

GENERAL CONDITIONS OF PURCHASE

- 1. Inspection and Acceptance:** Vendor shall perform any services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services. City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Purchase Order.
- 2. Shipping, Taxes and Other Credits and Charges:** Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, *et seq.* The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.
- 3. Intellectual Property:** Any research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by Vendor in performance of its obligations under this purchase order shall be the exclusive property of City. Ownership rights shall include, but not be limited to the right to copy, publish, display, transfer, prepare derivative works, or otherwise use materials. Software licenses terms may be incorporated herein by an End User License Agreement or order form signed by the Director of Purchasing. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions not agreed to in writing by the Director of Purchasing are of no force and effect.
- 4. Risk of Loss:** Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.
- 5. Invoice:** Each invoice shall include: (i) the purchase order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v)

an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

6. **Payment:** Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, *et-seq.*, after City accepts the goods/services. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Purchase Order, encumbered for the purpose of this Purchase Order and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may set off against any payments due to Vendor any claims and/or credits it may have against Vendor under this Purchase Order.
7. **Amendments/Changes:** Only the Executive Director of General Services or their delegate is authorized to change or amend this Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Purchase Order to exceed the amount appropriated and encumbered for this Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. Vendor has no authority to bind City on any contractual matters.
8. **Order of Precedence:** In the event of any conflicts between the language of this Purchase Order and any attachments hereto, if any, the language of this Purchase Order controls. Terms and conditions found in any order forms, registration forms or portals, invoices, or similar documents shall be void and have no effect, unless otherwise set forth in this Purchase Order. Future renewals and any additional products or subscriptions added during the Purchase Order term will be subject to the terms and conditions of this Purchase Order.
9. **Prohibited Terms:** Any term included in this Purchase Order or any attachments hereto that requires City to indemnify or hold Vendor harmless; requires City to agree to binding arbitration; limits Vendor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall have no force or effect.
10. **Warranty:** Vendor warrants and guarantees to City that all goods furnished under this Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third-party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.
11. **Indemnification/Limitation of Liability:** Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Purchase Order or that are caused by or the result of any act or

omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Purchase Order up to the Total Purchase Order Amount. Notwithstanding anything contained in this Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, *et seq.*

- 12. Termination:** City may terminate this Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.
- 13. Interference:** Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.
- 14. Venue, Choice of Law and Disputes:** Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.
- 15. Assignment/No Third-Party Beneficiary:** Vendor shall not assign or subcontract any of its rights or obligations under this Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Purchase Order is intended solely for the benefit of City and Vendor with no third-party beneficiaries
- 16. Notices:** Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.
- 17. Compliance With Laws:** Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations, and executive orders related to its performance under this Purchase Order. City may immediately terminate this Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead *nolo contendere*, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.
- 18. Insurance:**
 - 18.1.** Vendor agrees to secure, at or before the time of execution of this Purchase Order, the following insurance covering all operations, goods or services provided pursuant to this Purchase Order. Vendor shall keep the required insurance coverage in force at all times during the term of the Purchase Order, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best

Company as "A-VIII" or better. Each policy shall require notification to City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Purchase Order. Such notice shall reference City contract number listed on the signature page of this Purchase Order. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing City's contract number. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Vendor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Purchase Order.

- 18.2.** Proof of Insurance: Vendor may not commence services or work relating to this Purchase Order prior to placement of coverages required under this Purchase Order. Vendor certifies that if a certificate of insurance is requested by City it shall comply with all insurance requirements of this Purchase Order. City requests that City's contract number be referenced on the certificate of insurance. City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Purchase Order shall not act as a waiver of Vendor's breach of this Purchase Order or of any of City's rights or remedies under this Purchase Order. City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- 18.3.** Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required),
- 18.4.** Vendor and subcontractor's insurer(s) shall include City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 18.5.** Waiver of Subrogation: For all coverages required under this Purchase Order, Vendor's insurer shall waive subrogation rights against City.
- 18.6.** Subcontractors and Subconsultants: Vendor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Purchase Order) procure and maintain coverage as approved by Vendor and appropriate to their respective primary business risks considering the nature and scope of services provided.
- 18.7.** Workers' Compensation and Employer's Liability Insurance: Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- 18.8.** Commercial General Liability: Vendor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

- 18.9. Automobile Liability:** Vendor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Purchase Order.
- 19. Severability:** If any provision of this Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.
- 20. Survival:** All terms and conditions of this Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.
- 21. No Construction Against Drafting Party:** No provision of this Purchase Order shall be construed against the drafter.
- 22. Status of Vendor/Ownership of Work Product:** Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.
- 23. Records and Audits:** Vendor shall maintain for two (2) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Purchase Order, and City shall have the right to inspect and copy the same.
- 24. Remedies/Waiver:** No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.
- 25. No Discrimination in Employment:** In connection with the performance of work under the Purchase Order, Vendor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Vendor shall insert the foregoing provision in all subcontracts.
- 26. Use, Possession or Sale of Alcohol or Drugs:** Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Purchase Order or barring Vendor from City facilities or from participating in City operations.
- 27. Federal Provisions:** Where the source of the funds, directly or indirectly for this Purchase Order is the Federal Government, Vendor agrees to the applicable provisions set out below. Vendor shall be responsible for determining which terms are applicable to its products and/or services.
- 27.1. Equal Employment Opportunity Compliance:** Vendor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60); **Davis-Bacon Act Compliance:** Vendor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3148

to 3148) as supplemented by Department of Labor regulations (29 CFR part 5); **Anti-Kickback Act Compliance:** Vendor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3); Contract Work Hours and Safety Standards: Vendor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5); **Rights to Inventions Made Under a Contract or Agreement:** Vendor agrees to comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency; **Clean Air and Water Requirements:** Vendor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*). Vendor agrees to report each violation of these requirements to City and understands and agrees that City will, in turn, report each violation as required to the appropriate EPA regional office; **Energy Conversation Requirements:** Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6201); **No Suspension or Debarment:** Vendor certifies that neither it nor its principals or any of its subcontractor is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency; and **Byrd Anti-Lobbying:** If the Maximum Contract Amount exceeds \$100,000, the Vendor must complete and submit to City a required certification form provided by City certifying that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract grant of any other award covered by 31 U.S.C. 1352. Vendor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

28. FEMA Grant and Cooperative Agreement Specific Provisions: During the performance of this Purchase Order, Vendor agrees as follows:

28.1. Equal Employment Opportunity:

28.1.1. Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

28.1.2. Vendor will, in all solicitations or advertisements for employees placed by or on behalf of Vendor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

28.1.3. Vendor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said

labor union or workers' representatives of Vendor's commitments under this section, 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

28.1.4. Vendor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

28.1.5. Vendor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders

28.1.6. In the event of Vendor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Vendor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

28.1.7. Vendor will include the portion of the sentence immediately preceding paragraph (26.1) and the provisions of paragraphs (26.1.1) through (26.1.6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-vendor or vendor. Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a vendor becomes involved in, or is threatened with, litigation with a sub-vendor or vendor as a result of such direction by the administering agency Vendor may request the United States to enter into such litigation to protect the interests of the United States.

28.2. Compliance with the Contract Work Hours and Safety Standards Act:

28.2.1. Overtime requirements. No vendor, assignee or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

28.2.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (26.2.1.1) of this section Vendor, assignee and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such vendor, assignee and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (26.2.1.1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (26.2.1.1) of this section.

28.2.3. Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Vendor, assignee or subcontractor under any such contract or any other Federal contract with the same prime vendor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime vendor, such sums as may be determined to be necessary to satisfy any liabilities of such vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (26.2.1.2) of this section.

28.2.4. Subcontracts. Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (26.2.1.1) through of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 26.2 of this section."

28.3. Clean Air Act and Federal Water Pollution Control Act provisions:

28.3.1. Clean Air Act: Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* Vendor agrees to report each violation to the (City and County of Denver, Colorado will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. Vendor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

28.3.2. Federal Water Pollution Control Act: Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* Vendor agrees to report each violation to City and County of Denver, Colorado and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. Vendor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA."

28.3.3. Suspension and Debarment: This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Vendor is required to verify that none of Vendor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of

subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

28.4. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended): Vendors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

28.5. APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

28.5.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000). The undersigned [Vendor] certifies, to the best of his or her knowledge, that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

28.5.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

28.5.3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

28.5.4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Vendor, _____ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Vendor understands and

agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Vendor's Authorized Official

Name and Title of Vendor's Authorized Official

Date

29. Procurement of Recovered Materials: In the performance of this contract, Vendor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Information about this requirement and the list of EPA-designate items is available at EPA's Comprehensive Procurement Guidelines website, www.epa.gov/cpg.

30. Additional Federal Provisions for FEMA Agreements:

- 30.1.** Vendor agrees to provide (City and County of Denver, Colorado), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Vendor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- 30.2.** Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 30.3.** Vendor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- 30.4.** Vendor shall not use the DRS seal(s), logos, crests, or reproductions of flags or likenesses of DRS agency officials without specific FEMA pre- approval."
- 30.5.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. Vendor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 30.6.** The Federal Government is not a party to this Purchase Order and is not subject to any obligations or liabilities to the non- Federal entity, vendor, or any other party pertaining to any matter resulting from the contract. Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Vendor's actions pertaining to this Purchase Order.

31. Additional Terms and Conditions for ARPA Grant Funds:

- 31.1.** Vendor agrees and acknowledges that some or all of the funds encumbered by te City to pay for the services described herein have been provided in accordance with Section 603(b) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) (along with all rules and regulations promulgated thereunder, "ARPA"). The Parties acknowledge that all funding from ARPA (collectively, "ARPA Funds") may only be used to cover those eligible costs incurred by City during the period that begins on March 3, 2021, and ends on December 31, 2024:

- 31.2.** To respond to the public health emergency with respect to the Coronavirus Disease 2019 (“COVID-19”) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or to aid impacted industries such as tourism, travel and hospitality;
- 31.3.** To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- 31.4.** For the provision of government services to the extent of the reduction in revenue of City due to the COVID-19 public health emergency relative to the revenues collected in the most recent full fiscal year of City prior to the emergency; or To make necessary investments in water, sewer, or broadband infrastructure.
- 31.5.** Vendor shall only utilize ARPA Funds for the purposes described in the attached purchase order. Vendor agrees and acknowledges that, as a condition to receiving the ARPA Funds, it shall strictly follow the Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached hereto and incorporated herein as Exhibit A. All invoices submitted by Vendor to City pursuant to this Agreement shall use “COVID-19” or “Coronavirus” as a descriptor for those costs that are paid by ARPA Funds to facilitate the tracking of Agreement-related spending related to COVID-19. Vendor shall segregate and specifically identify the time and expenditures billed to City on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the services and/or goods provided by Vendor for which ARPA Funds are used shall not, to the extent that ARPA Funds are used, also be paid for or reimbursed by monies provided under any other federal program.
- 31.6.** City agrees and acknowledges that it shall obligate the use of ARPA funds for the services performed and/or good provided by Vendor under this Agreement no later than December 31, 2024. Vendor agrees and acknowledges that all services performed and/or goods provided by Vendor using ARPA Funds must be performed and/or provided, respectively, by Vendor no later than December 31, 2026. Further, Vendor agrees and acknowledges that payment for all services performed and/or goods provided by Vendor using ARPA Funds must be provided by City to Vendor no later than December 31, 2026. As such, Vendor shall invoice City not later than November 1, 2026 for all work performed pursuant to this Agreement for which ARPA Funds will be used to enable sufficient time for City to review, process, and pay such invoice no later than the performance deadline prescribed in ARPA (the “Invoice Deadline Date”). Any invoice submitted by Vendor after the Invoice Deadline Date for services performed and/or goods provided on or prior to December 31, 2026 may not be eligible to be paid by ARPA Funds, and, to the extent that ARPA Funds are not available to pay such invoice, partially or in total, such invoice shall only be paid subject to funds appropriated annually by the Denver City Council, paid into the Treasury of City, and encumbered for the purpose of this Agreement.
- 31.7.** To the extent that Vendor’s services hereunder contemplate the spending of ARPA Funds, Vendor shall provide to City information responsive to mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program outcomes. Further, in providing the ARPA-required information to City, to the extent possible, Contractor shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by City. Vendor shall insert the foregoing

requirement into all subcontracts related to this Agreement, thereby obligating all subcontractors to the same reporting requirement as Vendor.

31.8. The following paragraph replaces “**23. Records and Audits**” of the online Purchase Order Terms and Conditions: Vendor shall maintain records of the documentation supporting the use of ARPA Funds in an auditable format, for the later of five (5) years after final payment on this Agreement or the expiration of the applicable statute of limitations. Any authorized agent of City, including City Auditor or his or her representative, and for ARPA Funds any authorized agent of the Federal government, including the Special Inspector General for Pandemic Recovery (“Inspector General”) have the right to access, and the right to examine, copy and retain copies, at the official’s election in paper or electronic form, any pertinent books, documents, papers and records related to Vendor’s use of ARPA Funds pursuant to this Agreement. Vendor shall cooperate with Federal and City representatives and such representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of five (5) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of the use of ARPA Funds, City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this section shall require Vendor to make disclosures in violation of state or federal privacy laws. Vendor shall at all times comply with D.R.M.C. 20-276.