

Direct all invoices to:
City of Scottsdale
Attn: Accounts Payable
7447 E. Indian School Rd.
Ste 210
Scottsdale, AZ 8251
Phone (480) 312-2432

CITY OF SCOTTSDALE



PURCHASING OFFICE
9191 E. SAN SALVADOR DR.
SCOTTSDALE, AZ 85258
Phone (480) 312-5700
Fax (480) 312-5701

**City of Scottsdale Formal Solicitation General Terms & Conditions
(Attachment B)**

1. Advertising

No advertising or publicity concerning the City using the Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the City of Scottsdale Contract Administrator and by the City Attorney.

2. Arizona Law

This Contract shall be governed and interpreted according to the laws of the State of Arizona, and any cause of action pertaining to this Contract may be brought only in courts in Maricopa County, Arizona.

3. Assignment

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the Purchasing Director and Contract Administrator.

4. Attorney Fees

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

5. Authority

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract.

6. Cancellation of City Contracts – Conflict of Interest

The City may cancel any Contract or Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the Contract is in effect, an employee of any other party of the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (Arizona Revised Statute 38-511).

7. Headings and Captions

The headings used in the Contract documents are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract, and are not to be used to construe or interpret this Contract.

8. Certificate of Insurance

The successful vendor(s) will be required to furnish the City of Scottsdale a Certificate of Insurance on a standard insurance industry ACORD™ form or its equivalent when separate insurance requirements are listed under Special Terms and Conditions, Section titled Insurance Requirements. The ACORD™ form must be issued by an insurance company authorized to transact business in the State of Arizona. A sample of a standard insurance industry ACORD™ form with the required additional insured language can be found on the Purchasing web site under forms at: <http://www.scottsdaleaz.gov/Purchasing>. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of your certificate and/or may be cause for Contract default. Additionally, Certificates of Insurance submitted without referencing the solicitation number may be subject to rejection and discarded.

9. Changes in The Work

The City may at any time order changes within the scope of the work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

The City shall execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code. Change Orders to Contracts may be executed, according to established rules, when provided for in the original Contract.

The Contractor will not perform any additional services without a written Change Order approved by the City. If the Contractor performs additional services without a Change Order, the Contractor will not receive any additional compensation.

10. Chemicals

Contractors shall provide Safety Data Sheets (SDS) for all substances that are delivered to the City of Scottsdale, that come under the Federal requirements of 29CFR 1910 Subpart Z - Toxic and Hazardous Substances, which includes 29CFR 1910.1200 - Hazard Communication

All Contractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative prior to bringing them on City property.

Contractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation shall be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart-Z Toxic and Hazardous Substances, and Section 1910.1200 Hazard Communication, Contractors are hereby informed of the presence (or possible presence) of chemicals in the area where the work requested will be performed. All selected Contractors shall contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate safety data sheets.

11. Immigration Law Compliance

Under the provisions of Arizona Revised Statute §41-4401, the Contractor warrants to the City that the Contractor and all its Subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that the Contractor and all its Subcontractors now comply with the E-Verify Program under Arizona Revised Statute §23-214(A).

A breach of this warranty by the Contractor or any of its Subcontractors will be considered a material breach of this Contract and may subject the Contractor or Subcontractor to penalties up to and including termination

of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of the Contractor or any Subcontractor who works on this Contract to ensure that the Contractor or any Subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its Subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the Contractor or any of its Subcontractors in material breach of this Contract if the Contractor and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by Arizona Revised Statute §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any Contract the Contractor enters into with any and all of its Subcontractors who provide services under this Contract or any Subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or Subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

12. Compliance with Federal and State Laws

The City has entered into this Contract with the Contractor relying on his knowledge and expertise to provide the services contracted for. As a part of that reliance, the Contractor represents that it knows and understands the relevant and applicable federal and state laws that apply to the services provided through this Contract and agrees to comply with these relevant and applicable federal and state laws.

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, and for construction Contracts: ARIZONA REVISED STATUTE § 34-301, "Employment of Aliens on Public Works Prohibited", and ARIZONA REVISED STATUTE § 34-302, as amended, "Residence Requirements for Employees".

13. Contract Administrator Duties

The Contract Administrator will serve as the primary point of contact with the City, monitor performance, review and approve invoices, establish delivery schedules, and in conjunction with Purchasing ensure Certificates of Insurance are in City's possession and are current and conform to the Contract requirements.

14. Contractor on Site Safety Reporting Requirements

For any non-construction City supplier whose service Contract(s) (either singular or in aggregate) results in the Contractor working 500 or more hours on site at a City of Scottsdale location(s) in any one calendar quarter, the following documentation must be provided by the Contractor to the Contract Administrator (CA):

- the Contractor's most recent OSHA 300A (if applicable);
- all accident reports for injuries that occurred in the City under the Contract during the most recent review period;
- the Contractor's current worker's compensation experience modifier;
- the above information is to be provided to the CA initially and every February thereafter as long as the Contract is in force; the CA will provide this information to Risk Management when requested.

15. Cooperative Use of Contract

This Contract may be extended for use by other municipalities, government agencies and governing bodies, including but not limited to the Arizona Board of Regents, and political subdivisions of the State of Arizona, that has, at the time of request, a cooperative purchasing agreement with the City, or that participates in the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Any usage by other entities must be in accordance with the ordinances, charter, and/or rules and regulations of the respective entity and must be approved by Contractor. Each participating entity that orders goods or services under this Contract as provided above is solely responsible for paying Contractor for those goods and services. The City is not responsible for any disputes arising out of transactions made by other entities.

16. Counterparts

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

17. Donations

To avoid the appearance of impropriety, Contractor shall not make any donation to the City of any goods or services during the term of this Agreement, unless it has specifically been approved by the City Manager or designee.

18. Endangered Hardwoods

The project shall not utilize any endangered wood species prohibited by Arizona Revised Statute § 34-201(J).

19. Entire Agreement

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the subject matter contained herein.

20. Equal Employment Opportunity

During the performance of this Contract, the Contractor will follow the federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

21. Estimated Quantities

All quantities referenced in this solicitation document are subject to adjustment dictated by City requirements. Quantities at variance with stated bid quantities may be purchased as required.

22. Execution of Contract

The Contractor shall provide all the required documentation, including, but not limited to, applicable bonds, insurance certificates, IRS W-9 Form and other documentation required to issue the Purchase Order or Notice to Proceed within ten (10) calendar days after the date of the Acceptance of Offer or Notice of Contract Award by the City. If a separate City Contract is required, the Contractor must execute it within ten (10) calendar days and return it to the City. Failure to complete these requirements within ten (10) calendar days may place the Contractor in default.

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.irs.gov under their forms section.

23. Force Majeure

The City shall not be held responsible for acceptance of all or any part of the materials tendered for delivery under this Agreement due to federal, state or municipal action, statute, ordinance or regulation, strike or other labor trouble, fire, windstorm or other incidents outside of the City's control which shall make such acceptance impossible or impractical.

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

24. Funds Appropriation

If the Scottsdale City Council does not appropriate funds to continue this Contract and pay for charges under this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to Contractor at least 30 days prior to the end of its current fiscal period and will pay to Contractor all approved charges incurred through the end of this period.

25. Indemnification

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Scottsdale, U.S. Bureau of Reclamation (if applicable per solicitation insurance requirements stated in the Special Terms & Conditions section of the each solicitation), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any act or omission, negligence, recklessness, or intentional wrongful conduct by Contractor in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

26. Independent Contractor

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City may report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments unless required under federal or state law. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

27. Israel Boycott Prohibition

Unless otherwise prohibited by law or court order, by submitting a quote/proposal/bid and/or entering into a contract with the City, Contractor certifies that they are not currently engaged in, and agree for the duration of the contract to not engage in, a boycott of Israel as proscribed in Arizona Revised Statute §35-393.

28. Forced Labor of Ethnic Uyghurs

To the extent applicable under Arizona Revised Statute §35-394, **Contractor** warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

- a. The forced labor of ethnic Uyghurs in the People's Republic of China.
- b. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

- c. Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Contractor becomes aware during the term of the Contract that Contractor is not in compliance with this paragraph, Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If Contractor fails to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Contract shall terminate unless the Term of this Contract shall end prior to said one hundred eighty (180) day period.

29. Litigation

The Contractor will disclose any issue or potential issue that may have a material bearing on the financial condition, solvency or credit worthiness of the organization. Disclosure includes any material contingent liabilities or uninsured potential losses, involuntary Contract terminations in other jurisdictions and any voluntary or involuntary bankruptcy filings over the past 7 years. The Contractor will also disclose any litigation in which the Contractor has been involved in, either as a plaintiff or defendant, within the past 3 years, and the Contractor shall agree to notify the City within 7 days of any litigation or significant potential for litigation of which the Contractor becomes aware during the course of any contract with the City. Further, the Contractor shall disclose in writing to the City all litigation involving the Contractor, the Contractor's related organization, owners and key personnel.

30. Local Conditions, Rules and Regulations

The Contractor shall familiarize itself with the nature and extent of the Contract documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

31. Amendments

Any adjustments, alterations, additions, deletions, or modifications in the terms and/or conditions of this Contract must be made by written Contract Amendment approved by the Contract Administrator, Purchasing Director and the Contractor.

If Contractor performs any modification without such written Contract Amendment, the City shall not be obligated to accept said modification.

32. No Preferential Treatment or Discrimination

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

33. No Waiver

The failure of either party to enforce any of the provisions of the Contract documents or to require performance of the other party of any of the provisions of this Contract will not be construed to be a waiver of those provisions, nor will it affect the validity of the Contract documents, or the right of either party to enforce each and every provision.

No delay or failure of either party in exercising any right hereunder, and no partial or single exercise thereof, shall be deemed to constitute a waiver of such right or any other rights hereunder. All waivers must be in writing and signed by the party to be charged. Any waiver by either party of any requirement hereunder shall be deemed to be a specific limited waiver and shall not be deemed to be a continuing waiver nor a waiver of any other requirement hereof.

34. Order of Precedence

In the event of a conflict in the provisions of this solicitation or resulting Contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:

1. Signed and fully executed separate Contract or Offer and Acceptance Sheet
2. Special Terms & Conditions of the Solicitation
3. General Terms & Conditions of the Solicitation
4. Statement or Scope of Work (SOW)
5. Specifications
6. Attachments
7. Exhibits
8. Instructions to Respondents
9. Other documents referenced or included in the Solicitation or Contract, if applicable.

Such As:

- a. Technical or code requirements or documents that govern construction materials and design-ICC, etc.
- b. City Supplements to MAG Uniform Standard Specifications for Public Construction.
- c. MAG Standard Specifications for Public Works Construction (unless a Federal Aid project).
- d. MAG Standard Details.
- e. Federal Requirements - ADOT/FHWA/FTA/FAA, etc., requirements. (Where Federal funds are provided for the project, Federal procurement and contract provisions may take precedence of the above Order of Precedence. If Federal procurement and contract provisions take precedence, the City's Order of Precedence will only control when not in conflict with the Federal procurement and contract provisions. Where there is a conflict, the Federal procurement and contract provisions will control.

35. Patents / Intellectual Property

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Scottsdale and its agents or contractors for alleged patent and/or copyright infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein.

The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires.

36. Payment Terms

The City of Scottsdale's payment terms are payment within thirty (30) days except in Title 34 circumstances where payment is required within fourteen (14) days. Payment may be sooner where cash discounts are offered for early payment; however, cash discounts offered will not be considered in determining lowest Respondent. In no event will payment be made prior to receipt of an original invoice containing invoice and Purchase Order numbers and receipt of purchased items. The City is not liable for delays in payment caused by failure of the Contractor to send an invoice to the address specified below. Contractor shall send an electronic copy of all invoices to the Contract Administrator for approval. Upon approval, all invoices shall be sent to the City at the following address:

CITY OF SCOTTSDALE
ACCOUNTS PAYABLE
7447 E. INDIAN SCHOOL ROAD, SUITE 210

37. Price Reduction

If Contractor's, manufacturer, or supplier at any time during the course of this Contract, makes a general price decrease, to the Contractor, the Contractor shall promptly notify the City in writing and extend such decrease to the City effective on the date of such general price decrease.

38. Records and Audit Rights

Contractor's and Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City of Scottsdale, or its authorized representative, to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on Contractor's or Subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Contract. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City of Scottsdale or its authorized representative shall have access to said Records from the effective date of this Contract for the duration of the work and until three (3) years after the date of final payment by the City of Scottsdale to Contractor pursuant to this Contract.

The City of Scottsdale or its authorized representative shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. The City of Scottsdale shall give Contractor or Subcontractor reasonable advance notice of intended audits.

Contractor shall require Subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any Subcontract pursuant to this Contract.

If an audit in accordance with this article, discloses overcharges, of any nature, by the Contractor to the City in excess of one percent (1%) of the total Contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

39. Registered/Licenses

To be considered responsive, Contractors must be registered/licensed in the State of Arizona, if such registration/license is normally a requirement for the nature of the work contemplated by this Contract.

40. Request for Taxpayer I.D. Number and Certification I.R.S. W-9 Form

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

41. Risk of Loss

Contractor agrees to bear all risks of loss, injury or destruction of goods and materials ordered as a result of this Contract which occur prior to delivery to the City; and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.

42. Scottsdale City Seal and City Symbol

The Scottsdale City seal (as defined in S.R.C. § 2-1) and the City symbol are **registered marks and are reserved solely for the City's use**. Any other use or **reproduction of the City's registered marks in any print, digital, or other media without the City's express, written consent is prohibited**. As a breach of this prohibition may impair the City's reputation, dilute its mark(s), or otherwise cause the City irreparable harm, the City shall be entitled to an immediate injunction enjoining such use in addition to any other legal or equitable remedies.

43. Severability

If any provision of the Contract documents is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then such provision shall be deemed deleted, the remaining provisions shall not in any way be affected or impaired thereby, and this Contract shall remain in full force and effect

44. Successors and Assigns

This Contract extends to and is binding upon Contractor, its successors and assigns, including any individual, company, partnership or other entity with or into which Contractor merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which Contractor sells its assets.

45. Termination

Termination for Convenience: City reserves the right to terminate this Contract or any part of this Contract for its sole convenience with thirty (30) days' written notice. In the event of any termination, Contractor must immediately stop all work, and must immediately cause any of its suppliers and Subcontractors to cease all work. As compensation in full for services performed to the date of any termination, Contractor will receive a fee for the percentage of services actually completed. This fee will be in the amount to be mutually agreed upon by Contractor and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and Contractor's compensation will be based upon this determination. The City will make this final payment within 60 days after Contractor has delivered the last of the partially completed items. Contractor will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or Subcontractors, which Contractor could reasonably have avoided.

Cancellation for Cause: City may also terminate this Contract or any part hereof with seven (7) days' notice for cause in the event of default if the Contractor fails to comply with any of the terms and conditions of this Contract. Late deliveries, deliveries of products which are defective or do not conform to this Contract, unsatisfactory performance as judged by the Contract Administrator, or failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this Contract for cause.

In the event of termination for cause, City shall not be liable to Contractor for any amount, and Contractor shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that City has improperly terminated this Contract for default, such termination shall be deemed a termination for convenience.

In the event Contractor is in violation of any federal, state, county or city law, regulation or ordinance, the City may terminate this Contract immediately upon giving notice to the Contractor.

46. Testing of Materials

When required in the course of any service or Contract, the procedures and methods used to sample and test material, will be determined by the City. Unless otherwise specified, samples and tests will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, The City of Scottsdale Material Testing Manual and/or the standard methods of AASHTO or ASTM, DSPM and MAG supplements.

The City will provide a pre-qualified City or Independent Testing Laboratory and will pay directly for initial City Acceptance Testing. If the first and subsequent tests indicate noncompliance with the specifications, the cost associated with that noncompliance shall be paid for by the Contractor. When the first and subsequent tests indicate noncompliance with the specifications, all retesting will be performed by the same testing agency.

Rejected materials shall be immediately removed and shall not be used in any form for any other part of the work.

47. Time is of the Essence

Time is of the essence with respect to the dates and times contained in the Contract documents.

48. Warranty

Contractor expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know, the particular purpose for which City intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use.

Contractor's warranty shall run to City, its successors, and assigns. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to City, when notified of such nonconformity by City, provided City elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by City in doing so. Contractor recognizes that City's requirements may require immediate repairs or reworking of defective goods, without notice to the Contractor. In such event, Contractor shall reimburse City for the costs, delays, or other damages which City has incurred.