

## PURCHASE ORDER TERMS AND CONDITIONS

Revised 5/1/2024

The purchaser is the City and County of Broomfield, a Colorado municipal corporation and county (the “City”). The vendor, supplier, consultant, or contractor identified on the face of this purchase order is the provider of goods and services (the “Seller”).

All special conditions on the face of the purchase order are hereby made a part of these Purchase Order Terms and Conditions (the “Purchase Order”). For purchase orders related to a Master On-Call Agreement of any type or any other contract, the terms of the signed agreement shall control over these general terms and conditions. Express changes to these Purchase Order Terms and Conditions not made by another written instrument executed by the parties shall be noted on the face of the Purchase Order. Additional or differing provisions proposed by the Seller or included in any documentation submitted by the Seller to the City are hereby objected to and have no effect unless noted on the face of this Purchase Order. This Purchase Order may be modified as described below in Section 4. The Seller’s acknowledgment, acceptance of payment or commencement of performance shall constitute the Seller’s unqualified acceptance of this Purchase Order.

### 1. COMMERCIAL DETAILS.

- a. *Invoices and Payments.* To ensure prompt payment, mail or email invoices to:

City and County of Broomfield  
One DesCombes Drive Broomfield, Colorado 80020  
Attention: Accounts Payable  
Email at: [apinvoices@broomfield.org](mailto:apinvoices@broomfield.org)

The City shall pay the Seller the agreed upon price in accordance with this Purchase Order within 30 days of satisfactory completion and approval of the services and receipt of invoices by the City. If the services exceed 30 days, the Seller may submit applications for payment monthly based upon the services completed and approved by the City. Payment shall be deemed to have been made as of the date the City mails the payment or electronically transfers funds to the Seller. The City shall not be required to pay disputed items until the dispute is resolved. Payment of any invoice shall not act as a waiver of the City’s right to recover in full any over-payment revealed by any subsequent

audit or inspection. Incorrect payments to the Seller due to omission, error, fraud, or defalcation may be recovered by deduction from subsequent payments due to the Seller under this Purchase Order or any other contracts between the parties.

- b. *Labor and Materials.* The Seller 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 Purchase Order.
- c. *Authorization.* All parties to this Purchase Order agree that the representatives are, in fact, bona fide and possess full and complete authority to bind said parties. Any questions pertaining to this Purchase Order shall be addressed to the Procurement Division, referencing the Purchase Order number. Specifics regarding the services may be directed to the ordering department.
- d. *Limitation of Terms.* The terms and conditions of any Seller invoice, Seller timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee.
- e. *Performance Period.* The Seller shall begin the services on the date specified in this Purchase Order or any applicable notice to proceed and shall complete the services within the time designated in this Purchase Order. Time is of the essence in completing this Purchase Order. All services shall be performed in accordance with good commercial practice and the schedule and completion dates shall be adhered to by the Seller. If the Seller becomes aware of difficulty in performing the services, the Seller shall timely notify the City in writing. This notification shall not change the period of performance unless agreed to in writing by the City.
- f. *Delays.* Any delays in or failure of performance by any party of its obligations under this Purchase Order shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party. In the event of a delay, the Seller shall

notify the City of the delay and the performance period shall be extended equal to the time actually lost by reason of the delay.

- g. *Tax Exemptions.* By statute the City is exempt from state and local taxes. The Seller shall obtain a sales tax exemption permit from the State of Colorado Department of Revenue, if necessary, to obtain materials for the services without the payment of Colorado State's sales tax. The City's Exemption Number is 98-02553-0000.

## 2. ACCEPTANCE OF GOODS AND SERVICES.

- a. *Delivery.* Delivery and performance must be effected within the time stated on the Purchase Order and the attached documents. No acts of the City including, without limitation, acceptance of partial late deliveries, shall operate as a waiver of this provision. In the event of any delay, the City shall have, in addition to other legal and equitable remedies, the option of placing this order elsewhere and holding the Seller liable for damages.
- b. *Goods Rejected.* Goods rejected due to failure to meet specifications, either when shipped or due to defects of damage in transit, may be returned to Seller for credit and are not to be replaced except upon receipt of written instructions from the City.
- c. *Inspection.* Goods are subject to the City's inspection on arrival. When the words 'no substitute' are used in the article description, only the article described will be acceptable.
- d. *Title.* The Seller warrants full, clear and unrestricted title to the City for all equipment, materials, and items furnished in performance of this Purchase Order, free and clear of any and all liens, restrictions, reservations, security interest encumbrances and claims of others.
- e. *Final Acceptance.* Receipt of the merchandise, services or equipment in response to this Purchase Order can result in authorized payment on the part of the City; however, that final acceptance is dependent upon completion of all applicable required inspection procedures. The City's representative shall be the sole judge of the acceptability of the goods or services. The City is not liable for payment of any goods or services shipped or released to the City without the appropriate purchasing authorization.

- f. *Freight Terms.* Shipments must be F.O.B., City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020, unless otherwise specified on this Purchase Order. If permission is given to prepay freight and charge separately, the original freight bill must accompany the invoice. Additional charges for packing will not be accepted. Where manufacturers have distribution points in various parts of the country, shipment is expected from the nearest distribution point to destination, and excess freight will be deducted from the invoice when shipments are made from greater distances.
  - g. *Protection of Property.* While on the City's premises in connection with this Purchase Order, the Seller shall have full control over its representatives and will be responsible for their compliance with the City's rules and regulations concerning security and conduct on City property and any damages caused by them. All City property shall be protected against damage or interrupted services at all times by the Seller during the term of this Purchase Order. The Seller shall be held responsible for repairing or replacing any and all property which is damaged by reason of the Seller's operation on the property to the satisfaction of the City.
3. WARRANTY. The Seller warrants that all goods, articles, materials and work covered by this Purchase Order will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended, and performed with the highest degree of care and competence in accordance with accepted standards for work of a similar nature. The Seller warrants that all goods sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the goods are subject. The Seller warrants that the services provided will not infringe or otherwise violate the intellectual property rights of any third party. The Seller shall replace, repair, re-perform or make good, without cost to the City, any defects or faults arising within one (1) year or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty provided by the Seller after the date of acceptance of the goods and services hereunder (acceptance not to be unreasonably delayed). Acceptance or use of goods by the City shall not constitute a waiver of any claim under this warranty. NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.
4. MODIFICATIONS; CHANGES IN THE SERVICES. The Seller shall not commence any

changed or increased work prior to receipt of a duly executed change order or amended Purchase Order unless directed by the City as provided herein. The City shall have no duty or obligation whatsoever to compensate or to reimburse the Seller for any additional work not specifically authorized. Any claim for adjustment must be asserted within thirty (30) days from the date the change or termination is ordered. Any modifications or changes to the services shall be documented with an amended Purchase Order.

5. TERMINATION. The City, by written notice, may terminate this Purchase 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 City 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 City with respect to such termination.
6. DAMAGES. If the Seller fails to comply with any provision of this Purchase Order, the Seller 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 City because of such failure. The cost to complete the services or any portion thereof which remains unperformed at the time of such termination, together with other damages, shall be deducted from any sum payable hereunder before final payment to the Seller.
7. KNOWLEDGE OF THE WORK. Before entering into this Purchase Order, the Seller became fully informed regarding the services and any materials or equipment required including the amount or quantity thereof. No adjustment or modification shall be allowed for any misunderstanding of the work or of equipment or material requirements, or of the provisions contained in this Purchase Order. The selection of materials and equipment for the services shall be in accordance with this Purchase Order, local building codes and any other applicable federal, state, or local laws, rules, regulations or policies. For any work subject to funding by the Federal Government, the Seller agrees to comply with all applicable Federal contracting requirements and any other federal or state contracting terms which may be applicable to the services.
8. CITY'S PERFORMANCE OF SELLER'S OBLIGATIONS. If the City directs the Seller to correct nonconforming or defective goods by a date to be agreed upon by the City and the Seller, and the Seller thereafter indicates its inability or unwillingness to comply, the City may cause the work to be performed by the most expeditious means available to it, and the Seller shall pay all costs

associated with such work.

9. **INSURANCE**. Unless otherwise specified, the Seller shall, at its own expense and for the duration of the work or other terms of this Purchase Order and any related warranty period, obtain and maintain: A. Commercial General Liability Insurance in the coverage amount of \$1,000,000 per occurrence and \$2,000,000 General Aggregate covering all operations by or on behalf of the Seller on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability. B. Automobile Liability Insurance covering any auto including owned, hired and non-owned in a combined single limit of \$1,000,000. C. Workers' Compensation Insurance as required by Colorado Statute covering all Seller's employees acting within the course and scope of their employment pursuant to this Purchase Order with the following minimum limits: \$100,000 each accident, \$100,000 each employee by disease and \$500,000 disease aggregate. Before any of the Sellers or contractors, or employees thereof shall do any work upon the premises of others, the Seller shall furnish the City with a current Certificate of Insurance demonstrating the required coverages identified above. The Seller agrees that such coverages shall be maintained until after the services are completed, accepted and warranty provisions have expired.
10. **INDEMNIFICATION**. The Seller agrees to indemnify, defend and hold the City 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 reasonable attorney's fees) relating to or arising out of: (a) any act or omission of the Seller, its employees, agents or subcontractors in connection with this Purchase Order; (b) any breach of a covenant, representation or warranty made by the Seller under this Purchase Order; (c) use by the Seller of any third party intellectual property; or (d) the incorporation by the Seller or any third party intellectual property into the services. Nothing in this Purchase Order shall be construed as a waiver of any defense available to the City under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et. seq., as amended or any similar provision. This provision shall survive the completion of the services and termination of this Purchase Order. If requested by the City, the Seller 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**. The Contractor is an independent contractor as described in C.R.S. § 8-40-202(2), and is not entitled to workers' compensation

benefits from the City and, further, is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.

12. CITY'S OWNERSHIP OF DOCUMENTS; DELIVERABLES. Any data, documents or other things or information provided by the City to the Seller or to which the Seller has access during the performance of the services (the "City Documents") and any reports, drawings, results, conclusions of the services or other writings or products produced by the Seller in the performance of this Purchase Order (the "Deliverables") shall be and remain the sole property of the City at all times; and the Seller shall not use any of the Deliverables or City Documents for any other purpose.
13. COMPLIANCE WITH LAW. The Seller shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees. The Seller shall procure all necessary approvals, licenses and permits at its own expense; provided, that, the Seller will be able to receive no cost permits when such permits are issued by the City directly.
14. WAIVER. This Purchase 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 Purchase Order on one or more occasions will not operate as a waiver of that or any other right on that or any other occasion.
15. GOVERNING LAW. This Purchase Order shall be governed by the laws of the State of Colorado, USA. Venue for any legal action related to this Purchase Order shall lie in the District Court, Broomfield County, Colorado.
16. APPROPRIATION; FINANCIAL OBLIGATIONS. As of the date of this Purchase Order, and for the express purpose of complying with the City's financial obligations hereunder, the City has appropriated funds equal to or in excess of this Purchase Order price. The payment of City obligations in fiscal years subsequent to the current year are contingent upon funds for this Purchase Order being appropriated and budgeted. If funds for this Purchase Order are not appropriated and budgeted in the year subsequent to the fiscal year of issuance of this Purchase Order, the City may terminate this Purchase Order. The City's current fiscal year is the calendar year. Additionally, such cancellation shall not impose any penalty against the City in the event of a

failure to appropriate sufficient funds.

17. DIGITAL ACCESSIBILITY STANDARDS. In 2021, the State of Colorado adopted HB21-1110 relating to the digital accessibility standards required to be implemented under the Colorado Anti-Discrimination Act which makes it unlawful to discriminate against individuals with a disability. In order to comply with the law on or before July 1, 2024, the Seller shall ensure that all digital deliverables and digital technology provided pursuant to the terms of this Agreement shall comply with at least the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, or such updated standard as the Colorado Governor's Office of Information Technology may adopt from time-to-time.
18. EQUAL OPPORTUNITY. The City and County of Broomfield intends and expects that the contracting processes of the City and its vendors provide equal opportunity without regard to gender, race, ethnicity, religion, age or disability and that its Vendors make available equal opportunities to the extent third parties are engaged to provide goods and services to the City as subcontractors, vendors, or otherwise. Accordingly, the Seller shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide goods and services in connection with performance of this Purchase Order (joint ventures are encouraged). Consistent with the City's Policy of Equal Opportunity and Non-Discrimination, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to all invitations and solicitation. The Seller shall disseminate information regarding all subcontracting opportunities under this Purchase Order in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The Seller shall maintain records demonstrating its compliance with this article and shall make such records available to the City upon the City's request.
19. CRIMINAL JUSTICE INFORMATION SECURITY. When applicable, before commencing performance of the services, the Seller shall be registered with the Colorado Bureau of Investigation's Criminal Justice Information Systems ("CJIS") Vendor Management Program. The Seller shall remain registered with the CJIS Vendor Management Program for the duration of the performance of this Purchase Order and shall immediately cease work and notify the City within 24 hours of its failure to remain registered. Any Seller personnel who has access to the CJI must pass a CJIS background check and comply with all CJIS-mandated security training. CJIS certification will be at the sole cost and

expense of the Seller. Seller will immediately notify the City if it learns that any of its personnel with access to CJI is no longer CJIS certified and will prohibit non-CJIS certified personnel from performing service under this Purchase Order. Seller shall be responsible for ensuring that any City-approved subcontractor with unsupervised access to City CJI complies with the requirements of this paragraph. Seller agrees to ensure that any other access to City CJI has appropriate supervision.

20. HAZARDOUS MATERIALS. “Hazardous Materials” means flammable or explosive materials, petroleum or petroleum products, oil, crude oil, methane gas or synthetic gas usable for fuel, radioactive materials, asbestos or any hazardous toxic or dangerous substances, materials or wastes which are regulated under any applicable law. The Seller shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the City’s property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials claims or litigation, without providing prior written notice to the City. In the event of any emergency involving the sudden discharge or the immediate threat of a sudden discharge of any Hazardous Materials (a “Hazardous Materials Incident”), the Seller shall undertake an emergency response to the Hazardous Materials Incident. A Hazardous Materials Incident shall include those incidents of spilling, dumping or abandonment of a Hazardous Material, whether or not such action is found to threaten immediate and irreparable harm. In the event of any Hazardous Materials Incident, the Seller shall notify the City within 1 hour by telephone and within 48 hours in writing of the Hazardous Materials Incident and the emergency response by the Seller.
21. SURVIVAL. Notwithstanding anything to the contrary, the parties understand and agree that all terms and conditions of this Purchase Order which require continued performance or compliance beyond the termination date of this Purchase Order shall survive such termination date and shall be enforceable as provided herein.
22. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Purchase Order or any benefit that may arise therefrom. The Seller warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Seller, to solicit or secure this Purchase Order.
23. CONFLICT OF INTEREST. The Seller will not knowingly perform any act which

would conflict in any manner with the performance of the services. By acceptance of this Purchase Order, the Seller certifies that it is engaged in no current project or business transaction, directly or indirectly, nor has it any interest, direct or indirect, with any person or business which might result in a conflict of interest in the performance of the services under this Purchase Order.

24. SEVERABILITY. Any provision of this Purchase 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.
25. ASSIGNMENT. This Agreement shall not be assigned by the other Party without the prior written consent of the City.
26. RECORDS. The Seller shall maintain all records, including working papers, notes and financial records, which records shall be available to the City for inspection and audit for a period of 3 years from the date of termination of the this Purchase Order unless the Seller is notified in writing by the City of the need to extend the retention period. Copies of such records shall be furnished to the City upon request without charge by the Seller.
27. ELECTRONIC SIGNATURES. The parties approve the use of electronic signatures for the execution, amendment, or any other action requiring a signature for this Purchase Order.

**ADDITIONAL TERMS FOR PUBLIC WORKS SERVICES  
AS DEFINED IN C.R.S. 24-92-102(8)**

28. CHANGES IN THE WORK. The City may, by written notice to the Seller, extend the completion date or make changes in the work necessary or convenient to accomplish the purpose of this Purchase Order. The Seller shall not commence any changed or increased work prior to receipt of a duly executed change order or amended Purchase Order unless directed by the City as provided herein. Except as provided below, the City shall have no duty or obligation whatsoever to compensate or to reimburse the Seller for any additional work not specifically authorized. In the event (i) the City requires additional compensable work to be performed by the Seller prior to the execution or other finalization of a change order or amended Purchase Order, and (ii) the Seller has submitted to the City an estimate of the cost for the additional compensable work, then the City shall reimburse the Seller for the costs

associated with such additional work on a periodic basis in accordance with the terms of this Purchase Order.

29. SITE CLEAN UP. On a daily basis, the Seller shall maintain the work site free from accumulation of waste materials or rubbish caused by performance of the services. The Seller shall remove all rubbish, tools, construction equipment, machinery, and surplus material from the work site. If the Seller fails to maintain the work site in an appropriate condition, the City may, after notice to the Seller, perform any necessary clean up and charge the cleanup costs to the Seller.
30. SAFETY. The Seller shall perform the services in compliance with the requirements of the United States Occupational Safety and Health Act.
31. UTILITIES. The Seller shall fully comply with C.R.S. §9-1.5-101 et. seq. including, providing notices to the notification association. The Seller shall coordinate with utilities and the City as provided in this Purchase Order and as required by law. The Seller shall be responsible for determining the exact location of utilities that may interfere with the work by exploratory excavation in advance of construction so that potential conflicts may be resolved. The Seller shall include in the price all of the utility identification work. The Seller shall not make a claim for delay or additional compensation due to any relocation operations by any utility.
32. PERFORMANCE AND PAYMENT BONDS. If the Purchase Order price exceeds the sum of Fifty Thousand Dollars (\$50,000), prior to commencing work under this Purchase Order, the Seller shall furnish, at its expense, a separate performance bond and a labor and materials bond, for an amount not less than 100% of the Purchase Order Price on an AIA Form A312 or equivalent bond form acceptable to the City. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Seller shall furnish bonds from an alternate surety acceptable to the City. The bonds shall remain in effect until completion of all warranty and guaranty work and shall be delivered to the City prior to the commencement of the work. The Seller shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or purchase order amendment.