

CITY OF ALBUQUERQUE TERMS AND CONDITIONS

Direct all inquiries about this Purchase to:
City of Albuquerque, Purchasing Division, P.O. Box 1293, Albuquerque, NM 87103
or call (505) 768-3320
Effective Date: December 12, 2022

1. Contract: By commencing work, vendor accepts all Terms and Conditions herein and agrees that, to the extent vendor terms conflict, these Terms and Conditions shall govern. These Terms and Conditions and any non-conflicting vendor terms and conditions shall constitute and be referred to as "this Contract."

(a) If the City and vendor have executed an agreement (two-party agreement) that includes terms and conditions related to the goods or services, the provisions of that two-party agreement shall govern and control in the event of a conflict between the provisions of this Contract and that two-party agreement.

(b) Any different or additional terms that purport to govern this Contract and that are found in any Purchase Orders issued in connection with this Contract, purchase order acknowledgement, on a web site, or otherwise are superseded by the provisions of this Contract and will be of no force or effect unless agreed to by both the City and vendor in a signed amendment to this Contract.

2. No Cost Plus: Pursuant to Section 5-5-9(B) of the Purchasing Ordinance, the city shall not enter into any contract which is a cost-plus-percentage of cost contract.

3. Invoicing: Vendors shall include the Department name and complete purchase order number on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning the order. Send invoices to one of the following: Trancepta: abq.invoices@submit.transcepta.com; Accounting email: Accounts.payable@cabq.gov; or regular mail PO Box 1985, Albuquerque, NM 87103. Visit the Accounting website for more information about getting invoices paid: <https://www.cabq.gov/dfa/accounting/how-do-i-get-paid>

4. Payment: City's payment terms are net 30 days unless otherwise stated. City shall not pay late fees, finance fees, or collection fees. Any vendor that accepts payments by credit card on behalf of City must be Payment Card Industry Data Security Standard compliant.

5. FOB Destination and Inspection: The risk of loss, injury and destruction, and legal title to the goods remains with vendor until the goods reach the location of the City. All goods delivered are subject to inspection upon receipt by City. Department's count will be accepted by vendor as final and conclusive on all shipments not accompanied by a packing slip. All rejected goods shall remain the property of vendor and will be returned at vendor's expense.

6. Taxes: Vendor is responsible for determining whether taxes are applicable to the order and for payment of the tax. Applicable taxes are to be included in each invoice due and may not be billed more than sixty (60) days after providing the goods or services to which the taxes apply.

7. Warranty: Vendor warrants that the goods and services furnished shall (a) conform to the specifications; (b) be free from defects in materials and workmanship; (c) be suitable for the purpose intended; (d) be new and of most current production; (e) be free from security interests or liens; and (f) not infringe upon or violate any copyrights or patent rights.

8. Insurance: Unless otherwise stated, the vendor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance policies in the kinds and amounts provided below, written with insurance companies authorized to do business in the State of New Mexico, which policies cover all operations under this Agreement, whether Services or operations are performed by Contractor or its agents. Before commencing the Services, and upon renewal of all coverages, vendor shall furnish to the City a certificate or certificates of insurance, in form satisfactory to the City, showing that Contractor has complied with this Section. All certificates of insurance shall be provided upon execution of this Agreement and upon any cancellation or change in the policy, and the certificates shall provide that

thirty (30) days' prior written notice of any cancellation, material change to, or non-renewal of a policy be given to:

Risk Manager
Department of Finance and Administrative Services
City of Albuquerque
P.O. Box 470
Albuquerque, New Mexico 87103

Various types of required insurance may be written in one or more policies. With respect to all commercial general liability coverages required, the City shall be named as an additional insured, which shall be reflected on all certificates of insurance and endorsement documents. All coverages afforded shall be primary with respect to operations provided. The kinds and amounts of insurance required are set out below:

- (a) Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:
 - \$2,000,000 Per Occurrence
 - \$2,000,000 Policy Aggregate
 - \$1,000,000 Products Liability/Completed Operations
 - \$1,000,000 Personal and Advertising Injury
 - \$ 5,000 Medical Payments

The policy of insurance must include coverage for all operations performed for the City by vendor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

- (b) Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy of insurance must include coverage for the use of all owned, non-owned, and hired automobiles, vehicles and other equipment, both on and off work.

- (c) Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico (the "Act"). If vendor has determined that vendor is not subject to the Act, vendor shall certify in a signed statement that vendor is not subject to the Act. Vendor shall notify the City and comply with the Act if vendor becomes subject to the Act during the term of the Agreement.

- (d) Increased Limits. If, during the term of this Agreement, the City requires vendor to increase the maximum limits of any insurance required herein, an appropriate adjustment in vendor's compensation will be made.

9. Default: City reserves the right to cancel all or any part of this Contract without cost to the City if vendor fails to meet the provisions of this Contract and, except as otherwise provided herein, to hold Vendor liable for any excess cost incurred by City due to vendor default.

10. Force Majeure: Neither Vendor nor City shall be liable for failure to perform its obligations under this Contract due to causes beyond the control and without the fault or negligence of either party. Such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Contract.

11. Termination for Lack of Appropriations: Notwithstanding any provision in this Contract to the contrary, payments hereunder are contingent upon the Albuquerque City Council making the necessary appropriations. If sufficient appropriations are not made, this Contract may be terminated at the end of City's'

then current fiscal year upon written notice given by City to vendor. Such event shall not constitute an event of default and all payment obligations of City and all of its interest in this Contract will cease upon the date of termination. City's determination regarding appropriation shall be accepted by vendor and shall be final.

12. Termination for Convenience: City may terminate this Contract at any time by giving at least 30 days' written notice to the vendor. In such event, vendor shall be paid under the terms of this Contract for all goods and/or services provided to and accepted by City, if ordered or accepted by City prior to the effective date of termination.

13. Contract Changes: In no case shall this Contract be changed without the prior written approval of City's Chief Procurement Officer.

14. Assignment: Neither this Contract, nor any interest therein, nor claim thereunder, shall be assigned or transferred by vendor, except as expressly authorized in writing by City's Chief Procurement Officer or designee. No such assignment or transfer shall relieve vendor from the obligations and liabilities under this Contract.

15. City Furnished Property: City furnished property shall be returned to City upon request in the same condition as received except for ordinary wear, tear, and modifications ordered hereunder.

16. Indemnity: Vendor agrees to defend, indemnify and hold harmless City from any and all claims, actions, suits or proceedings brought against City because of any injury or damage received or sustained by any person or property arising out of or resulting from this Contract or by reason of any asserted act or omission, neglect or misconduct of vendor or its agents or employees or any subcontractor or its agents or employees. This indemnity shall not be limited by reason of the specification of any particular insurance coverage in this Contract. City shall not indemnify vendor.

17. Debarment, Suspension, Ineligibility and Exclusion Compliance: Vendor certifies (a) that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (b) should any notice of debarment, suspension, ineligibility or exclusion be received by vendor, vendor will notify City immediately.

18. Conflict of Interest: No officer, agent or employee of City will participate in any decision relating to this Contract which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

19. Interest of Contractor: Vendor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Contract. Vendor will not employ any person who has any such conflict of interest to assist Vendor in performing the services.

20. No Collusion: Vendor represents that it has entered into this Contract without collusion on the part of Vendor with any person or firm, without fraud and in good faith. Vendor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Contract, will be offered or given by vendor or any agent or representative of vendor to any officer or employee of the City with a view towards securing this Contract or for securing more favorable treatment with respect to making any determinations with respect to performing this Contract.

21. Audits and Inspections: At any time during normal business hours and as often as City may deem necessary, there shall be made available to City for examination all of vendor's records with respect to all matters covered by this Contract. Vendor shall permit City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract. Vendor understands and will comply with City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested

information and records and appear as a witness in hearings for City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

22. Compliance With Ethics Provisions: Vendor certifies that it has not, either directly or indirectly, entered into action in restraint of free competitive bidding and is in compliance with the Ethical Conduct provisions of City's Public Purchases Ordinance. 5-5-22 R.O.A. 1994.

23. Non-discrimination: In performing this Contract, vendor shall comply with the Federal Civil Rights Act of 1964 and Title VII of the Act and the Americans with Disabilities Act of 1990.

24. Compliance With Laws: In performing this Contract vendor shall comply with all applicable laws, ordinances and codes of the federal, state and local governments.

25. Governing Law: This Contract is governed by the laws of the State of New Mexico and the City of Albuquerque. The venue for actions arising out of this Contract is Bernalillo County, New Mexico.

26. Federal Funding: Procurements involving the expenditure of federal funds may be subject to mandatory applicable federal law and regulations.