

TERMS AND CONDITIONS

1. Applicability of Terms and Conditions. These Terms and Conditions shall **NOT** apply to:
 - a. procurement of products and services for which the City and Contractor have a pre-existing written agreement.
 - b. procurement of construction services.
 - c. procurement of architectural, engineering, surveying or landscape architectural services (professional services under CCNA).

ALL CONSTRUCTION SERVICES AND PROFESSIONAL SERVICES MUST BE PROCURED BY SEPARATE CONTRACT. PAYMENT WILL NOT BE MADE BY CITY WITHOUT A SEPARATE SIGNED AGREEMENT.

The following terms and conditions are applicable to this Purchase Order entered into by and between the City of Gainesville, Florida (“CITY”) and Vendor (“Contractor”).

2. This Agreement constitutes the entire agreement between the CITY and Contractor. The City shall not be bound by any other terms unless both parties have executed a separate written agreement for purchases in which case the terms, conditions and specifications of the separate agreement shall take precedence. In the event that this Purchase Order is a result of Contractor’s response to a solicitation, the terms, conditions, specifications and pricing of the solicitation shall take precedent. Acceptance of the Purchase Order constitutes acceptance of all conditions stated herein.
3. **INSPECTION:** All materials ordered are subject to inspection and test by the City of Gainesville (the “City”). The City shall have the right to reject or to require correction of material found not to conform to this purchase order. At the City’s option, rejected material will be held for the Contractor’s instruction or, at the Contractor’s risk, returned at the Contractor’s expense. Payment for material prior to inspection shall not constitute the City’s acceptance.
4. **ACCEPTANCE:** Acceptance is limited to the provisions set forth in this order including these terms and conditions and those on the face hereof or incorporated herein by reference. Contractor’s

performance of any work or shipment of any materials covered by this order without having received the City’s express written assent to modification of or addition to the terms hereof shall constitute Contractor’s acceptance of these terms despite any language to the contrary in Contractor’s quotation, acknowledgement, confirmation or other communication made in response to this order, and such action by the Contractor shall constitute a waiver of any such language. The City’s silence or acceptance of any work performed or materials shipped shall in no event be deemed the City’s acceptance of any terms contained in the Contractor’s quotation, acknowledgement, confirmation or other communication received from the Contractor which are different from or in addition to the terms hereof.

5. **DELIVERY:** Shipment shall be F.O.B. Gainesville unless otherwise stated. Time is of the essence in the filling of this order. No delays in shipment of equipment or materials or rendition of services will be permitted except as authorized by the City in writing. Please notify the City at once of anticipated delay. Excessive or unusual transportation charges caused by Contractor’s inability to perform by specified date and in specified quantities shall be charged to Contractor. No additional charges (including shipping and handling) will be accepted or paid unless specifically stated as a line item on the face of this purchase order.
6. **DELAY:** The City shall have the right to delay performance for up to three months. If the City shall delay performance for more than three months and either the City or Contractor shall elect to terminate the Contract because of such delay, Contractor’s sole remedy shall be reimbursement for costs reasonably expended in preparation for or in performance of the contract plus Contractor’s lost profit in respect to the equipment or materials procured, manufactured or kept idle for the City.
7. **CANCELLATION:** Right is reserved to cancel this order if Contractor has not performed by specified date and in specified quantities or if any other term or condition is not complied with. In the event of cancellation pursuant to this clause, the City may procure similar articles or services elsewhere by purchase order or otherwise and Contractor shall be liable to the City for excess costs.

TERMS AND CONDITIONS

8. **COMPLIANCE WITH LAWS AND REGULATIONS:** Contractor agrees to comply with all federal, state and local laws and regulations applicable to the production, sale and delivery of the goods or the furnishing of any labor or services called for by this order, and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference.
9. **INSURANCE:** The Contractor shall maintain insurance sufficient to protect the interests of the City throughout the term of this purchase order.
10. **WARRANTY:** In addition to any warranty implied by law or fact, and any other express warranties, Contractor expressly warrants all items to be free from defects in design, workmanship, and materials; to conform strictly to applicable specifications, drawings, approved samples, if any; and to be fit and sufficient for the purpose intended and to be merchantable. Such warranties, together with all other service warranties of Contractor, shall run to the City. All warranties shall survive inspection, test acceptance of and payment by the City.
11. **WARRANTY-PRICE:** Contractor warrants that the City shall not be billed at prices higher than stated on this purchase order unless authorized by the City in writing. Contractor represents that the prices charged for the goods and services covered by this order are the lowest prices charged by the Contractor to buyers of a class similar to the City under conditions similar to those specified in this order and the prices comply with applicable government regulations in effect at the time of quotation, sale or delivery. Contractor agrees that any price reduction made in terms covered by this order subsequent to the placement of this order will be applicable to this order. Contractor agrees that no additional charges (including shipping and handling) will be accepted or paid unless specifically stated as a line item on the face of this purchase order.
12. **INDEMNIFICATION:** The Contractor shall indemnify, defend and hold harmless the City, its governing body, and its employees for any and all loss, liability, damages, claims, or demands attributable to any copyright infringement or the use of any copyright or compositions, secret processes, patented or unpatented inventions, articles or appliance furnished or used under a purchase order resulting from this quotation.
- The Contractor guarantees and agrees to indemnify, defend and hold harmless the City, its governing body, and its employees against any and all loss, liability, damages, demands, claims or costs arising out of defective material and products, faulty work performance, negligent or unlawful acts, and non-compliance with any local, state or federal codes, ordinances, orders or statutes, including the Occupational Safety and Health Act. This guarantee is in addition to and not intended as a limitation in any other warranty, express or implied.
13. **CLEAN UP:** If work is performed on City property, work shall not be considered complete until all rubbish and unused material due to, or connected with, the work are removed and the premises are left in a safe and tidy condition.
14. **PAYMENT.** The City shall make payment in accordance with the Local Government Prompt Payment Act, Sections 218.70 – 218.80, Florida Statutes. Contractor will be paid electronically as an electronic funds transfer (EFT).
Invoicing: Contractor is responsible for invoicing the City for goods or services provided pursuant to this purchase order. Itemized invoices shall be addressed to the City of Gainesville, and shall include the following information (if applicable): invoice date, invoice number, contract number, purchase order number, description of the goods or services or property provided to the City, part or item number for each item or part delivered, location and date of delivery of the goods or services or property to the City, quantity of the goods or services or property provided to the City, unit price of the goods or services or property provided to the City, extended total price of the goods or services or property provided to the City, and all applicable charges and discounts. The invoice must not include sales tax. The invoice(s) must be mailed to the *Bill To Address* set forth in the purchase order.
15. **FUNDING:** The obligations of the City as to any funding required pursuant to this Agreement shall be limited by an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be

TERMS AND CONDITIONS

prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

16. **DISPUTES:** If a dispute arises out of or relates to this purchase order, or the breach thereof, and if the dispute cannot be settled through negotiation, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after giving of notice. If the dispute is not resolved within 30 business days after giving notice, or such later date as may be mutually agreed, the Parties will submit the dispute to a mediator. The Parties shall mutually agree to the mediator and the costs of the mediator will be born equally by both parties. The venue for mediation and any subsequent litigation shall be in Alachua County, Florida.

17. PUBLIC RECORDS

Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the City, contractor must:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and

maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE *CITY OF GAINESVILLE* CONTACT AT THE TELEPHONE NUMBER OR EMAIL ADDRESS PROVIDED ON THE PURCHASE ORDER.