

TOWN OF FLORENCE, ARIZONA

PURCHASE ORDER TERMS AND CONDITIONS

1. These Purchase Order Terms and Conditions (the “Terms” or “contract”) shall be the general contract conditions applicable to any purchase or offer to buy products or services by the Town pursuant to a Purchase Order and are incorporated therein. These Terms shall be fully binding upon the Vendor and its employees, agents, representatives, successors and assigns. The Vendor agrees, certifies, and warrants the Town of its full compliance with the Terms. The Town and the Vendor may be referred to in this contract collectively as the “parties” and each individually as a “party”.
2. This contract is subject to cancellation by the Town pursuant to Arizona Revised Statutes (“A.R.S.”), section 38-511, the provisions of which are incorporated herein by reference.
3. The Vendor shall provide the “Goods” and/or “Services” as described in the Town’s Purchase Order provided to the Vendor.
4. All Goods received by the Town are subject to inspection, testing and acceptance by the Town to determine compliance with any requirements for the Goods. Acceptance takes place when the Town agrees with the Vendor that the terms and conditions of the contract have been met and verified. Acceptance is not the same as receipt, and can only occur after intact shipping, inspection by the Town, and any onsite testing that has been stipulated as part of the Purchase Order. Inspection, approval and acceptance by the Town shall not relieve the Vendor of any liability for defective, non-conforming or inadequate Goods provided pursuant to this contract. Goods failing to meet to meet the requirements of this contract and the Town’s Purchase Order will be held at Vendor’s risk and may be returned to the Vendor. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping, or other like expenses are the responsibility of the Vendor. The Town may elect to do any or all of the following: waive the non-conformance; stop the work or delivery immediately; or bring the Goods into compliance at the Vendor’s sole expense.
5. All Goods must: (a) meet or exceed the specifications and requirements of the Town’s specifications and Purchase Order; (b) Be new, unused, and not refurbished; (c) Be designed and constructed using current industry accepted engineering and safety practices, and materials; (d) Be fit for the intended purposes for which the Goods are used; (e) Be available for inspection at any time prior to or after procurement; (f) Conform to the written promises or affirmations of fact made by the Vendor; (g) Include any and all accessories which may or may not be specifically mentioned herein, but which are normally furnished or which are necessary to make a delivered product ready for its intended use. Such accessories shall be assembled, installed and adjusted such that the product is ready for continuous operation at the time of delivery; (h) Have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a particular product as may be purchased simultaneously by the Town; (i) Not be a prototype insofar as the general design, operation and performance. This requirement is not meant to preclude Vendor from offering new models or configurations, which incorporate improvements in a current design or add functionality, but which in such new model or configuration may be new to the marketplace; and (j) Include at least one copy of a safety and operating

manual. The cost of any such manuals shall be included in the base price for any product delivered hereunder. If more detailed and technically oriented parts and maintenance manuals are available for a product, at a cost, they shall be offered by the Vendor to the Town.

6. Title to Goods, and responsibility and liability for loss, and/or damage in shipping pass to the Town at the delivery destination after receipt, approval and acceptance have taken place. Vendor shall be responsible for delivery and acceptance according to the requirements of this contract and the Purchase Order. The execution of all required tests, certifications and/or licensing, and costs thereof, shall be the responsibility of the Vendor. Upon request by the Town, the Vendor shall provide any documentation or certification related to such tests, certifications or licensing.
7. All defective Goods shall be replaced and exchanged by the Vendor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the Vendor. All replacement Goods must be received by the Town within seven (7) business days of initial notification.
8. The Vendor shall be responsible for, and shall and hereby does warrant that all Goods provided shall: (a) be new; (b) be of good quality and manufacture; (c) conform to the requirements of the contract and specific Purchase Order (including all applicable descriptions, specifications, drawings and samples); (d) be free from defects in material, workmanship, or design; (e) be fit for the intended purpose; (f) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county and Town rules, regulations, ordinances and/or codes that may apply; and (g) be fully covered by Vendor's and manufacturers' warranties applicable to the Goods running in favor of the Town.
9. Copies of all applicable manufacturers' warranties shall be delivered to the Town with or before delivery of the Goods to the Town. The Town may at any time require the Vendor to deliver to the Finance Director written warranties from the Vendor and/or the manufacturers of the Goods for review and approval by the Town. These warranties shall be in a form and content satisfactory to the Town, the Town's lender(s), if any, and any other person reasonably requested by the Town, or the Town's lender(s). If the Vendor fails to deliver such warranties, or if the warranties are determined by the Finance Director to be inadequate or unacceptable, the Vendor shall be considered to be in material breach of this contract.
10. Immediately upon notice from the Finance Director thereof, the Vendor shall correct or replace as required by the Finance Director, at the Vendor's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Goods. The Town's acceptance or approval of the Goods shall in no way relieve the Vendor of any of the Vendor's responsibilities hereunder. Unless a longer period is provided in the Purchase Order, the Vendor's or manufacturers' written warranties, and this obligation to correct or replace, shall continue for a period of two (2) years after acceptance of the Goods. The warranties shall begin on the date of acceptance of the Goods by the Town, during which, the Vendor shall replace or repair defective Goods, at no expense to the Town.

11. The following requirements shall apply to all Goods: (a) Any warranties offered by a dealer shall be in addition to the manufacturer's standard warranty, and shall not be a substitute for such. The Vendor's base price for any Goods shall be inclusive of the standard warranty. The warranties set forth in this contract are not affected by inspection or testing of or payment for the Goods by the Town; (b) The Vendor shall be responsible for the execution and effectiveness of all product warranties, and shall be the sole source for solution, to problems arising from warranty claims. The Vendor agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party; (c) The Vendor shall provide detailed parts and labor warranty information. If the Vendor submits a warranty which does not meet the minimum requirements herein, the Vendor agrees that such warranty shall be considered to be amended to meet those minimums; and (d) the Vendor must be properly franchised dealer authorized to sell and service, including warranty, service, all products offered and sold under this contract and the Town's Purchase Order.
12. The Vendor shall be responsible for and shall and hereby does warrant that all Services provided shall: (a) be of good quality; (b) be provided by properly trained, qualified, and licensed (where applicable) workers and/or subcontractors; (c) conform to the requirements of this contract and the Purchase Order (including all applicable descriptions, specifications, drawings and samples); (d) be appropriate for the intended purpose; (e) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county and Town rules, regulations, ordinances and/or codes that may apply; and (f) be fully covered by Vendor's warranties running in favor of the Town under this contract.
13. To the fullest extent permitted by law, the Vendor shall defend, indemnify, pay, save and hold harmless the Town, its Mayor and council members, officials, agents representatives, volunteers and employees (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorney's fees, court costs, the costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, cost of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the Goods, Services and/or Vendor's performance (or lack thereof) pursuant to this contract and the Purchase Order. The Vendor's duty to defend, pay, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the Goods, acts, errors, mistakes, omissions, work or Services of the Vendor or anyone for whose acts the Vendor may be legally liable. It is the specific intention of the parties that the Indemnitees shall be indemnified by Vendor from and against all Claims other than those arising from the Indemnitees' sole negligence. The Vendor shall be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies. In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this section, the Vendor, at the Vendor's sole cost and upon at least ten (10) days' written notice from the Town, shall defend the same with counsel acceptable to the Town, in the Town's sole discretion. The foregoing indemnity obligations of the Vendor shall survive the expiration or termination of this contract for six (6) years and then expire.

14. This contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the Goods or Services specified herein. This contract may not be modified or amended except by a written document, signed by authorized representatives for each party.
15. The Vendor shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State, County and Municipal laws, codes and regulations in connection with the execution of the Services and provision of Goods.
16. All warranties and representations by the Vendor shall survive the completion, expiration or termination of this contract.
17. This contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Any action brought to interpret, enforce or construe any provision of this contract shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona or in the United States District Court for the District of Arizona, if but only if, the Superior Court lacks or declines jurisdiction over such action). The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this paragraph.
18. The Vendor shall be solely responsible for any and all tax obligations which may result out of the Vendor's performance of this contract. The Town shall have no obligation to pay any amounts for taxes, of any type, incurred by the Vendor.
19. This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this contract shall be deemed to possess the full force and effect of the original, but all of which together shall constitute one and the same instrument, binding on the parties. The parties agree that this contract may be transmitted between them via facsimile or so called "PDF" signature. The parties intend that faxed or "PDF" signatures constitute original signatures and that a fully collated agreement containing the signatures (original, faxed or PDF) of the parties is binding upon the parties.
20. Any amendment, modification or variation from the provisions of this contract shall be in writing and signed by all parties hereto.
21. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including, but not limited to, attorney's fees, court costs, the costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, cost of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute, and the cost of appellate proceedings), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

22. The terms and provisions of this contract represent the results of negotiations between the parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this contract shall be interpreted and construed in accordance with their usual and customary meanings, and the parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this contract that ambiguous or conflicting terms or provisions contained in this contract shall be interpreted or construed against the party whose attorney prepared the executed contract or any earlier draft of the same.
23. If the terms of this contract or provision of Services or Goods hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this contract and pay for charges or Goods hereunder, the Town may terminate this contract at the end of the current fiscal period.
24. The Town has the right to terminate, suspend or abandon this contract for cause or convenience, or to terminate any portion of the Services which have not been performed by the Vendor. The Town may terminate this contract, or any part thereof, for its sole convenience, at any time without penalty or recourse. The Vendor shall receive payment for Services satisfactorily completed and accepted by the Town, as determined by Town in its reasonable discretion.
25. If the Vendor is providing Services, the Vendor acknowledges and agrees that, without limiting any obligations or liabilities of the Vendor, the Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to the Town of Florence. Failure to maintain insurance as specified may result in termination of this contract at the Town's option. The Vendor is primarily responsible for the risk management if its work under this contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. The Town reserves the right to amend the requirements herein at any time during the contract. The Vendor shall require any and all subcontractors to maintain insurance as required herein naming the Town and Vendor as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance and Endorsements. The Vendor's insurance coverage shall be primary insurance with respect to all available sources. Coverage provided by the Vendor shall not be limited to the liability assumed under the Indemnification provision of this contract. To the extent permitted by law, Vendor waives all rights of subrogation or similar rights against Town, its representatives, agents, and employees. All insurance policies, except Workers' Compensation, required by this contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of performance of this contract, the Town of Florence, its Mayor and Council members, agents, representatives, officers,

volunteers, officials and employees as Additional Insureds and shall specify that any insurance coverage carried or self-insurance by the Town, any department or employee shall be excess coverage and not contributory insurance to that provided by the Vendor. Said policy shall contain a severability of interest provision. The Town reserves the right to continue payment of premium for which reimbursement shall be deducted from amounts due or subsequently due the Vendor. The Town reserves the right to require complete copies of all insurance policies and endorsements required by this contract at any time. Failure to maintain the insurance policies as required by this contract, or to provide evidence of renewal, is a material breach of the agreement.

By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect the Vendor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this contract, but the Town has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this contract or failure to identify any insurance deficiency shall not relieve the Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this contract.

All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this contract is satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this contract.

The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town of Florence. The Vendor shall be solely responsible for any such deductible or self-insured retention amount. The Town, at its option, may require the Vendor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

If any work under this contract is sub-contracted in any way, the Vendor shall execute written agreement with subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting the Town of Florence and the Vendor. The Vendor shall be responsible for executing the agreement with subcontractor and obtaining Certificates of Insurance and Endorsements verifying the insurance requirements.

Prior to commencing any Services under this contract, the Vendor shall furnish the Finance Director with Certificate(s) of Insurance, and formal endorsements as required by this contract, issued by the Vendor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's,

conditions, and limits of coverage and that such coverage and provisions are in full force and effect.

The Vendor shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as insurance limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this section, such Excess insurance shall be "follow form" equal or broader to coverage scope then underlying.

The Vendor shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Vendor's employees engaged in the performance of Services under this contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$250,000 disease policy limit.

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate and Endorsement to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned".

Errors & Omissions Liability: Coverage Amount: \$1,000,000 per occurrence/aggregate, unless higher coverage limits are required under the original solicitation documents, in which case such higher limits shall apply.

26. Pursuant to the provisions of A.R.S. §41-4401, the Vendor warrants to the Town that the Vendor and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). The Vendor acknowledges that a breach of this warranty by the Vendor or any of its subcontractors is a material breach of this contract subject to penalties up to and including termination of this contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Vendor or any subcontractor who works on this contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Vendor and any of its subcontractors to ensure compliance with this warranty.

The Town will not consider the Vendor or any of its subcontractors in material breach of the foregoing warranty if the Vendor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes §23-214(A).

The provisions of this section must be included in any contract the Vendor enters into with any and all of its subcontractors who provide services or Goods under this contract or any subcontract. As used in this Section, "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.