

City of Iowa City
General Terms and Conditions

***These terms and conditions cannot be changed without prior consent of both parties.
The laws of the State of Iowa shall apply in all disputes.***

A. Insurance Requirements:

1. Certificate of Insurance; Cancellation or Modification

- a) Before commencing work, the Vendor shall submit to the City for approval of a Certificate of Insurance meeting all requirements specified herein, to be in effect for the full contract period.
 - I. The City of Iowa City will be named as additional insured.
 - II. Project bid number and project title will be in the description.
 - III. Insurance carriers will be rated as A or better by A.M. Best.
- b) The Vendor shall notify the City in writing at least thirty (30) calendar days prior to any change or cancellation of said policy or policies.
- c) Cancellation or modification of said policy or policies shall be considered just cause for the City of Iowa City to immediately cancel the contract and/or to halt on the contract, and to withhold payment for any work performed on the contract.
- d) The policy shall be primary in payment, not excess or contingent, regardless of any other coverage available to the City.

2. Minimum Coverage

- a) Any policy or policies of insurance purchased by the Vendor to satisfy his/her responsibilities under this contract shall include contractual liability coverage, and shall be in the following type and minimum amounts:

Informal Project Specs: Class I (under \$1M)		
Type of Coverage:	Each Occurrence	Aggregate
a. Comprehensive General Liability. (1) Bodily Injury & Property Damage.	\$1,000,000.00	\$2,000,000.00
	Combined Single Limit	
b. Automotive Liability. (1) Bodily Injury & Property Damage.	\$500,00.00	
c. Worker's Compensation Insurance.	As required by Chapter 85, Code of Iowa	
When Additionally Required:		
Errors and Omissions	\$500,000.00	

Fidelity Bond (minimum)	\$50,000.00	
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Formal Project Specs: Class II (over \$1M)		
Type of Coverage:	Each Occurrence	Aggregate
a. Comprehensive General Liability. (1) Bodily Injury & Property Damage.	\$1,000,000.00	\$2,000,000.00
	Combined Single Limit	
b. Automotive Liability. Bodily Injury & Property Damage.	\$1,000,000.00	
c. Excess Liability	\$1,000,000.00	\$1,000,000.00
d. Worker's Compensation Insurance.	As required by Chapter 85, Code of Iowa	

3. Performance Bond

When required, the successful Bidder shall furnish a bond in the amount of one hundred percent (100%) of the contract price, said bond to be issued by a responsible surety approved by the City and shall guarantee the prompt payments of all materials and labor and protect and save harmless the City from claims and damages of any kind caused by the operation of the contract, and shall also guarantee the maintenance of the improvement for a specified period following its completion and acceptance by the City. A letter of Irrevocable Credit from a responsible lending agency approved by the City, for the same guarantee(s) as noted above, may be submitted for approval. The City reserves the right to accept or reject this form of guarantee.

4. Indemnity

The Vendor shall indemnify, defend and hold harmless the City of Iowa City and its officers, employees, and agents from any and all liability, loss, cost, damage, and expense (including reasonable attorney's fees and court costs) resulting from, arising out of, or incurred by reason of any claims, actions, or suits based upon or alleging bodily injury, including death, tort, or property damage rising out of or resulting from the Vendor's operations under this Contract, whether such operations be by the vendor or themselves or by any Subcontractor or by anyone directly or indirectly employed by either of them.

Vendor is not, and shall not be deemed to be, an agent or employee of the City of Iowa City.

Responsibility for Damage Claims - It is specifically agreed between the parties executing this contract that it is not intended by any of the provisions of any part of the contract documents to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a

suit for personal injuries or property damage pursuant to the terms or provisions of this contract. It is understood that no subcontractor is a third-party beneficiary to any contract between the City and the prime Vendor. Nothing in any special provision or any supplemental specification shall be construed as eliminating or superseding the requirements of this section.

Vendor further agrees to:

- a) Save the City its agents and employees harmless from liability of any nature or kind for the use of any copyright or non-copyright composition, secret process, patented or unpatented invention, article, apparatus or appliance including any device or article forming a part of the apparatus or appliance furnished or used in the performance of the contract of which the Vendor is not the patentee, assignee, licensee or owner.
- b) Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c) Furnish adequate protection against damage to all work and to repair damages of any kind, to any of the buildings, grounds, or equipment, due to Vendor's own work or to the work of other vendors, for which the Vendor is responsible.
- d) Obtain all permits and licenses required by city, state, and federal governments and pay all related fees. The Vendor shall also comply with all laws, ordinances, rules and regulations of the city, state of Iowa and the federal government.

B. Availability of Funds:

A contract shall be deemed executory only to the extent of appropriations available to each department for the purchase of such commodities and/or service. The City's extended obligation on these contracts which envision extended funding through successive fiscal periods shall be contingent upon actual appropriation for the following fiscal year.

C. Change in Laws:

In the event of a change in law that frustrates the goals of the City relative to this contract, the City will be entitled to terminate the contract upon written notification to the Vendor without cost or penalty to the City.

D. Contract Alterations:

The City reserves the right to make changes to the Goods/Services to be provided which are within the Scope of this Contract. No assignment, alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and agreed to by both the City and the Vendor. The Vendor shall not commence any additional work or change the scope of the Goods/Service until authorized in writing by the City. Vendor shall make no claim for additional compensation in the absence of a prior written approval and amendment of this Agreement executed by both the Vendor and the City. This Agreement may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement.

E. Subletting of Contract:

Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any right, title or interest therein, or their power to execute such contract, to any other person, firm or corporation, without the prior written consent of the City, but in no case shall such consent relieve the Vendor from their obligations, or change the terms of contract.

1. Contract Period. Contract shall remain in force for a full period specified and until all commodities and/or services ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall be met, unless:

- a) Extended upon written authorization of the City and accepted by Vendor, to permit ordering or unordered balances or additional quantities at contract prices and in accordance with contract terms.
- b) Extended upon written authorization of the City and accepted by Vendor, for a period negotiated and agreed upon by both parties, when in the best interest of the City.
- c) Terminated due to default, as described below.

F. Default:

The contract may be cancelled or annulled by the City in whole or in part by written notice of default to the Vendor upon non-performance, violation of contract terms, non-conforming products or services, delivery failure, bankruptcy, or insolvency, or the making of an assignment for the benefit of creditors. The City may, within its sole discretion, accept or reject any or all proposed cure actions. An award may then be made to next low bidder, or when time is of the essence, similar commodities and/or service may be purchased on the open market. In either event, the defaulting Vendor (or their surety) shall be liable to the City for cost to the City in excess of the defaulted contract price. Lack of knowledge by the Vendor will in no way be a cause for relief from responsibility.

G. Delivery Failures:

Failure of a Vendor to provide commodities and/or service within the time specified, unless extended in writing by the City, or failure to replace rejected commodities and/or service when so directed by the City shall constitute delivery failure. When such failure occurs, the City reserves the right to cancel or adjust the contract, whichever is in the best interest of the City. In either event, the City may purchase in the open market commodities and/or service of comparable worth to replace the articles of service rejected or not delivered. On all such purchases, the Vendor shall reimburse the City, within a reasonable time specified by the City, for any expense incurred in excess of contract prices, or the City may deduct such amount from monies owed the Vendor. If the contract is not cancelled, such purchases shall be deducted from contract quantities. The City reserves the right to accept commodities and/or service delivered which do not meet specifications or are substandard in quality, subject to an adjustment in price to be determined by the City.

H. Force Majeure:

The Vendor shall not be liable in damages for delivery failure when such failure is the result of fire, flood, strike, act of God, act of government, act of an alien enemy or any other circumstances which, in the City's opinion, is beyond the control of the Vendor. Under such circumstances, however, the City may at its discretion cancel the contract.

The City shall not be liable in damages for any payment failure and may suspend or terminate the contract with respect to delivery of any additional goods or services when such failure, suspension or termination is the result of fire, flood, strike, act of God, act of government, act of an alien enemy or any other circumstances which, in the City's opinion, is beyond the City's control. Under such circumstances, however, the Vendor may at its discretion cancel the contract.

I. New Goods Fresh Stock:

All contracts, unless otherwise specified, shall produce new commodities, fresh stock, latest model, design, or pack.

J. Professional Workmanship:

Professional workmanship shall meet or exceed existing industry standards.

K. Occupational Safety and Health Administration Requirements:

All commodities and/or service shall satisfactorily comply with applicable Occupational Safety and Health Administration regulations in effect at the time commodities are shipped and/or the service is performed. Safety Data Sheets are required in accordance with applicable regulations.

L. Anti-Discrimination:

Vendor shall not discriminate against any person in employment or public accommodation in violation of federal, state, or local law. "Employment" shall include but not be limited to hiring, accepting, registering, classifying, promoting, or referring to employment. "Public accommodation" shall include but not be limited to providing goods, services, facilities, privileges and advantages to the public. refuse to hire, accept, register, classify, promote or refer for employment, or to otherwise discriminate in employment against any other person or to discharge any employee in violation of federal, state, or local law.

M. Delivery Provisions:

- 1. Cartage.** All items shall be delivered free on-board destination. Delivery costs and charges must be included in the bid unless otherwise stated in the specifications or proposal.
- 2. Responsibility for commodities and/or services.** The Vendor shall be responsible for any commodities and/or service covered by this contract until they are delivered at the designated point, but the Vendor shall bear all risk for rejected commodities and/or service after written notice of rejection. Rejected commodities and/or service shall be removed and/or replaced by and at the expense of the Vendor promptly after written notification of rejection, unless public health and safety require destruction or other disposal of rejected delivery.

Upon Vendor's failure to do so within thirty (30) calendar days after the date of notification, the City may return the rejected commodities to the Vendor and/or replace services at the Vendor's risk and expense, or the City may dispose of them as its own property.

3. **Inspections**. Final inspection of commodities and/or service shall be conclusive except as regards latent defects, fraud, or such gross mistakes that amount to fraud. Final inspection and acceptance or rejection of the commodities and/or service shall be made within a reasonable time after delivery, but failure to inspect and accept or reject commodities and/or service shall not impose liability on the City if such commodities and/or service are not in accordance with the specifications. All delivered commodities shall be accepted subject to inspection and physical count.
4. **Time of Delivery**. Vendor shall guarantee delivery of supplies in accordance with such delivery schedule as may be provided in the specifications and proposals. If delivery schedules are not provided in the specifications section, deliveries will be accepted between 8:30 a.m. and 3:30 p.m. on weekdays only. No deliveries shall be accepted on Saturdays, Sundays, or holidays, unless otherwise authorized.
5. **Packing Slips or Delivery Tickets**. All shipments or deliveries shall be accompanied by packing slips or delivery tickets and shall contain the following information for each item delivered:
 - a) Name and Address of Ordering Department/Division.
 - b) Name of the Vendor.
 - c) Commodity name.
 - d) Supplier's stock number.
 - e) Quantity ordered.
 - f) Quantity and date shipped.
 - g) Quantity back ordered.

Vendors are cautioned that failure to comply with these conditions may be considered sufficient reason for refusal to accept the commodities and/or for delay in payment.

N. Warranty/Guarantee:

The Vendor warrants that all articles, materials and services performed shall be consistent with manufacturer's specifications and will be free from defects. From the post acceptance by the City of Iowa City of the items delivered and installed Vendor shall provide a one (1) year warranty to include all hardware, parts, software, software updates, shipping costs, labor, travel, and service calls. If, within the guarantee period, any defects or signs of deterioration are noted which in the City's opinion are due to faulty design, installation, workmanship, or materials, the Vendor, upon notification and at his/her expense, shall repair or adjust the equipment or parts to correct the condition or he/she shall replace the part or entire unit to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as shall be designated by the City as least detrimental to the operation of the City business.

Vendor will replace, at its own expense, any project component that does not meet departmental expectations within three (3) to five (5) business days of installation without limitation of any rights which the City may have by reason of any breach of warranty.

Regardless of any statement to the contrary, the Vendor agrees that the implied warranty of merchantability and fitness for a specific purpose is not disclaimed.

O. Discrepancies:

In the event that there are any discrepancies or differences between any conditions of the Vendor's quote and the General Terms and Conditions prepared by the City of Iowa City, the City's General Terms and Conditions shall prevail. All costs associated with this project must be included in the Vendor's submitted quote. The total project cost for complete repair must include all costs for required equipment, supplies, shipping, labor, and travel needed for the full functionality and use of the equipment. Any costs not specifically set forth in this Quote will be the responsibility of the Vendor and will be deemed included in the fees and charges bid herein.

P. Choice of Law and Forum:

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this contract, without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this contract shall be brought and maintained solely in Johnson County District Court for the State of Iowa, Iowa City, Iowa, or in the United States District Court for the Southern District of Iowa, Davenport Division, Davenport, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability in State or Federal court, which may be available to the City.

Q. Trade Secrets or Propriety Information:

Responses to this Request for Bid become the exclusive property of the City of Iowa City. All documents submitted in response to this Request for Bid may be regarded as public records and may be subject to disclosure. During the course of the submittal evaluation process or the course of the project, City of Iowa City will accept materials clearly and prominently labeled "Trade Secret", "Confidential", or "Proprietary" by the respondent or other submitting party. The City of Iowa City will not advise as to the nature of the content of the documents entitled to protection to disclosure, or as to the definition of trade secret, confidential, or proprietary information. The respondent or other submitting party will be solely responsible for all such determinations made by it, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret", "Confidential", or "Proprietary" as it determines to be appropriate. Respondents which indiscriminately so identify all or most of their submittal as protected from disclosure without justification may be deemed nonresponsive.

The City will endeavor to advise the Vendor of any request for material under the Iowa Open Records Act (Iowa Code Chapter 22) that the Vendor has marked "Trade Secret", "Confidential" or "Proprietary" by giving the Vendor 5 calendar days' notice of such request prior to release of the material so marked to enable the Vendor to seek a court order to protect such materials from disclosure. The City's sole responsibility is to notify the proposer of the request for disclosure, and the City of Iowa City shall not be liable for any damages resulting out of such disclosure, whether such disclosure is deemed required by law, by an order of court or administrative agency, or occurs through inadvertence, mistake, or negligence on the part of the City of Iowa City or its officers, employees, consultants, or subconsultants.

R. City Officers and Employees not to benefit:

Upon signing this agreement, Vendor acknowledges that Section 362.5 of the Iowa Code prohibits a City officer or employee from having an interest in a contract with the City, and certifies that no employee or officer of the City, which includes members of the City Council and City boards and commissions, has an interest, either direct or indirect, in this contract, that does not fall within the exceptions to said statutory provision enumerated in Section 362.5

S. Payment Provisions:

1. **Payment Terms.** Payment may be made only after inspection and acceptance by the using department and, when required, approval by the City Council. No partial payments shall be made unless otherwise authorized by the City, or unless commodities were constructed, erected, installed or tested on site, in which case payment shall be made on the basis of a percentage of the value of all work performed less any previous payments. Payment of balances shall be made only after approval and final acceptance by the City.
2. **Withholding Payment.** Consideration for withholding payment shall include faulty materials, equipment, or workmanship, back orders, and liens that have been filed, or evidence indicating a possible filing of claims. In all cases, regulations and limitations imposed by the Federal Government and State of Iowa shall prevail.
3. **Invoicing.** Following acceptance, payment shall be made within thirty (30) calendar days from receipt of proper invoice. Invoice shall include project number, purchase order number, department name, dollar amount, and any other pertinent information.
4. **Taxes.** The City of Iowa City is exempt from all Federal, State of Iowa and other states' taxes on the purchase of commodities and services used by the City within the state of Iowa. The Purchasing Division shall provide tax exemption certification to out of state suppliers as required. Out of state taxes imposed on purchases of commodities and/or services which are used within another state are applicable and subject to payment.

Vendors shall bill the City Accounting Division, including tax, for contracts pertaining to the alteration, construction or repair of real property. The Vendor shall provide the necessary Iowa Department of Revenue Contractor's Statement (one contractor's statement for each subcontractor). The Accounting Division shall then contact the state of Iowa for tax reimbursement.

Vendors and subcontractors shall pay all legally required sales, consumer and use taxes on all commodities and/or services purchased or rented to complete their contract.

If a Vendor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer.