Vendor Contract # **0000001546**

The City of Seattle
PURCHASE ORDER/VENDOR CONTRACT

Terms and Conditions

2.1 **Entire Agreement:** This Purchase Order/Vendor Contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Contractor. The City's RFQ, all addenda to the RFQ, and the Contractor's response to the RFQ are explicitly included in this Purchase Order/Vendor Contract. Where there is any conflict among or between any of these documents, the controlling document shall be the first listed in the following sequence: the most recently issued Purchase Order/Vendor Contract amendment; the Purchase Order/Vendor Contract; the most recently issued addendum to the City's RFQ; the City's RFQ; and the Contractor's response to the RFQ.

2.2 **Term**: The term of this Purchase Order/Vendor Contract shall commence on the date the City's Buyer signs the same and shall expire sixty (60) days after the date of the "Last Item Due Date" stated on the Purchase Order/Vendor Contract form signature page

2.3 **Freight**: Prices include freight prepaid and allowed. The Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.

2.4 **Title**: Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.

2.5 **Overages/Underages:** Shipments shall correspond with the Purchase Order/Vendor Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

2.6 **Schedule**: Unless the City's Buyer requests a change in schedule, the Contractor shall deliver the items or render the services by the "Last Item Due Date" stated on the Purchase Order/Vendor Contract form signature page At the City's option, the Contractor's failure to timely deliver or perform may require expedited shipping at the Contractor's expense, or may be cause for termination of the Purchase Order/Vendor Contract and the return of all or part of the items at the Contractor's expense. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Buyer of such difficulty and the length of the anticipated delay.

2.7 **Payment**: Invoices will be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery of all goods ordered, the completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. No payment shall be due prior to the City's receipt and acceptance of the items identified in the invoice therefor.

2.8 **Unlawful Overcharges**: The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.

2.9 **Price Warranty:** The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Purchase Order/Vendor Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.

2.10 **Warranties**: The Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.

2.11 **Date Warranty**: Vendor warrants that all Software provided under this Contract: (i)does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

2.12 **Recycled Content:** Whenever practicable, the Contractor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City. The Contractor shall certify, in the form of a label on the product or a sworn statement accompanying the Contractor's response to a City Request for Price Quotations, the percentage of recycled content in every product proposed to be sold to the City, including the percentage of post-consumer waste in such product.

2.13 **Non-Discrimination and Equal Employment Opportunity:** During the term of this Purchase Order/Vendor Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City's Director of Finance setting forth the provisions of this nondiscrimination clause.

2.14 **Non-Discrimination in Contracting:**

2.14.1 Notwithstanding any other provision in this Purchase Order/Vendor Contract, City utilization requirements for Women and Minority Business Enterprises ("WMBEs") shall not apply to this Purchase Order/Vendor Contract. No minimum level of WMBE subcontractor participation shall be required as a condition of receiving award of the contract and no preference will be given to a bidder for its WMBE utilization or WMBE status. Any affirmative action requirements set forth in any federal regulations or statutes included or referenced in the RFQ will continue to apply.

2.14.2 The City encourages the Contractor to employ a workforce reflective of the region's diversity.

2.14.3 **Discrimination** – The Contractor shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

2.14.4 **Record-Keeping** – The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Purchase Order/Vendor Contract, relevant records and information necessary to document the Contractor's utilization of WMBEs and other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Purchase Order/Vendor Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.

2.14.5 **Affirmative Efforts to Utilize WMBEs** – The City encourages the utilization of Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs") (collectively, "WMBEs"), in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

- Placing all qualified WMBEs attempting to do business in The City of Seattle on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.
- Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.
- Establishing delivery schedules, where the requirements of the contract permit, that encourage participation by WMBEs.
- Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of the contract.
- Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the City of Seattle, and other organizations that provide assistance in the recruitment and placement of WMBEs.

2.14.6 **Sanctions for Violation** – Any violation of the mandatory requirements of this WMBE Utilization provision shall be a material breach of contract for which the Contractor may be subject to damages and sanctions provided for by contract and by applicable law.

2.15 **Publicity**: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.

2.16 **Proprietary and Confidential Information:** The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions (see RCW Chapter 42.17). The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials.

2.17 **Indemnification**: To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, or trademark, arising out of the work performed or goods provided under this Purchase Order/Vendor Contract, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

2.18 **Insurance**: The Contractor shall secure and maintain, at all times during the term of this Purchase Order/Vendor Contract, at its own expense, a policy or policies of insurance known as: **(1) Commercial General Liability** written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent including premises/operations, products/completed operations, personal/advertising injury, contractual liability, and independent contractors liability; **(2)** if any vehicle is used in the performance of this Purchase Order/Vendor Contract, a policy of **Business Automobile Liability** written on an insurance industry standard form (ISO form CA 00 01) or equivalent, including coverage for owned, non-owned, leased or hired vehicles; and **(3)** if any work under this Purchase Order/Vendor Contract will be performed by a resident of the State of Washington, **Worker's Compensation** ("Industrial Insurance") as required by Title 51 of the Revised Code of Washington. The Contractor waives, with respect to the City only, its immunity under Title 51 of the Revised Code of Washington. **(4)** The insurance as provided under items (1) and (2) above shall be endorsed to include The City of Seattle, its officers, elected officials, employees, agents and volunteers as an

Additional Insured per ISO form CG2010 11/85 or CG2026 or equivalent, and to not permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.

2.19 **Compliance with Law**:

2.19.1 **General Requirement:** The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

2.19.2 **Licenses and Similar Authorizations:** The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Purchase Order/Vendor Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

2.19.3 **Taxes:** The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Purchase Order/Vendor Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Purchase Order/Vendor Contract.

2.19.4 **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Purchase Order/Vendor Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Purchase Order/Vendor Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Purchase Order/Vendor Contract.

2.20 **Adjustments**: The City's Buyer at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

2.21 **Amendments**: Except for adjustments authorized above, modifications or amendments to the Purchase Order/Vendor Contract may only be made by a change order or by written document signed by or for both parties. Unless Contractor is otherwise notified, the City's Buyer shall be the City's authorized agent.

2.22 **Assignment**: Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Purchase Order/Vendor Contract for the benefit of creditors upon 21 days advance written notice to the City, *or* Vendor Relations, Suite 910, 700 – 3rd Ave., Seattle, WA 98104.

2.23 **Binding Effect**: The provisions, covenants and conditions in this Purchase Order/Vendor Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

2.24 **Waiver:** The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

2.25 **Applicable Law:** This Purchase Order/Vendor Contract shall be construed under the laws of the State of Washington. The venue for any action relating to this Purchase Order/Vendor Contract shall be in the Superior Court for King County, State of Washington.

2.26 **Remedies Cumulative:** Remedies under this Purchase Order/Vendor Contract are cumulative; The use of one remedy shall not be taken to exclude or waive the right to use another.

2.27 **Severability:** Any invalidity, in whole or in part, of any provision of this Purchase Order/Vendor Contract shall not affect the validity of any other of its provisions.

2.28 **Gratuities:** The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Purchase Order/Vendor Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Contractor or any agent thereof to any City official, officer or employee.

2.29 **Termination:**

2.29.1 **For Cause:** Either party may terminate this Purchase Order/Vendor Contract in the event the other fails to perform its obligations as described herein, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.

2.29.2 **For Reasons Beyond Reasonable Control of a Party:** Either party may terminate this Purchase Order/Vendor Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.

2.29.3 **For Public Convenience:** The City may terminate this Purchase Order/Vendor Contract in whole or in part whenever the City determines that such termination is in its best interest (including but not limited to for lack of continuing appropriations). In such a case the Contractor shall be paid for all items accepted by the City.

2.29.4 **Notice:** Notice of termination shall be given by the party terminating this Agreement to the other not less than ten (10) working days prior to the effective date of termination.

2.30 **Major Emergencies or Disasters:** The following provision shall be in effect only during major emergencies or disasters when the City has activated its Emergency Operations Center and the Contractor has been given notice by the City that such activation has occurred. The City is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the City is contracting with the Contractor under the following terms and conditions: Contractor shall provide to the City, upon the City's request, such goods and/or services at such time as the City determines. In the event the Contractor is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Contractor, the Contractor shall make such delivery as soon as practicable. If the Contractor is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Contractor shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Contractor is unable to provide such goods and/or services as requested by the City, the Contractor may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Contractor has obtained prior approval from the City for such substitution. The Contractor shall charge the City the price determined in this Purchase Order/Vendor Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Purchase Order/Vendor Contract. The Contractor acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Contractor, in support of public good purposes, shall consider the City as a customer of first priority and shall make its best effort to provide to the City the requested goods and/or services in a timely manner. For purposes of this Purchase Order/Vendor Contract, a "major emergency" or "disaster" shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above.

2.31 **Non-Discrimination in Benefits:**

2.31.1 **Compliance with SMC Ch. 20.45:** The Vendor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Vendor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Vendor provides to its employees with spouses. At the City's request, the Vendor shall provide complete information and verification of the Vendor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material beach of this Agreement. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at* http://cityofseattle.net/contract/equalbenefits/*)*

2.31.2 **Failure to Comply with SMC Ch. 20.45:** Failure to comply will subject the Contractor to one or more of the following penalties: disqualification from bidding on or being awarded a City contract for a period of up to 5 years, actual damages, termination of the contract, or other remedial actions such as payment of cash equivalent payments or expedited implementation of equal benefits.

2.32 **Fair Contracting Practices Ordinance:** The Contractor shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies. (See SMC 14.10 at http://clerk.ci.seattle.wa.us/~public/code1.htm)