

TERMS AND CONDITIONS

- 1) **Assignment/Transfer:** Assignment or transfer of this contract without written consent of Wayne County may be construed by the County as a breach of contract sufficient to cancel this agreement at the discretion of the County.
- 2) **Inspection:** All goods and services shall be subject to inspection and approval by the County at all reasonable times including inspection during manufacture. Inspection and approval by the County at the Contractor's plant does not preclude rejection for defects upon discovery by subsequent inspection. Any goods and services rejected by the County shall be promptly repaired or replaced at the Contractor's expense. Any and all costs incurred by the County in connection with the return of goods rejected by the County as defective shall be at the Contractor's risk and expense.
- 3) **Risk of Loss:** Regardless of FOB point, the Contractor agrees to bear all risks of loss, injury or destruction of goods and materials ordered herein which occur prior to delivery and acceptance; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder.
- 4) **Warranty:** The Contractor warrants that it has good and merchantable title to the goods sold hereunder and that said goods shall conform to the descriptions and applicable specifications and samples. Such goods shall be of good merchantable quality and fit for the known purposes for which sold, and are free and clear of all liens and encumbrances. The Contractor and the County agree that this order does not exclude, or in any way limit, other warranties provided for in this agreement or by law.
- 5) **Excise and Sales Tax:** The prices herein must not include any Federal excise taxes or sales taxes imposed by any State or Municipal Government. Such taxes, if included, must be deducted by the Contractor when submitting invoice for payment.
- 6) **Invoices:** Invoices for Goods must be submitted on date of complete shipment. Invoices for Services must be submitted within 45 days after completion of Services. Payment will be delayed if the invoice fails to reference PO number, ordering department, unit prices, quantities, totals, and a full description of the order that matches the PO.
- 7) **IRS Form W-9:** The Contractor must have on file with the County an IRS Form W-9 before the County will issue any payment to the Contractor.
- 8) **Compliance with Laws:** The Contractor represents and warrants that the performance of this order and the furnishing of goods or services required shall be in accordance with the applicable standards, provisions and stipulations of all pertinent Federal, State or County laws, rules, regulations, resolutions and ordinances including but not limited to the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations and the Occupational Safety and Health Acts.
- 9) **Amendments:** No amendment, modification or supplement to this contract shall be binding unless it is in writing and signed by authorized representatives of the parties.
- 10) **Termination:** When in the County's best interest, the County may unilaterally cancel this agreement at any time, whether or not the Contractor is in default of any of its obligations hereunder. Under any such cancellation, The Contractor agrees to waive any claim for damages, including loss of anticipated profit on account hereof. However, the County agrees that the Contractor shall be paid for items and/or services already accepted by County, but in no event shall the County be liable for any loss of profits on the order or portion thereof so terminated. Either party may terminate this agreement at any time for the failure of the other to comply with any of its material terms and conditions.
- 11) **Waiver of Breach:** No waiver by either party of any breach of any of the covenants or conditions herein contained performed by the other party shall be construed as a waiver of any succeeding breach of this same or of any other covenant or condition.
- 12) **Complete Agreement:** The parties agree that the conditions of purchase stated herein and the Bidder's Bid set forth their entire agreement and there are no promises or understandings other than those stated herein, and that any prior negotiations between the County and the Contractor or terms and conditions of sales set forth in the Contractor's quotation or order or sales acknowledgment shall not constitute a part of the agreement between

the County and the Contractor concerning this purchase. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

- 13) **Liability and Indemnity:** Contractor agrees to protect, defend, reimburse, indemnify and hold the County, its Commissioners, officers, affiliates, employees and agents harmless at all times from and against any and all claims, liabilities, expenses, losses, demands, damages, fines and causes of action of every kind and character made, incurred, sustained or initiated by any party hereto, any party acquiring any interest hereunder, any agent or employee of any party hereto, any third or other party whosoever, or any governmental agency, arising out of, incident to, or in connection with this contract, or in the performance, nonperformance or purported performance of the work or services or breach of the terms hereof, except when County is solely at fault.
- 14) **Insurance:** Vendor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the County. The cost of such insurance shall be borne by the Vendor.

Minimum Limits of Insurance Coverage shall be at least as broad as insurance services office commercial general liability coverage (occurrence Form CG 00 01) and include products coverage.

Vendor shall maintain at least the following minimum coverage:

Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.

If the Vendor maintains higher limits than the minimum insurance shown above, the County requires and shall be entitled to coverage for the higher insurance limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the vendor shall obtain coverage to reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Vendor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Additional Insured Status. The County, its officers, officials, employees, volunteers, and others as may be specified in any "Special Conditions" shall be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage. For any claims related to this Contract, the Vendor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy shall state that coverage shall not be canceled, except with notice to the County.

Waiver of Subrogation. Vendor grants to the County a waiver of any right to subrogation which any insurer of the Vendor may acquire against the County by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan

and shall have a policyholder's service rating no lower than A:VII as listed in A.M. Best's Key Rating guide, current edition or interim report.

Verification of Coverage. Vendor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Article. The County shall receive and approve all certificates and endorsements before the Vendor begins providing services. Failure to obtain the required documents prior to commencement of services shall not waive the Vendor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by the Article, at any time.

Special Risks or Circumstances. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

The Vendor must submit certificates evidencing the insurance to the Risk Management Division at the time the Vendor executes the Contract, and at least fifteen (15) days prior to the expiration dates of expiring policies

- 15) **Records:** The County reserves the right to inspect all vendor documents relating to this agreement for up to three (3) years after expiration.
- 16) **Jurisdiction and Law:** This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this contract.

17) **COMPLIANCE WITH CONSENT AGREEMENT**

1. The parties acknowledge that this Contract is subject to Public Act 436 of 2012, MCL [141.1541](#) to [141.1575](#) ("Act") and the Consent Agreement between the County and the State Treasurer N.A. Khouri from August 21, 2015 through October 18, 2016 ("Consent Agreement Effective Period").

2. Upon written request of the County, the Contractor shall promptly and fully provide all necessary and requested assistance and information under the Consent Agreement and under the Act.

3. The Contractor shall promptly provide notice to the County Executive if the Contractor receives a request for assistance by an officer, employee, agency or contractor of the State Department of Treasury.

4. The Contractor shall promptly provide notice to the County Executive of knowledge or information of any action or omission that could be considered, or that could lead to, a failure to comply with or breach of the Consent Agreement or of a violation of state or federal law with respect to a matter relating to the Consent Agreement, including the Open Meetings Act, 1976 PA 267, the Uniform Budget and Accounting Act, 1968 PA 2, or the Emergency Municipal Loan Act, 1980 PA 243, by the County, the County Commission, the County Executive, or another officer of the County, during the Consent Agreement Effective Period.

5. To satisfy Sections 3 and 4, the Contractor shall immediately provide notice to the County Executive by sending an email to consentagreement@waynecounty.com or by completing the submission form found at www.waynecounty.com/mb/consent-agreement.htm.

6. If this Contract is considered "Debt" under the terms of the Consent Agreement, it may not be executed or submitted to the County Executive or County Commission for approval until it has been submitted to the County Chief Financial Officer for approval and verification that the required State Treasurer's approval has been received.