

TERMS AND CONDITIONS

BY ACCEPTANCE OF THIS ORDER, VENDOR AGREES WITH THE FOLLOWING TERMS AND CONDITIONS

1. The Vendor (Vendor) and the City of North Myrtle Beach (the Parties) hereby expressly acknowledge and agree that this Purchase Order is a contract supported by adequate and sufficient consideration the receipt and sufficiency of which is hereby acknowledged.
2. The City of North Myrtle Beach (hereinafter, "City") shall be required to pay for only those items specified on this Purchase Order (PO).
3. No changes to the terms, conditions, goods, services, materials, labor or other specifications of the PO may be made without prior written authorization from the City.
4. The Vendor shall be responsible for all costs and liabilities incurred, without liability to or contribution from the City, for all changes to the terms, conditions, goods, services, materials, labor or other specifications of the PO made or supplied without prior written authorization from the City or supplied without an official written and numbered PO from the City.
5. Delivery and Completion of all goods and services under this PO shall be performed within the time allotted on the PO. If for any reason, including *Force Majeure*, Delivery and Completion are not timely delivered, the City reserves the right, at its sole discretion, to cancel the PO and obtain the goods and/or services elsewhere, and to obtain from the Vendor any loss incurred as a result of such delay.
6. The Vendor shall immediately inform City when the Vendor has knowledge of any *Force Majeure*, any actual or potential labor dispute, or anything else (i.e., shipping delays) that is delaying or threatens to delay the timely performance of this PO.
7. Neither this PO nor any of the goods, services, labor, or interests hereunder may be assigned, sublet, subcontracted, transferred, or modified except by written agreement between the City and the Vendor, and the City may withhold consent in its sole discretion.
8. Unless otherwise stated in this PO, unit prices will govern over extended prices. Any unused or unearned funds, whether due to non-delivery of goods or services, price reduction, or other cause, shall be returned to or retained by the City promptly.
9. Any materials shipped in excess of the quantity specified in the PO may at the City's sole option and discretion be returned to the Vendor at Vendor's expense. The City shall not be obligated to pay for services, goods, nor labor provided in excess of that specified in the PO.
10. In all cases in which the Vendor imports goods from foreign countries, the Vendor shall state on its invoices, as a separate item, all amounts of any fees incurred for custom, import duty, and/or tariffs paid to the United States Government.
11. License, Permits, Insurance & Taxes. All costs for required licenses, insurance, and taxes shall be borne by the Vendor. If any work specified by this PO will be performed on the City's property or facilities, the Vendor shall, prior to commencement of work, is required to obtain a business license (and building permits, if applicable) to do business in the City. All subcontractors hired by the Vendor must also be licensed with the City. All Vendors that sell to the City must have a City of North Myrtle Beach business license. Please contact the business license office at 843-280-5585 or businesslicense@nmb.us to determine how to obtain proper licensing. The Vendor shall, prior to commencement of work, have in force comprehensive general liability insurance providing coverage for bodily injury of \$1,000,000 for each person, and \$1,000,000 for each occurrence, and coverage for property damage for \$1,000,000 for each occurrence, and \$1,000,000 aggregated and Workman's Compensation Insurance, and employer's liability coverage with a limit of \$1,000,000, and shall, upon demand, furnish the City with certificates of insurance showing it has in force coverage the casualties and amounts specified.
12. DEFAULT: In case of default by the Vendor, the City reserves the right and shall be entitled, in its sole discretion, to purchase any or all goods, services and/or labor under the PO from third parties in the open market, and to charge the Vendor with any additional costs incurred. The defaulting Vendor shall not be considered a responsible bidder until all charges assessed by the City have been paid in full and satisfied.
13. CAUSE: This PO may be terminated without advance notice by the City for cause, default, or negligence on the part of the Vendor.
14. FEDERAL FUNDS: When Federal Funds are used for this procurement, this PO shall be subject to all applicable Federal Acquisitions Regulations (April 1984 or as amended).
15. NON-APPROPRIATIONS: At any time that funds are not appropriated or otherwise approved or otherwise not approved and made available to support continuation of the performance of this PO, the City may cancel this PO without recourse for loss, damages, breach, or further obligation to the Vendor or others claiming through or on behalf of the Vendor.
16. PUBLICITY RELEASES: The Vendor expressly agrees that it will not refer to this PO or award of this contract in any advertising in any manner so as to state, suggest, or imply that the products or services provided are endorsed or preferred by the City.
17. HOLD HARMLESS: The Vendor shall indemnify and hold harmless the ~~State of South Carolina~~ and the City,

and all of its officers, agents, and employees from all suits and claims of any type whatsoever brought by reason of the willful or negligent acts of the Vendor or its employees or agents and for infringing on any patent, trademark, or copyright, except that neither the Vendor nor the City shall have liability one against the other for any such patent, trademark or copyright infringement based upon the use of materials furnished by the State.

18. NOTICE OF PROHIBITION OF GRATUITIES: The Ethics, Government Accountability, and Campaign Reform Act, Section 8-13-705 (Supp. 1999) provides that: (A) A person may not, directly, or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to: (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities; (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or (3) induce a public official, member, or public employee to perform or fail to perform an act in violation of the public member's, or public employee's official responsibilities. (B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being: (1) influenced in the discharge of his official responsibilities; (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or (3) induced to perform, or fail to perform an act in violation of his official responsibilities. (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten years, and a fine of not more than ten thousand dollars.
19. By acceptance of this PO, Vendor shall be deemed to have affirmatively represented to City that Vendor has complied with or, prior to commencement of work, will have complied with all applicable Federal, State, and local laws, and ordinances, and all lawful orders, rules, and regulations thereunder, and shall remain in compliance during the performance of all goods, services, and labors hereunder.
20. S.C. LAW CLAUSE: Vendor, and person/partnership, association, or corporation

claiming through them or with whom this PO is made, shall be subject to and shall comply with the laws of South Carolina, particularly as to requirements to be authorized, and/or licensed to do business with the State of South Carolina, notwithstanding that other states may exempt or exclude the Vendor or any person/partnership, association, or corporation from requirements that it be authorized, and/or licensed to do business in the State. By acceptance of this order, the Vendor consents to the jurisdiction, venue, and process of the courts of the State of South Carolina, Horry County, as to all matters, and disputes arising, or to arise under the contract, and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied, shall be construed under and subject to the laws of the State of South Carolina.

21. SEVERABILITY: In the event that any of the terms or conditions of the PO be held by a court of competent jurisdiction of the State of South Carolina to be invalid at law and unenforceable, such invalidity and unenforceability shall not affect any other remaining terms or conditions, and to the invalid portion shall be deemed stricken to only such extent necessary to comply with law.
22. By acceptance of this PO, the Vendor acknowledges that the Vendor has read and understands all of the terms herein of this PO and agrees to same.
23. Invoices shall be mailed to the bill to the address(es) as listed on the PO. Alternately, invoices can be emailed to AP@NMB.US. The City's payment terms are Net 30 days.
24. This PO, together with any accompanying Services, Professional Services, Construction, or Cooperative Contract, if any, constitute(s) the entire agreement between the City of North Myrtle Beach and the Vendor. No changes to the prices, quantities, delivery, or other terms or conditions shall be valid and enforceable unless reduced to writing as a change order/amendment, signed by all parties, and attached hereto and incorporated herein by reference. The Parties hereto expressly acknowledge and agree that there are no other agreements, whether verbal or implied.
25. In any instance of conflict between the Vendor's documents and terms or conditions, and the Terms and Conditions of the City and its documents, the City's shall control and take precedence.