

CITY OF HENDERSON, NEVADA
GENERAL TERMS AND CONDITIONS – PURCHASE ORDER

Supplier shall provide the goods and/or services described in this Purchase Order subject to the following General Terms and Conditions – Purchase Order (“Terms”), unless otherwise noted on the face of the Purchase Order.

1. DEFINITIONS [Goods, Services]

“CITY” means the City of Henderson, a municipal corporation and political subdivision of the State of Nevada.

“Law” means federal, state and local laws, statutes, ordinances, regulations, rules, codes, orders, policies, standards, guidelines or other governmental requirements (whether procedural or substantive), including the Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC), and Henderson Municipal Code, as amended or that may be enacted or promulgated subsequently.

“Purchase Order” means a CITY order for goods and/or services, which becomes a binding contract upon written acceptance or performance by Supplier, and which contract consists of the face of the CITY’s order, these Terms, and any other specifically referenced document(s) in the order or these Terms.

“Supplier” means the individual, partnership, company, corporation, or other entity contractually obligated to provide the goods and/or services described in this Purchase Order.

2. APPLICABILITY [Goods, Services]

Notwithstanding any provision of Law, including U.C.C. 2-207 or NRS 104.2207, Supplier’s written acceptance of this Purchase Order, or Supplier’s commencement of performance without providing a written rejection of the Purchase Order to the CITY within five (5) days of receipt, shall convert this Purchase Order, in its entirety, into a legally binding contract. Each heading within these Terms shall indicate its applicability to the purchase of goods and/or services. Whether these Terms are included in an offer or an acceptance by Supplier, the CITY’s acceptance is conditioned on Supplier’s assent to these terms. Any additional, different or conflicting terms contained in Supplier’s contract, quotation, proposal, invoice(s), or any other written or oral communication from Supplier shall not be binding in any way on the CITY whether or not they would materially alter the Purchase Order, and the CITY hereby objects thereto. Except for the “Rules of Precedence” Section below, these Terms do not apply if a specific bid award or contract is referenced on the face of the Purchase Order.

3. RULES OF PRECEDENCE [Goods, Services]

The parties shall attempt to construe the terms and conditions in the various documents comprising this Purchase Order, in a manner that avoids conflict or inconsistency and in a manner that is supplementary or complementary in nature rather than in conflict. If, however, a conflict or inconsistency between the terms and conditions of the documents cannot be so avoided through such efforts, the following rules of precedence shall govern this Purchase Order: (a) terms and conditions on the face of the Purchase Order prevail over these Terms; (b) the terms and conditions of a specific bid award or contract referenced on the face of the Purchase Order prevail over any term or condition contained in the Purchase Order, any Supplier contract, quotation, proposal, invoice(s), or any other written or oral communication from Supplier; (c) all terms and conditions of the Purchase Order prevail over U.C.C. Article 2 and Nevada’s Uniform Commercial Code–Sales; and, (d) all terms and conditions of the Purchase Order prevail over any Supplier contract, quotation, proposal, invoice(s), or any other written or oral communication from Supplier.

4. QUALIFICATIONS [Goods, Services]

Supplier represents to the CITY that Supplier is qualified and has sufficient skill and experience to provide the goods and/or perform the services. Supplier further represents that it has obtained and will maintain all necessary licenses, permits or other authorizations to provide the goods and/or perform the services and that it is financially solvent, able to pay its debts when due, and possessed of sufficient working capital to complete its contractual obligations.

5. PRICE STABILITY [Goods, Services]

Supplier agrees that all prices quoted shall remain firm until the later of (a) sixty (60) calendar days from the date quoted or (b) the date such price quote expires.

6. DELIVERY REQUIREMENTS [Goods]

Supplier shall deliver the goods at the delivery point specified on the face of the Purchase Order (the “Delivery Location”) F.O.B. Delivery Location on or before the date(s) specified in this Order (the “Delivery Date”). If no Delivery Date is specified, Supplier shall deliver the goods in full within a reasonable time of receipt of the Order. Counterparty shall obtain the CITY’s prior approval for partial shipment. Prices shall include delivery as well as necessary unloading. Timely delivery and performance is of the essence. If Supplier fails to deliver the goods in full by the Delivery Date, the CITY may terminate the Order immediately and Supplier shall indemnify the CITY against any losses, damages, and reasonable costs and expenses attributable to Supplier’s failure to deliver. Supplier bears all risk of loss or damage to the goods until delivery of the goods to the CITY. Title to the goods passes to the CITY after delivery and unloading of the goods at the Delivery Location is completed. Delivery of the goods is not complete until such goods have actually been received and accepted by the CITY.

7. SAFETY DATA SHEETS [Goods]

Supplier shall provide CITY a current safety data sheet (SDS) for each good supplied for which an SDS is required by applicable Law, including 29 CFR 1910.1200(g), as amended.

8. INSPECTION [Goods, Services]

An authorized representative of the CITY will inspect the goods and services at time of delivery. If deficiencies are detected, the goods and or services will be rejected and Supplier will be required to make necessary repairs, corrections, or replacements at Supplier's cost. Payment and/or commencement of a discount period will not be made until the corrective action is made; the good and or services are re-inspected and accepted.

9. PAYMENT [Goods, Services]

Supplier shall generate invoices and send to **City of Henderson, 240 Water Street, Henderson, Nevada 89015, Attention: Accounts Payable**. Invoices should include the following: (a) Supplier name and address; (b) date and unique invoice number; (c) applicable Purchase Order number; (d) any supporting back-up documentation; and, (e) any other information (*e.g.*, quantity, description, period of performance) necessary to identify the goods or services for which payment is requested. Handwritten invoices will be accepted only if submitted on pre-printed and prenumbered invoice forms. Upon reconciliation of all errors, corrections and credits, the CITY will pay the invoice (with any correction) within thirty (30) calendar days, unless otherwise noted on the face of the Purchase Order. The CITY may return to Supplier invoices received that do not comply with the requirements set forth herein..

10. TAXES [Goods, Services]

The CITY is exempt from paying sales and use taxes under NRS 372.325.4 and from paying certain Federal Excise Tax. Supplier indemnifies and holds harmless the CITY from and against any liability on account of any and all such taxes, levies, duties, assessments and deductions.

11. FORCE MAJEURE [Goods, Services]

Neither party shall be liable for failure or delay in performance due to fire, flood, earthquake, unusually severe weather, strikes, labor disputes, war, acts of vandalism, destruction, public disobedience, terrorism, the action of civil or military authorities, or other events beyond the reasonable control and without fault or negligence of the affected party. The affected party shall promptly notify the other party in writing, describing the cause and the estimated duration of delay. The affected party shall use commercially reasonable efforts to avoid or remove such cause and continue performance.

12. TERMINATION FOR CONVENIENCE [Goods, Services]

The CITY may terminate this Purchase Order at any time, in whole or in part, in its sole discretion by written notice to Supplier, specifying the extent and effective date of the termination. Upon receipt of such notice, Supplier shall stop work, mitigate its damages, and within 30 days, shall submit to the CITY a written request for incurred costs for goods delivered and/or services performed through the date of termination and shall provide any substantiating documentation requested by the CITY.

13. TERMINATION FOR CAUSE [Goods, Services]

Upon Supplier's failure to perform this Purchase Order under its terms, the CITY will provide written notice to Supplier of the breach, and Supplier will have a reasonable time (as stated in the CITY's written notice) in which to cure the breach. Notwithstanding the foregoing, the CITY may terminate this Purchase Order immediately if any Supplier representation is materially false or misleading. Failure to cure within the stated time or a materially false or misleading Supplier representation will subject Supplier to a default termination, with no liability to the CITY. The CITY will retain all rights to common law breach of contract remedies.

14. WARRANTY [Goods]

Supplier warrants that goods supplied under this Purchase Order are free of defects in material, workmanship and design, suitable for the purpose intended, and in compliance with all applicable specifications and free from liens or encumbrance on title. Supplier further warrants that, unless otherwise specified on the face of the Purchase Order, the goods are new, are of the latest and most improved model of current production, are made up completely of unused, genuine, and original parts, and have not been operated for any purpose other than routine operational testing. Demonstration goods do not meet the foregoing requirements and are not acceptable.

15. STANDARD OF CARE [Services]

Supplier warrants that all services performed are in accordance with current, sound and generally accepted industry practices by qualified personnel trained and experienced in the appropriate fields and that the services are in conformance with any specification/statement of work contained or referenced in this Purchase Order. In the event of a breach of this warranty, Supplier shall, at no cost to the CITY, re-perform or perform the services so that the services conform to the warranty.

16. INSURANCE [Goods]

Supplier shall obtain and maintain, at its expense, the following insurance coverage for all work related to the performance of this Purchase Order: commercial general liability; automobile liability insurance; worker's compensation; and, employers' liability.

17. INSURANCE [Services]

Supplier shall obtain and maintain the following insurance coverages: (a) commercial general liability insurance, \$1 million each occurrence, \$1 million personal and advertising injury, and \$2 million general aggregate; (b) automobile liability insurance, with a combined single limit of \$2 million for bodily injury and property damage for each occurrence; (c) professional liability insurance (errors and omissions), \$1 million each claim and \$1 million annual aggregate and if written on claims-made basis, Supplier shall ensure that any retroactive date under that policy shall precede the effective date of the Purchase Order and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time the services are completed and accepted by the CITY; and, (d) workers compensation insurance per statutory requirements and

employer's liability insurance, with the following limits: (1) \$1 million each accident; (2) \$1 million disease/employee; and (3) \$1 million disease/policy limit. Supplier shall maintain a "Certificate of Insurance" naming the CITY as an "Additional Insured" under A and B, stating that the insurance is primary with respect to the CITY's interest and that any insurance maintained by the CITY is excess and not contributory, providing for separation of insured coverage, and providing waivers of subrogation on all coverage.

18. INDEMNITY [Goods, Services]

Supplier shall indemnify, defend and hold harmless the CITY, its officers, officials, employees, agents, and volunteers for, from and against any liability, loss, damage, expense, fine, penalty, claim, damage, judgment, suit, and cost (including without limitation costs and fees of litigation, enforcing indemnification rights and pursuing insurance providers) of every nature by a third-party arising in connection with this Purchase Order, including but not limited to damage to any property, bodily injury to, or death of, a person, violation or infringement of any patent, copyright or uncopyrighted work, misappropriation of any trade secret, and Supplier's failure to comply with applicable Law, unless caused by the gross negligence or willful misconduct of the CITY. Any pre-printed or additional terms providing for indemnification or hold harmless commitments by the CITY do not apply to the Purchase Order and are rejected by the CITY unless the CITY signs the document setting forth such terms in strict compliance with the then applicable fiscal signature policy of the CITY. Without limitation of the foregoing, the CITY's hold harmless and indemnification obligations will be subject to the limitations set forth in the NRS.

19. COMPLIANCE WITH LAW [Goods, Services]

Supplier shall comply with all Laws applicable to this Purchase Order and relative to conducting business or performing work in the City of Henderson and the County of Clark, Nevada. By entering into this Purchase Order, Supplier provides a written certification that Supplier is not currently engaged in, and during the duration of the Purchase Order shall not engage in, a Boycott of Israel. The term "Boycott of Israel" has the meaning ascribed to that term in Section 3 of Nevada Senate Bill 26 (2017).

20. NON-DISCRIMINATION AND FAIR EMPLOYMENT PRACTICES [Goods, Services]

Supplier shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under any applicable Law.

21. NO CONFLICT OF INTEREST [Goods, Services]

Supplier represents that to its knowledge there is no relationship with any the CITY employee, appointed official, or elected official that would create a conflict of interest under applicable Law in connection with this Purchase Order.

22. CONFIDENTIAL INFORMATION AND DATA [Goods, Services]

- (a) Confidentiality. The CITY might provide Confidential Information (as defined below) to the Supplier in connection with the Purchase Order. Supplier shall (1) maintain the confidentiality of the CITY's Confidential Information and not disclose it to a third party, except as authorized by the CITY in writing, as required by Law, or as required by a court or other regulatory body or government agency of competent jurisdiction; (2) restrict disclosure of Confidential Information to personnel who have a reasonable basis for needing access to such information and who are bound by confidentiality obligations similar to those in these Terms; (3) take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its personnel who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be with the same degree of care that Supplier uses to protect its own Confidential Information and in no event less than a reasonable amount of care; (4) not use the Confidential Information, except to further the purposes of the Purchase Order or as may be required to report to the Supplier's governing body, legal advisors, financial advisors, or regulators, and not sell the Confidential Information; (5) promptly notify the CITY upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Section; and (6) establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the Protected Data (as defined below) from unwarranted disclosure as may be required for the CITY to comply with all Laws. The responsibilities under this Section shall continue for five (5) years after the termination or expiration of the Purchase Order for Confidential Information that is not Protected Data or a trade secret under Law and for Protected Data and trade secrets shall continue for so long as such Confidential Information remains Protected Data or a trade secret under Law.
- (b) "Confidential Information" means information that is disclosed by the CITY under the Purchase Order in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent. Confidential Information does NOT include any information that: (1) is or becomes publicly known through no wrongful act of Supplier; (2) is already known to Supplier without restriction when it is disclosed; (3) is or becomes, rightfully and without breach of any obligations, in Supplier's possession lawfully without any obligation restricting disclosure; (4) is independently developed by Supplier without breach of any obligations; (5) is explicitly approved for release by written authorization of the CITY; or (6) required to be open to public inspection pursuant to NRS Chapter 239 and NAC and is not subject to an applicable exception or declared by law to be confidential (as determined by the CITY in its sole and absolute discretion).
- (c) "Personal Information" means (1) any data or information accessible by Supplier as a result of its business relationship with the CITY that can be used to identify or locate a natural person, including but not limited to: name, address, telephone number, e-mail address, social security number, or driver's license number; (2) any other data, such as, but not limited to,

identifiers, demographic or behavioral data, when such data is linked or has the capacity to be linked to a specific person; and (3) “personal information” as that term is defined In NRS 603A.040 or any comparable Nevada statutes, and any Nevada regulations promulgated under such state statutes. Personal Information includes any list, description or other grouping of individuals that is derived using any of the foregoing.

- (d) “Protected Data” means any Personal Information that is protected or covered by Law or a CITY policy. Protected Data will not be excluded from coverage merely because it is provided to Supplier in a manner that commingles the Protected Data with other data that is not Protected Data.
- (e) Rights in Data. All data created and/or processed in connection with the services is and remains the property of the CITY and shall in no way become attached to the services, nor shall Supplier have any rights in or to the data of the CITY. The CITY shall own all data created and/or processed by the services, and/or any CITY provided data that resides in the service’s environment, to include disaster recovery site(s), equipment and media. Supplier is granted no rights hereunder to use the customer data except to the extent necessary to fulfill its obligations to the CITY.
- (f) Return of Data. Supplier agrees to return all original data and any data contained in any derivative work to the CITY in a mutually agreed upon format within thirty (30) days of the expiration of the term set forth under this Purchase Order. Delivery must be through a secured electronic transmission or on encrypted portable media by parcel service that utilizes tracking numbers.

23. USE, STORAGE OR OTHER PROCESSING OF CITY’S PROTECTED INFORMATION [Services]

- (a) Data Storage. Supplier represents and warrants that its creation, collection, receipt, access, use, transmission, storage, disposal, and disclosure of Confidential Information and Protected Data (“Protected Information”) does and will comply with Law, as well as all other applicable regulations and directives. Supplier shall implement and maintain a written information security program including appropriate policies, procedures, and risk assessments that are reviewed by Supplier at least annually.
- (b) Standards. Without limiting Supplier’s obligations for the creation, use, storage or other processing of Protected Information, Supplier shall provide all available reports that substantiate compliance with accepted industry practices applicable to the services, including, NRS Chapter 603A, Criminal Justice Information System, the International Organization for Standardization’s standards: ISO/IEC 27001 – Information Security Management Systems – Requirements and ISO/IEC 27002 – Code of Practice for International Security Management, the Control Objectives for Information and related Technology (COBIT) standards, Payment Card Industry Data Security Standard (PCI DSS), the National Institute of Standards and Technology (NIST) Cybersecurity Framework, or any other applicable industry standards for information security, and shall ensure that all such internal safeguards, including the manner in which Protected Information is created, collected, received, accessed, used, transmitted, stored, disposed, and disclosed, comply with Law, as well as this Purchase Order.
- (c) Breach. Supplier shall notify the CITY without unreasonable delay and in the most expedient time possible of a security breach where unencrypted Protected Information transferred to Supplier by the CITY was or is reasonably believed to have been accessed or acquired by an unauthorized person (“Security Breach”). Immediately following Supplier’s notification to the CITY of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. Supplier agrees to fully cooperate in the CITY’s handling of the matter, including, without limitation: (1) assisting with any investigation; (2) providing the CITY with physical access to the facilities and operations affected; (3) facilitating interviews with Supplier’s employees and others involved in the matter; and (4) making available all relevant records, logs, files, data reporting, and other materials required to comply with Law, industry standards, or as otherwise required by the CITY.
- (d) Oversight. Upon CITY’s request, Supplier shall confirm compliance with these Terms, as well as any applicable Law and industry standards. Supplier shall promptly and accurately complete a written information security questionnaire provided by the CITY, not to exceed frequency of one time per annum, or a third party on the CITY’s behalf, regarding Supplier’s business practices and information technology environment in relation to all Personal Information being handled and/or services being provided by Supplier to the CITY under the Purchase Order. Supplier shall fully cooperate with such inquiries. In addition, upon the CITY’s request, Supplier shall provide the CITY with the results of any audits performed by or on behalf of Supplier that assesses the effectiveness of Supplier’s information security program as relevant to the security and confidentiality of Protected Information.

24. UPDATES [Goods, Services]

Except as otherwise specified by the CITY under a Purchase Order, Supplier will update computer software and cause it to operate under new versions or releases of operating systems and/or databases required by such software, and provide timely support and maintenance for any future releases of such operating systems and/or databases. Supplier will provide an update to computer software supporting a newer version of third-party platform components within a timeframe set by the CITY that is in advance of the Supplier’s termination of support for such third-party components.

25. GOVERNING LAW/VENUE [Goods, Services]

This Purchase Order shall be governed by and construed and interpreted in accordance with the Laws of the State of Nevada, without giving effect to its choice or conflicts of law provisions. Any action at law or other judicial proceeding for the enforcement of any provision shall be instituted in the County of Clark, State of Nevada, and Supplier irrevocably agrees to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada over any dispute or other matter arising under or in connection with this Purchase Order.

26. NO ASSIGNMENT [Goods, Services]

Supplier shall not assign, transfer, convey or otherwise dispose of this Purchase Order or its right, title, or interest in or to the same, or any part thereof, without prior written consent of the CITY.

27. INDEPENDENT CONTRACTOR [Goods, Services]

Supplier is an independent contractor, and nothing herein shall be deemed to create an employment, partnership or agency relationship.

28. NO WAIVER [Goods, Services]

The failure of a party to enforce any of the provisions of this Purchase Order at any time, or to require performance by the other party of any of the provisions of this Purchase Order at any time, will not be a waiver of any provisions, nor in any way affect the validity of this Purchase Order, or the right of any party to enforce each and every provision.

29. PROHIBITION AGAINST CONTINGENT FEES [Goods, Services]

Supplier warrants that no person or entity has been employed or retained to solicit or secure this Purchase Order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the CITY shall have the right to terminate this Purchase for cause without penalty or further obligation or liability to Supplier or, in the CITY's discretion, to deduct from the price or consideration, or otherwise recover, the full amount of such commission, percentage brokerage or contingent fee from Supplier.

30. PUBLICITY [Goods, Services]

Except with respect to internal business communications, communications with governmental agencies, or as required by applicable law, Supplier shall not use this Purchase Order nor its relationship with the CITY for purposes of or in any manner that intentionally gives rise to advertising or publicity without first consulting with and obtaining the CITY's prior written consent.

31. OWNERSHIP OF DOCUMENTS [Services]

All materials, drawings, specifications, reports or other documents given, prepared, or assembled by Supplier are deemed to be the CITY's property when prepared, whether delivered to the CITY or not, constitute "work made for hire" (and all copyrights to which belong to the CITY), and shall, together with any materials furnished to Supplier by the CITY, be delivered to the CITY upon request, and, in any event, upon termination or final acceptance of the services. In any event, Supplier assigns to the CITY all intellectual property rights in such work whether by way of copyright, trade secret or otherwise, and whether or not subject to protection by copyright Laws. However, Supplier shall retain all rights to its preexisting standard details, specifications, computer software or other intellectual property and hereby licenses such preexisting materials to the CITY through a fully paid, worldwide, royalty-free, non-exclusive and perpetual license, for the CITY's own use and any future use, replacement, or correction of the services. If Supplier (or a subcontractor) labels a document owned by the CITY as Supplier's (or a subcontractor's) proprietary or confidential document, such label shall be deemed void.

32. FUNDING [Goods, Services]

Funding of the services specified under this Purchase Order is dependent on CITY budget appropriations set each CITY fiscal year. If necessary funds to continue with the specified services are not allocated by the CITY, this Purchase Order shall terminate at the expiration of the appropriated funds.

33. TIME OF ESSENCE [Goods, Services]

Time is of the essence with respect to Supplier's obligations under this Purchase Order.

34. SEVERABILITY [Goods, Services]

If any provision of this Purchase Order is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding.

35. ENTIRE AGREEMENT [Goods, Services]

This Purchase Order constitutes the entire agreement between the parties with respect to the specified goods and services.

36. AMENDMENT [Goods, Services]

The face of the Purchase Order may be modified or amended by the CITY issuing a change order. Any other modifications or amendments to this Purchase Order must be in a written document executed by the authorized representatives of each party.

37. PUBLIC RECORDS [Goods, Services]

Supplier acknowledges that the CITY is a governmental entity that is subject to the public records Laws and regulations set forth in Chapter 239 of the NRS and NAC and, therefore, the CITY's records, including this Purchase Order and documents provided in connection with it, are likely public records and may subject to inspection and copying by any person unless there is an applicable exception or the record is declared by applicable law to be confidential. If the CITY receives a public records request that arises from (Rev. 8/2/2018)

or relates to this Purchase Order, the Supplier, or any Supplier disclosures to the CITY, the CITY will determine in its sole and absolute discretion whether it must provide the information because an applicable exception does not apply or the information is not declared by applicable law to be confidential.

38. NOTICES [Goods, Services]

Notices will be addressed to the places of business identified on the face of the Purchase Order.

39. CONSEQUENTIAL DAMAGE WAIVER [Goods, Services]

The CITY shall not be liable to Supplier for any consequential, indirect, exemplary or incidental damages.

40. NO THIRD PARTY BENEFICIARIES [Goods, Services]

This Purchase Order is intended only to benefit the parties hereto, their permitted successors and assigns, and express indemnitees. This Purchase Order shall not be deemed to be for the benefit of any entity or person that is not a party hereto, is a party's permitted successor or assign, or an express indemnitee and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

41. SAFETY AND COMPLIANCE [Goods, Services]

Supplier shall plan and direct the performance of services in compliance with Supplier's safety policies, and the CITY's safety and work practices. Supplier shall supervise all activities to ensure that its personnel and subcontractors use proper safety equipment and comply with the foregoing policies and all applicable Laws.

42. RECORDS AND AUDITING [Goods, Services]

Supplier shall maintain accurate and complete books, documents, accounting records and other records pertaining to the goods and services for six (6) years (or longer as required by applicable law) from the later of the date of final payment under this Purchase Order or the CITY's acceptance of the goods and services. Supplier shall make such records available to the CITY for inspection, audit, examination, reproduction, and copying at Supplier's offices at all reasonable times. However, if requested, Supplier shall furnish copies of said records at its expense to the CITY, within seven (7) business days of the request.

[END OF TERMS]