

STANDARD TERMS AND CONDITIONS

These standard terms and conditions (“Terms”) are incorporated into the Purchase Order to which they are attached between the INDIANAPOLIS-MARION COUNTY BUILDING AUTHORITY, a body corporate and politic organized and existing under Indiana Code 36-9-13 (the “Building Authority”), and the VENDOR (as identified in the Purchase Order) (“Vendor”).

1. RECEIPT OF GOODS/SERVICES. The sale of goods (“Goods”) and/or the provision of services (“Services”) pursuant to the Purchase Order constitutes Vendor’s acceptance of these Terms. These Terms are the only terms which govern the purchase of the Goods and/or Services by the Building Authority from the Vendor. These Terms comprise the entire agreement between the parties and supersede all prior or contemporaneous understanding or agreement, both written and oral. Vendor will provide the Goods and/or perform the Services set forth in the Purchase Order to the extent authorized by the Building Corporation. Unless expressly set forth otherwise in the Purchase Order, Vendor shall provide all supervision, labor, materials, tools, equipment, and subcontracted work necessary for the performance and completion of the Goods and/or Services.

2. STANDARD OF CARE FOR SERVICES. Vendor acknowledges and agrees that the Building Authority is entering into the Purchase Order in reliance on Vendor’s competence and qualifications for the type of Services to be performed. Vendor accepts the relationship of trust and confidence established between it and the Building Authority regarding the provision of the Services. Vendor shall use its professional care to perform the Services and to further the interests of the Building Authority in accordance with the Purchase Order and these Terms and the Building Authority’s requirements, criteria, budget, time frame and procedures.

Vendor further covenants and represents as follows:

(a) Licensing. Vendor is duly licensed in the State of Indiana to perform the Services and there are no obligations, commitments, restrictions or impediments of any kind applicable to Vendor that will limit or prevent performance of the Services.

(b) Compliance with Laws. In the performance of the Services, Vendor shall observe and comply with all applicable federal, state, municipal and local laws, ordinances, rules, regulations, codes and orders applicable to the Services to be rendered by Vendor in connection therewith.

(c) Standards. Vendor shall perform the Services on behalf of itself and the Building Authority in a manner consistent with the professional and ethical standards of care, diligence, and skill exercised by professionals providing similar services, and in full compliance with all applicable governmental and professional laws, permits and regulations, and shall avoid any activity that could give even the appearance of impropriety. Notwithstanding the foregoing, if such professional standard, as applied to Vendor’s performance of the Services, permits a lower or less stringent

standard of care, prudence and skill than that applicable to the reasonably prudent person, such professional standard shall be raised to that required of the reasonably prudent person. In addition to, but not in limitation of, the foregoing, Vendor’s Services shall be free from negligence.

(d) Administration. Vendor shall furnish efficient business administration and superintendence and perform the Services with reasonable diligence and expediency consistent with sound professional practices.

(e) Errors and Omissions. Vendor warrants that the Services will be free from (i) errors, omissions, and/or defects, and (ii) performed in conformity with the professional standards provided herein. If the Services do not comply with the foregoing warranty, the Building Authority shall give Vendor notice and Vendor shall, at its own cost, promptly correct and make good any errors or omissions in its Services. Should Vendor refuse or neglect to correct or make good any such errors or omissions within a reasonable time after receiving notice thereof, then the Building Authority shall be entitled to have such errors or omissions corrected at the expense of Vendor. This obligation of Vendor is in addition to, and not in substitution for, any other liability of Vendor for errors and omissions in the Services and any other remedy of the Building Authority therefor hereunder and at law or in equity.

The foregoing covenants, representations and warranties are in addition to, and not in lieu of, any and all other duties, obligations and liabilities implied or imposed upon Vendor by law in connection with the Services to be performed hereunder. All such covenants, representations and warranties shall survive completion of the Services and the cancellation, termination or expiration of the Purchase Order.

3. CHANGE OF SCOPE. The Services set forth in the Purchase Order are based on the information provided by the Building Authority to Vendor as of the date of execution of the Purchase Order. Vendor will promptly notify the Building Authority in writing of any changes in scope of the Services, and any such changes must be approved in advance by the Building Authority by a duly executed amendment to the Purchase Order.

4. USE OF DOCUMENTS. All documents resulting from the Services shall be and become the sole property of the Building Authority, and the Building Authority is vested with all rights of ownership therein, including, without limitation, all copyrights (both statutory and common law), all of which are hereby assigned by Vendor to the Building Authority in consideration of the compensation paid by the Building

Authority to Vendor hereunder. All of the Building Authority's rights hereunder shall survive completion of the Services and any cancellation, termination or expiration of these Terms.

5. DELIVERY OF GOODS. Where applicable, Vendor shall deliver the Goods in accordance with the requirements of the Purchase Order and the Terms herein. The Goods shall be delivered within a reasonable time after the date of the Purchase Order or as otherwise provided therein. Title and risk of loss shall pass to the Building Authority upon delivery of the Goods to the Building Authority.

6. RETURN OF GOODS. The Building Authority shall have thirty (30) days to accept the Goods from the date of delivery. The Building Authority shall timely notify the Vendor in writing of any defective or nonconforming Goods within thirty (30) days of receipt of the Goods. If the Building Authority timely notifies Vendor of any nonconforming Goods, the Building Authority shall, in its sole discretion request Vendor to replace such nonconforming Goods with conforming Goods, or credit or refund to the Building Authority the price paid for the nonconforming Goods.

7. WARRANTY. In addition to the warranties provided in Section 2 herein, Vendor expressly warrants that the Goods and the Services provided for the performance of the Purchase Order shall: (i) conform to all drawings, specifications, samples and other descriptions furnished, specified or adopted by the Building Authority; (ii) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Goods or the Services, and the products containing the Goods and Services, are to be sold; (iii) be merchantable; (iv) be free from any defects in design, to the extent furnished by Vendor or any of its subcontractors or suppliers, even if the design has been approved by the Building Authority; (v) be free from any defects in materials and workmanship; and (vi) be fit, sufficient and suitable for the particular purpose for which the Building Authority intends to use the Goods or the Services. Vendor further expressly warrants that Vendor shall, at the time of physical delivery, convey to the Building Authority good title to all Goods that are delivered under and covered by the Purchase Order, free of all liens, claims and encumbrances whatsoever. The warranties in this Section 7 are referred to in these Terms as the "Vendor's Warranties." The Vendor's Warranties are available to, and for the benefit of, the Building Authority, its subsidiaries and affiliates, and their respective successors and assigns. The Vendor's Warranties shall extend to future performance of the Goods. The warranty period shall be that provided by applicable law. The Vendor's Warranties shall be in addition to all other warranties available under applicable law.

8. DELAYS. If events beyond the control of Vendor, including, but not limited to, fire, flood, explosion, riot, strike, war, project shutdown, pandemics or epidemics, acts or omissions of the Building Authority or others for whom Vendor is not responsible, Acts of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in these Terms or the

Purchase Order, such schedule shall be extended for a period equal to the delay. If the Building Authority requests changes in the scope, extent, or character of the Services or the Goods, the time of performance of the Services or delivery of the Goods shall be adjusted as provided in the amendment to the Purchase Order.

9. TERMINATION. These Terms will commence as of the date of execution of the Purchase Order and will thereafter continue in effect until terminated. The Building Authority may, at any time, terminate the Purchase Order and these Terms for its convenience without penalty. Upon receipt of written notice of termination, Vendor shall cease operations as directed by the Building Authority in the notice. Provided Vendor is not in default under these Terms, Vendor shall receive, as full compensation, its actual, necessary, and reasonable costs for all Services performed or Goods accepted by the Building Authority up to the date of such notification of termination.

10. INSURANCE. Vendor will provide and maintain insurance coverage in amounts specified by the Building Authority or, if no amount is specific, in reasonable amounts naming the Building Authority as an additional insured, and covering Professional, Commercial General, Contractor's, Automobile, Product, Worker's Compensation and Employer's Liability in amounts in accordance with applicable law and Vendor's business requirements. Certificates evidencing such coverage will be provided to the Building Authority upon request.

11. INDEMNIFICATION. To the fullest extent permitted by applicable law, Vendor and its agents, partners, employees and subcontractors (collectively "Indemnitors") shall defend, indemnify and hold harmless the Building Authority, the Building Authority's representatives, agents, employees, contractors, and invitees (collectively "Indemnitees") from and against all claims, liability, damages, losses, liens, causes of action, suits, judgments and expenses (including, without limitation, consequential and special damages, personal injury and property damages, and attorney fees) of any nature, kind or description (collectively "Liabilities") arising out of, caused by, or resulting from: (i) the negligent performance of the Services, breach of the Vendor's Warranties, or delivery of the Goods by the Indemnitors; and (ii) any other acts, omissions or negligence of Vendor or of any of its subcontractors in connection with Vendor's performance of its obligations under the Purchase Order or these Terms. The obligations contained in this Section 11 shall survive termination of the Purchase Order and these Terms. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by this indemnification, then each of such Indemnitors shall be jointly and severally liable and responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Section 11 shall not be construed to eliminate or reduce any other indemnification or right which the Building Authority or any of the Indemnitees has by law against Vendor or any of the Indemnitors.

12. INDEMNIFICATION PROCEDURE. The Indemnitees shall give the Indemnitors prompt written notice of any demand, or any civil, criminal, administrative or investigative claim, action or proceeding (including arbitration) asserted, commenced or threatened against an Indemnitee (including an employee thereof) for which indemnification is sought under Section 11 hereof. Failure to give notice will not diminish the Indemnitors' obligations under Section 11. When provided notice of any actual or potential Liabilities, the Indemnitors, at the Indemnitees' option and at the Indemnitors' expense, will undertake defense of such actual or potential Liabilities through counsel approved by the Indemnitees. The Indemnitors may select legal counsel to represent the Indemnitees (said counsel to be reasonably satisfactory to the Indemnitees) and otherwise control the defense of such Claim; provided, however, that the Indemnitors shall first obtain authorization from the Indemnitees before settlement is made of the actual or potential Liabilities if the terms of such settlement (a) require any action or inaction by the Indemnitees or any affiliate thereof or (b) could materially adversely affect the Indemnitees, including any terms which admit the existence of a defect in Products or a failure of the Indemnitees to fully and faithfully perform its obligations. In the alternative, the Indemnitors may elect to undertake defense of such Liabilities to the extent asserted against the Indemnitees, and the Indemnitors shall reimburse the Indemnitees on monthly basis for all reasonable expenses, attorneys' fees, and other costs incurred by the Indemnitees related thereto.

13. FEES AND PAYMENT TERMS. For its performance of the Services or provision of the Goods, the Building Authority shall pay Vendor the fees set forth in the Purchase Order. Vendor's invoices shall be in a form reasonably acceptable to the Building Authority and shall include such detailed documentation supporting Vendor's right to the requested payment as the Building Authority may reasonably require (including, without limitation, all required supporting documentation). The Building Authority shall pay Vendor for the amount properly invoiced, due, owing, and unpaid within forty-five (45) days of Building Authority's receipt of Vendor's properly submitted invoice.

14. PAYMENT WITHHOLDING. The Building Authority shall have the right to withhold from payments otherwise due to Vendor such amounts it disputes in good faith or as it may reasonably determine to be necessary to protect from any loss arising from Vendor's failure to perform in accordance with these Terms. If the Building Authority determines that Vendor is not entitled to all or part of the amount requested in a properly submitted invoice, the Building Authority will notify Vendor in writing of its decision to withhold payment (the "Notice"). The Notice shall indicate the amount the Building Authority is withholding from such payment and the reasons therefore. When the Building Authority determines that the reasons for such withholding have been cured by Vendor, the Building Authority will release such withheld amounts that are properly due, owing, and unpaid to Vendor within forty-five (45) days.

15. LIEN WAIVERS. In the event the Services, in the Building Authority's reasonable judgment, are of a type for which a mechanic's lien may be placed on the Building Authority's property, then with each applicable invoice, Vendor shall provide (on its own behalf and on behalf of its subcontractors) affidavits and lien waivers in a form reasonably acceptable to the Building Authority. The delivery of such complete and executed documents to the Building Authority shall be a condition precedent to the Building Authority's obligation to make payment on the applicable invoice.

16. NO WAIVER BY THE BUILDING AUTHORITY. No payment to Vendor, nor any use of the Services or acceptance of the Goods, shall operate as an approval or acceptance by the Building Authority of the Services or Goods or as a release of Vendor from any of its obligations under the Purchase Order or these Terms.

17. FINAL PAYMENT TO VENDOR. Acceptance by Vendor of any sum tendered by the Building Authority as final payment under the Purchase Order shall constitute a waiver of all payment claims of Vendor and its subcontractors and sub-vendors with respect to the Services performed or Goods delivered pursuant to the Purchase Order.

18. NON-DISCRIMINATION. Pursuant to Indiana and federal law, Vendor and Vendor's subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Services, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Purchase Order and these Terms.

19. E-VERIFY. Vendor affirms under penalties for perjury that it has enrolled in and is verifying the work eligibility status of all newly hired employees through the E-Verify program, as provided for under IC 22-5-1.7, for the duration of the Purchase Order and any future contracts with the Building Authority, unless and until the E-Verify program no longer exists. Vendor further affirms under penalties for perjury that it does not knowingly employ or retain in its employ any unauthorized aliens, which includes any persons whose immigration status makes them ineligible to work for Vendor. Vendor shall require all of its subcontractors, before performing the services on behalf of Vendor for the Building Authority, to provide certification to Vendor that, at the time of certification: (a) subcontractor does not knowingly employ or contract with any unauthorized aliens, meaning any persons whose immigration status makes them ineligible to work for subcontractor; and (b) subcontractor has enrolled in and is participating in the E-Verify program. Vendor certifies that it will keep on file these subcontractor certifications referenced for the duration of any contract with subcontractor to provide services under the Purchase Order or any future contract with the Building Authority.

20. NO INVESTMENT IN IRAN. As required by IC 5-22-16.5, Vendor certifies that it is not engaged in investment

activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of the Purchase Order and denial of future contracts, as well as an imposition of a civil penalty.

21. GOVERNING LAW. The Purchase Order and these Terms and all matters arising out of or relating to these the Purchase Order and these Terms shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its principles of conflict of laws. All claims, disputes and other matters in controversy arising out of or related to the Purchase Order and these Terms, or the performance or breach thereof, shall be decided in the Circuit or Superior Courts of Marion County, Indiana, and that such courts shall have sole and exclusive jurisdiction over the action or proceeding, unless agreed to otherwise, in writing, by the parties. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY SUIT, ACTION, CLAIM, OR PROCEEDING RELATING TO THE PURCHASE ORDER AND THESE TERMS.

22. ENFORCEMENT COSTS. In the event it shall become necessary for the Building Authority to retain the services of an attorney for the purposes of enforcing any provision of the Purchase Order and these Terms against Vendor, Vendor shall be liable to Building Authority for any and all costs of collection, including but not limited to, reasonable attorneys' and professional fees, court costs, costs of investigation and defense, accrued interest, and any other reasonable expenses incurred by the enforcement of such action.

23. SEVERABILITY. If any term or provision of these Terms is held invalid, illegal or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of these Terms be construed to remain fully valid, enforceable and binding on all parties.

24. INDEPENDENT CONTRACTOR. Vendor shall be an independent contractor in performing the Services and delivering the Goods, and shall not be an agent, employee or representative of the Building Authority for any purpose.

25. AUTHORIZATION. The person signing the Purchase Order on behalf of Vendor in a representative capacity certifies that: (i) he/she is fully empowered and duly authorized by any and all necessary action or consent required to execute and deliver the Purchase Order for and on behalf of the Vendor; (ii) said party has full capacity, power and authority to enter into and carry out its obligations under the Purchase Order and these Terms; and (iii) the Purchase Order has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

26. NO THIRD PARTY BENEFICIARY. All of the provisions of the Purchase Order and these Terms are solely for the benefit of the parties hereto, and none of the provisions of the Purchase Order or these Terms shall inure to the benefit

of any person not a party hereto, and third parties shall have no rights hereunder.

27. CONSTRUCTION AND INTERPRETATION. The terms "herein" and "hereunder", and words of similar import, are to be construed to refer to the Terms as a whole, and not to any particular section, paragraph or provision, unless expressly so stated. All words or terms used in the Terms, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require. The Terms are to be construed without regard to any presumption or rule requiring construction against the party causing such document to be drafted or prepared. The terms "person" and "persons" used herein shall include natural persons and corporations, partnerships (general and limited), limited liability companies, firms, associations, trusts, estates, bodies politic, political subdivisions and other entities and organizations.

28. NOTICES. All notices required to be given under these Terms shall be in writing, and shall be mailed by certified mail, return receipt requested, or deposited with a nationally recognized overnight delivery service, properly addressed to the party to be notified, at the address set forth below:

If to the Building Authority:

Indianapolis-Marion County Building Authority
200 E. Washington Street, Room T-311
Indianapolis, IN 46204
Attention: General Manager

With a copy to:

Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079
Attention: David E. Corbitt, Esq.

If to Vendor:

At the address set forth in the Purchase Order.

29. HEADINGS. Headings in these Terms are for convenience only and shall not be used to interpret or construe its provisions.

30. MISCELLANEOUS. The Purchase Order and these Terms may only be modified by a written instrument signed by both parties. The rights and obligations under the Purchase Order and these Terms herein cannot be assigned by either party without the written permission of the other party. These Terms shall be binding upon and inure to the benefit of any permitted assigns. No waiver by either party of any default by the other party in the performance of any particular section of these Terms shall invalidate another section of these Terms or operate as a waiver of any future default, whether like or different in character.

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