

## CLACKAMAS COUNTY PURCHASE ORDER STANDARD TERMS AND CONDITIONS (Rev 03/2018)

**1. DEFINITIONS:** "Goods" collectively means the goods and services being supplied by Contractor to County. "Purchase Order" or "PO" means the entire written agreement between the parties, including these Standard Terms and Conditions – See also "Order of Precedence" below; "Contractor" means the party named in the Purchase Order with whom County has contracted for the purchase of goods or services; "ORS" means the Oregon Revised Statutes; and "County" means Clackamas County, a political subdivision of the State of Oregon, or any component unit thereof, including but not limited to County service districts, urban renewal agencies, or the Housing Authority of Clackamas County.

**2. ASSIGNMENT/SUCCESSORS IN INTEREST:** Contractor shall not assign, transfer, or subcontract rights, or delegate responsibilities under this PO, in whole or in part, without the prior written approval of the County. No such written approval shall relieve Contractor of any obligations of this PO, and both Contractor and any transferee shall remain liable to the County as if no such assignment had occurred. The provisions of this PO shall be binding upon and shall inure to the benefit of the parties to the PO and their respective successors and assigns.

**3. ACCESS TO RECORDS:** Contractor shall maintain all accounting records relating to this PO according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts.

**4. COMPLIANCE WITH APPLICABLE LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; and the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) County Local Contract Review Board Rules, containing language required to be in all public contracts, is specifically incorporated by reference as if set forth herein.

**5. SEVERABILITY:** If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**6. COUNTY PAYMENT OF CONTRACTOR CLAIMS:** If Contractor does not pay promptly any claim that is due for goods or services furnished to the Contractor by any subcontractor in connection with this PO, the County may pay such claim and charge that payment against any payment due to the Contractor under this PO, including recovery of interest accrued on such payment at a rate of eight percent (8%) per annum. County's payment of a claim does not relieve the Contractor or its surety, if any, from the obligations for any unpaid claims.

**7. HOLD HARMLESS:** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend, indemnify, and hold harmless County and its elected officials, officers, agents, and employees from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractors, officers, agents, or employees.

**8. GOVERNING LAW, JURISDICTION, VENUE:** This PO shall be governed and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit, or proceeding between County and Contractor that relates to this PO ("Claim") must be heard exclusively in the Circuit Court of Clackamas County for the State of Oregon. If the Claim must be brought in a federal forum, then it must be heard exclusively in the US District Court for the District of Oregon. Contractor consents to the in personam jurisdiction of these courts. *Neither this Section nor any other provision of this PO is a waiver by the County of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court.*

**9. WARRANTIES:** Unless otherwise stated, all equipment shall be new current model and carry full factory warranties. Contractor warrants all goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with bid specifications. Upon delivery, all warranties shall automatically transfer to the County. Contractor shall undertake all steps necessary to effectuate the foregoing.

**10. DELIVERY:** Deliveries shall be F.O.B. Destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage shall remain with Contractor until formal inspection and acceptance when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations. Time is of the essence and the County reserves the right to cancel any undelivered portion of this order for failure by the vendor to deliver on time. Vendor assumes responsibility of delay notwithstanding the cause. All hazardous materials must have the material safety data sheet (MSDS) provided at time of delivery.

**11. INSPECTIONS:** Goods furnished under this PO shall be subject to inspection and test by the County at times and places determined by the County. If the County finds Goods furnished to be incomplete or not in compliance with specifications, the County may reject the Goods and require Contractor to either correct them without charges or deliver them at a reduced price which is equitable under the circumstances as determined by County. If Contractor is unable or refuses to correct such Goods within a time deemed reasonable by the County, the County may cancel the order in whole or in part without penalty or cost. All invoices, packing lists, packages, shipping notices, and any other written document affecting this Contract shall contain the applicable PO number. Packing list(s) shall be enclosed with each and every shipment pursuant to this PO, indicating the content therein. Nothing in this paragraph is to in anyway affect or limit County's rights as a buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**12. PAYMENT:** Payment for completion of County contracts are normally made within 30 days following the date the entire order is delivered or the date the accurate invoice is received whichever is later. Contractor may not access an overdue account charge in excess of 2/3% per month (8% APR) on outstanding balances. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

**13. TERMINATION:** (i) The parties may terminate this PO by mutual agreement; (ii) County may terminate this PO at any time for convenience with written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (iii) County may terminate this PO at any time if County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iv) if Contractor breaches any PO provision or is declared insolvent, County may terminate this PO for cause with written notice to Contractor, and Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.

**14. FORCE MAJEURE:** Neither party is responsible for delay or default caused by an event beyond its control, including events such as war, riots, insurrection, terrorism, acts of God, or other disasters. The County may terminate this PO without liability to Contractor upon written notice after determining such delay or default will reasonably prevent performance of this PO.

**15. WAIVER/BREACH OF CONTRACT:** County's failure to enforce any provision of this PO is not a waiver or relinquishment by County of its rights to such performance in the future or to enforce any other provision.

**16. FOREIGN CONTRACTOR:** If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this PO. County may withhold all payments under this PO without penalty until Contractor has met this requirement.

**17. CONSTITUTIONAL DEBT LIMITATION:** This PO is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**18. TAX CERTIFICATION:** Contractor must, throughout the duration of this PO and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this PO. Further, any violation of Contractor's warranty of this PO that Contractor has complied with the tax laws of this state and the applicable tax laws of a political subdivision of this state also shall constitute a material breach of this PO. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this PO, and to pursue any or all of the remedies available under this PO, at law, or in equity, including but not limited to: (i) Termination of this Contract, in whole or in part; (ii) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (iii) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this PO, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**19. CONSTRAINTS:** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this PO, has faithfully complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. COUNTY NAME AND TRADEMARK:** Contractor shall not use names, marks or trademarks identifying County, or any department or office of County, or in any other way identify County without prior written approval from the County Public and Government Affairs Office.

**21. INSURANCE:** Contractor shall secure at its own expense and keep in effect during the term of the performance under this PO, general liability or professional liability insurance as deemed applicable by County with limits not less than one million dollars (\$1,000,000) per occurrence with an aggregate amount of \$2,000,000, unless otherwise specified in writing by County. If requested, Contractor shall provide proof of insurance of said insurance policy and name the County as an additional insured on said policies. Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its subcontractors, if any, comply with these requirements.

**22. ORDER OF PRECEDENCE:** This PO includes the documents listed below, which, in the event of any conflicts among them, must be interpreted in the following order of precedence: (i) The solicitation document issued by County and its attachments and addenda, if any; and (ii) this Purchase Order including its Terms and Conditions, Contractor's bid, proposal or quote. *In the event Contractor's bid, proposal or quote contains a requirement that its terms and conditions are superior to the above order of precedence, then Contractor's acceptance of this PO constitutes a complete and absolute waiver of such requirement.*

**23. EMPLOYMENT STATUS AND CONFLICTS:** Contractor certifies that it is not currently employed by the federal government and is not an employee of the County. Contractor further certifies that it has not offered any gifts, financial incentive or other enticements to a County employee, a County employee relative as defined in ORS 244.020(15), or an employee's or relative's business in exchange for a contract.

**24. INDEPENDENT CONTRACTOR STATUS:** The services to be rendered under this PO are those of an independent contractor. Contractor is solely and entirely responsible for any applicable state and federal taxes applicable to this PO. Contractor's employees are not entitled to any of the benefits that County provides its employees.

**25. TRAVEL AND EXPENSE REIMBURSEMENT:** If any travel or expense reimbursement is authorized in this PO, County will only reimburse Contractor in accordance with the County Contractor Travel Reimbursement Policy, hereby incorporated by reference.

**26. INTELLECTUAL PROPERTY:** All inventions, discoveries, work of authorship, trade secrets or other tangible or intangible items and intellectual property rights created by Contractor pursuant to this PO, including derivative works and compilations, together the "Work Product", and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of County.