTRACT:** If these goods or services are being purchased through an Interlocal contract, or a Cooperative contract, VENDOR agrees that CITY shall be entitled to the same rights and protections under the law afforded to the Interlocal agency or the Cooperative entity under the Contract, as if CITY had entered into the Interlocal or Cooperative contract.
- XXVIII. VENDOR VERIFIES THAT:** (1) It does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of the Contract discriminate against a firearm entity or firearm trade association; (2) It does not "boycott Israel" as that term is defined in Texas Government Code § 808.001 and it will not boycott Israel during the term of this Contract; and (3) It does not "boycott energy companies," as those terms are defined in Texas Government Code §§ 809.001 and 2274.001, and it will not boycott energy companies during the term of the Contract. VENDOR agrees to extend the above referenced Contract to CITY and to abide by all pricing, terms, and conditions specified therein.