

## TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES (No Federal or Grant Funds)

### 1. ORDER/ACCEPTANCE/ENTIRE AGREEMENT:

- (a) This Purchase Order between Jefferson County, Colorado (the "County") and the Supplier, Vendor, Consultant or Contractor named on the Purchase Order (the "Supplier"), together with all documents referenced or attached thereto, is subject to these terms and conditions and is collectively referred to herein as this "Order." The Supplier's acknowledgment, acceptance of payment or commencement of performance shall constitute the Supplier's unqualified acceptance of this Order. Additional or differing provisions proposed by the Supplier or included in any documentation submitted by the Supplier to the County are hereby objected to by the County and have no effect unless accepted in writing by the County's signatory to this Order. This Order and any attached exhibits supersede any prior or contemporaneous offers, negotiations and agreements concerning the subject matter hereof and constitute the entire agreement between the parties. This Order may not be modified except in writing signed by the County's signatory to this Order.
- (b) All services included or referenced in the Order ("Services") are to be scheduled with the County representative identified in this Order ("County Representative.") The County may change the County Representative at any time by giving notice to the Supplier. The County Representative shall be the sole judge of the acceptability of the goods or Services and the sufficiency of the supporting data submitted by the Supplier.
- (c) The Supplier shall provide all labor, equipment, materials and supervision necessary for, or incidental to, the complete and timely delivery of all goods or performance of all services described or reasonably implied from the terms and conditions of this Order. The Supplier shall provide the goods or perform the Services to the satisfaction of the County and in strict accordance with the provisions of this Order.
- (d) The terms and conditions of any Supplier invoice, Supplier time sheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the County notwithstanding any signatures on such form by a County employee. The Supplier's rights and obligations shall be solely governed by the terms and conditions of this Order. Any employee's signature on the Supplier's forms shall be effective only to establish receipt of goods or services.
- (e) The Supplier representative identified in this Order (the "Supplier Representative") has the authority to bind the Supplier with respect to the delivery of the goods or Services and shall be present at the work site, as necessary, to assure the Supplier's satisfactory performance. The Supplier Representative shall also be responsible for advising the County Representative of the status of the goods or Services and agrees to take direction only from the County Representative and to comply promptly and fully with the reasonable requests and directives issued by the County Representative from time to time. The Supplier shall not replace the Supplier Representative unless: (a) the County requests a replacement; or (b) the Supplier terminates the employment of the Supplier Representative and provides a satisfactory substitute. The County must approve a substitute Supplier Representative, and, if no substitute is acceptable, the County may terminate this Order.

### 2. GOVERNING LAW; COMPLIANCE WITH LAW:

- (a) The rights and duties of the parties under this Order shall be governed by the laws of the State of Colorado, excluding its conflicts of law provisions. The courts of the State of Colorado shall have sole and exclusive jurisdiction of any disputes or litigation arising under this Order. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County of Jefferson, State of Colorado.
- (b) The Supplier shall observe and comply with all applicable laws, including but not limited to federal, state and local laws, regulations, rules, or ordinances that affect those employed or engaged by it, the materials or equipment used or the conduct of the Services and shall procure any and all necessary approvals, licenses and permits all at its own expense.
- (c) The Supplier guarantees that all merchandise provided hereunder has been manufactured as sold in compliance with all applicable laws and ordinances and that, when applicable, the design of equipment being purchased conforms with all regulations of the Federal Occupational Safety and Health Act.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS:

All data, documents or other information provided to the Supplier and results or conclusions of the services shall be deemed confidential, and shall not be disclosed by the Supplier to any person or entity (other than the Supplier's employees with a need to know the data, documents or information in order to perform the Services) without the prior written consent of the County. All documents, plans, reports or other information provided by the County to Supplier and any documents or information produced by the Supplier in connection with the Services shall be the property of the County. This provision shall survive the completion of the Services and the termination of this Order.

### 4. INTELLECTUAL PROPERTY:

Any custom developed software or other intellectual property resulting from the Services provided pursuant to this Order will become the exclusive property of the County. The Supplier hereby assigns

exclusively to the County and its successors and assigns any and all other programs, inventions, improvements and developments, including all patents, copyrights, trade secrets and other proprietary rights, related to the Services. The Supplier shall have no further right to market, develop, enhance and or modify such custom developed software or other intellectual property for any third party. All ideas, results, data and other information developed by the Supplier as a result of performing Services under this Order shall (1) be assigned and transmitted only to the County, (2) become the County's exclusive property, and (3) be regarded by the Supplier as confidential and shall not be disclosed to any other person or entity.

5. **COOPERATION:** The Supplier shall fully cooperate and not interfere with the activities of other suppliers or contractors, or the County's employees on the premises where Services are being performed hereunder. The Supplier shall keep the work site free of waste materials and rubbish. The Supplier shall remove and safely store all rubbish, tools, construction equipment, machinery, and materials. If the Supplier fails to maintain the work site in a safe and clean condition, the County, may, after notice to the Supplier, perform any necessary clean up and charge all related costs to the Supplier. The Supplier shall immediately report injury or damages caused by the Supplier to the County and shall hold harmless and indemnify the County for any such injury or damage.
6. **CHANGES IN THE SERVICES:** The County Representative may, by written notice to the Supplier, extend the Start or Completion Date or make changes in the Services necessary or convenient to accomplish the purpose of this Order. The Supplier shall not commence any changed or increased Services prior to receipt of a duly executed change order unless directed by the County as provided herein. The County shall have no duty or obligation whatsoever to compensate or to reimburse the Supplier for any additional Services not specifically authorized as provided herein.
7. **DEFAULT:** In the event that the Supplier is in breach or default of any obligation hereunder the County may immediately terminate this Order, whether in whole or in part. Such termination right is in addition to any other right or remedy at law or in equity including the Supplier's contractual responsibility for damages as described in Section 8 below. Without in any way limiting any remedies available to the County, the County may: (1) return part or all of any shipment so made and may charge the Supplier with any loss or expense sustained as a result of such failure to deliver; (2) withhold remaining payment(s) (or any portion thereof that the County may deem equitable) until such breach is cured; and (3) the County shall have the right to recover from the Supplier by offset or otherwise the price of any non-conforming goods or services. If the County permits the Supplier to continue to perform the Services, such permission shall neither modify nor waive the County's rights against the Supplier for such default. The rights and remedies of the County under this Order are cumulative and in addition to all other rights and remedies provided by law or in equity.
8. **DAMAGES:** If the Supplier fails to comply with any provision of the Order, the Supplier shall be liable for any and all damages, including without limitation, the cost of procuring similar supplies or services and all other costs and expenses incurred by the County.
9. **ENTRY ON THE COUNTY'S PROPERTY:** While on the County's premises in connection with the transactions contemplated by this Order, the Supplier shall have full control over its representatives and will be responsible for their compliance with the County's rules and regulations concerning security and conduct on County property and any damages caused by them.
10. **INDEMNIFICATION:** The Supplier warrants that the Services will not infringe or otherwise violate the intellectual property rights of any third party. The Supplier agrees to indemnify, defend and hold the County and its officials, officers, employees and agents harmless from and against any and all claims, damages, losses, demands for payment, injuries, costs and expenses (including attorney's fees) relating to or arising out of: (a) any act or omission of the Supplier, its employees, agents or subcontractors in connection with this Order; (b) any breach of a covenant, representation or warranty made by the Supplier under this Order; (c) use by the Supplier of any third party intellectual property; or (d) the incorporation by the Supplier or any third party intellectual property into the Services. Nothing in this Order shall be construed as a waiver of any defense available to the County under the Governmental Immunity Act or any similar provision. This provision shall survive the completion of the Services and termination of this Order. If requested by the County, the Supplier shall, at its own expense procure the right to continue using the Services or replace or modify the same so that they become non-infringing.
11. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The Supplier acts as an independent contractor and is not acting as an agent, servant or employee of Jefferson County. The Supplier is solely responsible for necessary workers' compensation insurance and shall be responsible for withholding and paying all federal and state taxes. The Supplier and its employees are not entitled to unemployment insurance benefits from Jefferson County.
12. **INVOICES AND PAYMENTS:** The Supplier shall mail its invoices to the County's Accounting Division and each invoice shall include the applicable Order number. Payment shall be made within 30 business days after the

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- County's receipt of an invoice or acceptance of products and services, whichever occurs later. Payment shall be deemed to have been made as of the date the County mails the payment or electronically transfers funds to the Supplier. The County shall not be required to pay disputed items until the dispute is resolved. Incorrect payments to the Supplier due to omission, error, fraud or defalcation may be recovered from the Supplier by deduction from subsequent payments due the Supplier under this Order or other orders or contracts between the County and the Supplier. The County is a tax-exempt governmental entity, a body politic and corporate. No sales, use, or excise taxes shall be included in or added to the prices of the materials or goods on this Order. Tax Exempt Number 98-02810.
13. **LICENSES:**
- (a) The Supplier grants to the County an irrevocable, non-exclusive, worldwide, royalty-free license to possess and use intellectual property owned by the Supplier and delivered to the County under this Order or utilized or incorporated in the Services (except for intellectual property that is specifically developed by the Supplier for the County, in which event, the County shall hold all right, title and interest in such intellectual property): (i) for the County's own internal purposes, and (ii) for any and all purposes associated with the use of the Services delivered to the County under this Order.
  - (b) If the Supplier is obligated to provide third party software under this Contract, the Supplier will obtain and deliver all appropriate third party licenses to the County. Any third party licensing agreements will be subject to the County's review and approval.
  - (c) No license, express or implied, of any patent, copyright, trademark, trade secret or other intellectual property is given by the County to the Supplier hereunder.
14. **NON-APPROPRIATION:** The payment of County obligations hereunder in fiscal years subsequent to the current year are contingent upon funds for this Order being appropriated and budgeted. If funds for this Order are not appropriated and budgeted in the year subsequent to the fiscal year of issuance of this Order the County may terminate this Order. The County's current fiscal year is the calendar year. Additionally, such cancellation shall not impose any penalty against the County in the event of a failure to appropriate sufficient funds.
15. **NOTICES:**
- (a) "Key Notices" under this Order are notices regarding any default, dispute, or termination. Key Notices shall be given in writing and shall be deemed received if given by: (i) electronic mail (as defined in subsection (b) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission, (ii) certified mail, return receipt requested, postage prepaid, 3 business days after being deposited in the United States mail, or (iii) overnight carrier service or personal delivery, when received. For Key Notices, the parties will follow up any electronic mail with a hard copy of the communication by the means described in subsection a(ii) or a(iii) above. The requirement for following up a Key Notice made by electronic mail with a hard copy shall be deemed waived by the receiving party upon acknowledgement, via electronic mail, within 3 business days of transmission of the Key notice, that the Key Notice has been received. All other daily communications or notices between the parties that are not Key Notices may be done via electronic mail. Notices shall be sent to the address or email stated in this Order.
  - (b) The parties agree that: (i) any notice or communication transmitted by electronic mail shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic mail as a defense in any proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Order, the term "electronic mail" means email.
16. **RIGHT TO AUDIT AND INSPECT:** The County shall have the right to examine and audit, at reasonable times, the Supplier's records and accounts that contain information bearing upon Services or the amount payable to the Supplier under this Order. The County may inspect all Services to be delivered under this Order at reasonable times and places, including, where applicable/practicable, during manufacture and before shipment, and the Supplier will provide support, facilities and information necessary for safe and convenient inspection.
17. **SEVERABILITY:** Any provision of this Order which is prohibited or found to be unenforceable by a court of competent jurisdiction will be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
18. **SHIPPING:** The Supplier shall make shipment prepaid and use the most cost effective method of shipment and carrier to ensure arrival of products in accordance with the County's due date. All supporting documents will include the Order number. The Supplier shall enclose a packing memorandum with each shipment. If the Supplier fails to deliver the goods by the date(s) specified herein, County may request that the Supplier use an expedited means of shipment and the Supplier shall be responsible for the additional shipping charges to expedite said shipment. Unless otherwise specified in this Order, delivery shall be FOB destination. The County will not accept COD shipments. All shipping costs shall be billed as separate items on Supplier's invoices.
19. **ASSIGNMENT AND SUBCONTRACTING:** The Supplier may not assign this Order in whole or in part without the County's prior written consent. The Supplier shall not employ any subcontractor without prior written approval of the County Representative. Prior to commencing the Services, each subcontractor shall provide the appropriate insurance, as required under this Order. The Supplier shall be responsible for the coordination of its services and the acts and omissions of its agents, employees, subcontractors and suppliers. The Supplier shall bind each agent and employee to the terms of this Order. The County may terminate this Order if subcontracted by the Supplier without the prior written consent of the County Representative.
20. **SURVIVAL:** Notwithstanding anything to the contrary, the parties understand and agree that all terms and conditions of this Order which require continued performance or compliance beyond the termination date of this Order shall survive such termination date and shall be enforceable as provided herein in the event of a failure to perform or comply by a party to this Order.
21. **TERMINATION:** The County, by written notice, may terminate this Order in whole or in part with or without fault. In the event of termination for fault the terms of paragraph titled "Damages" shall apply. The County shall be liable only for that portion of the Services acceptably completed prior to receipt of such notice less any costs and expenses incurred by the County with respect to such termination.
22. **TIMELY PERFORMANCE:** Time is of the essence with respect to this Order. If the Supplier becomes aware of difficulty in performing this Order, the Supplier shall timely notify the County in writing, giving pertinent details. This notification shall not change the period of performance unless agreed to in writing by the County Representative.
23. **WAIVER:** This Order and its provisions may not be waived except in a writing signed by the party against whom enforcement is sought. The failure of a party to enforce any right arising under this Order on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.
24. **WARRANTY:** The Supplier represents and warrants that it shall perform the Services in a timely, competent and professional manner. The Supplier represents and warrants that all products and/or services furnished hereunder:
- (a) conform to the particular requirements of the Order and the Supplier's (or the applicable manufacturer's) specifications;
  - (b) are in good working order and condition;
  - (c) are free from defects in design, materials and workmanship and,
  - (d) are merchantable and fit for their particular purpose. This Warranty shall be in effect for a period of one year commencing on the date of final acceptance of the Services or as otherwise stated in the warranty document if for a longer period regardless of whether the Supplier is under contract with the County at the time of the discovery of the defect. Any payment by the County for such Services shall not constitute a waiver of such warranty. The Supplier shall also assign to the County any longer term guarantee of materials used by the Supplier as may be provided by a manufacturer. The Supplier also represents and warrants that all merchandise provided hereunder has been manufactured and sold in compliance with all applicable laws and ordinances and that, when applicable, the design of equipment being purchased conforms with all regulations of OSHA at time of delivery. In addition to any other remedies, the County may require the Supplier to repair or replace defective products and/or re-perform services. Transportation of replacement products and return of non-conforming products and repeat performance shall be at the Supplier's expense. If repair, replacement or re-performance is not timely, the County may return, repair or replace any defective products and/or services at the Supplier's expense. The Supplier shall provide warranty documentation in connection with the Services prior to the commencement of the Services. This warranty shall survive the County's inspection, acceptance and payment.
25. **ELECTRONIC SIGNATURES.** The parties approve the use of electronic signatures for the execution, amendment, or any other action requiring a signature for this Order. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§24-71.3-101 to -121.