

TERMS AND CONDITIONS (UNLESS OTHERWISE SPECIFIED)

1. **General:** Award of contract occurs and a binding contract, consisting of the purchase order and its terms and conditions, results when the City Purchasing Department issues a purchase order in response to a Vendor's offer. These terms and conditions shall apply unless superseded by the specifications, Supplemental Terms, or General Instructions, Terms and Conditions of a Request for Bids or Proposals.

2. Packing, Shipping and Invoicing:

- Department name AND purchase order number MUST be on all invoices, packages, packing slips, bills of lading, etc.

- The Department's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket.

3. **Inspection:** Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for non-conformance with specifications shall be removed, at the Vendor's risk and expense, promptly after notice of rejection.

4. **Discounts:** Prompt payment discounts will not be considered in computing the low offer. Discounts for payment offered will be considered only after award.

5. **Taxes:** All offers include any applicable gross receipts taxes as a separate line item unless otherwise specified. The City will furnish, on request, a non-taxable transaction certificate. Determination of whether the tax is due and payment of the tax is the responsibility of the Vendor. Applicable taxes are to be included in each invoice due and may not be billed more than sixty (60) days after providing the services to which the taxes apply.

6. **Inspection of Plant:** The City Purchasing Officer, or designee, may inspect, at any reasonable time, the part of the Vendor's, or any subcontractor's plant or place of business, which is related to the performance of this contract.

7. **Commercial Warranty:** The Vendor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such supplies or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this contract.

8. **New Material:** All items provided under this contract are to be NEW and of most current production, unless otherwise specified.

9. **Workers' Compensation:** The Vendor agrees to comply with State laws and rules pertaining to workers' compensation benefits for its employees when required to do so. If the Vendor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this contract may be terminated by the City.

10. **Default:** The City reserves the right to cancel all or any part of this contract without cost to the City if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor

liable for any excess cost incurred by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

11. Termination for Lack of Appropriations: Notwithstanding any provision in this contract to the contrary, payments hereunder are contingent upon the City Council of the City making the necessary appropriations. If sufficient appropriations are not made, this contract may be terminated at the end of the City's then current fiscal year upon written notice given by the City to the Vendor. Such event shall not constitute an event of default and all payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's determination regarding appropriations shall be accepted by the Vendor and shall be final.

12. Termination for Debarment: The City shall have the right to terminate the contract without notice upon receipt of a notice of debarment of or ineligibility to receive funds by the Vendor from any agency of the federal government, the State of New Mexico or any other governmental agency.

13. Termination for Convenience: The City may terminate this contract at any time by giving written notice to the Vendor. In such event, the Vendor shall be paid under the terms of the contract for all goods/services provided to and accepted by the City, if ordered or accepted by the City prior to the effective date of termination.

14. Contract Changes: In no case shall the contract be changed without the prior written approval of the City's Purchasing Officer.

15. Assignment: Neither the contract, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as expressly authorized in writing by the City's Purchasing Officer, or designee. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this contract.

16. Compliance With Ethics Provisions: In submitting its offer, the Vendor certifies that he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding and is in compliance with the Ethical Conduct provisions of the Governmental Conduct Act of the State of New Mexico.

17. Non-discrimination: In performing the contract, the Vendor shall comply with the Federal Civil Rights Act of 1964 and Title VII of the Act, (Rev., 1979), and the Americans with Disabilities Act of 1990, (Public Law 101-336).

19. Compliance With Laws: In performing the contract, the Vendor shall comply with all applicable laws, ordinances and codes of the federal, State and local governments.

20. **Contract Information:** Direct all correspondence or inquiries concerning this contract to: City of Gallup, Purchasing Department, P.O. Box 1270, Gallup, New Mexico 87105, or call (505) 863-1232.

IMPORTANT NOTICE: When accepting a hand-carried purchase order, Vendor should call the Purchasing Division to certify validity of the purchase order or request photo identification from the person presenting the purchase order and maintain for its records the driver's license number, social security number or City ID number of that person. The City will not be liable for purchases made by unauthorized individuals

Individual solicitations may have General or Supplemental terms and conditions that may modify, change or add to these existing terms and conditions.