

Terms and Conditions. Vendor agrees to sell and PHA agrees to buy the Items, subject to the following provisions to which the parties agree.

1. **Definitions.** "Items" means the services, goods, or other tangible or intangible personal property covered by this PO. "PHA" means the Port of Houston Authority of Harris County, Texas. "PO" means this Purchase Order. "Proposal" means the Vendor's quote, response to Solicitation, bid, or proposal for the Items in this PO. "Solicitation" means PHA's formal or informal request, invitation, or solicitation for the Items in this PO or to which the Vendor has provided a Proposal. "Vendor" means the individual or entity contracting with the PHA to furnish the Items covered by this PO.

2. **Offer/Acceptance.** If Vendor has submitted a written Proposal, this PO is an acceptance by PHA of Vendor's offer to sell in accordance with the resulting contract, or, if no contract is executed, a) PHA accepts only the description, quantity, price, or delivery schedule of the Items included in Vendor's Proposal and b) PHA's acceptance is limited to the express terms contained in this PO and the Solicitation, except to the extent that those terms conflict with the description, quantity, price, or delivery schedule of the Items included in Vendor's Proposal. Any additional or different terms contained in Vendor's Proposal shall be deemed material and are hereby objected to and rejected by PHA. If Vendor has not submitted a written Proposal, this PO is an offer to buy the Items listed in the Solicitation, subject to Vendor's acceptance by commencement of performance or written acknowledgment. Vendor's acceptance of this PO is expressly limited to terms of this PO and the Solicitation, and PHA hereby objects to any additional or different terms in Vendor's acceptance. A change by Vendor to the PO is a counter-offer to sell, and cancels this PO, unless PHA accepts the counter-offer by new or amended PO. Once accepted, this PO is a binding contract.

3. **PHA Obligation.** PHA has no obligation under this PO until it is executed by (i) PHA's Procurement Director or its designee, and (ii) PHA Financial Services or its designee.

4. **Firm Price, No Extra Charges.** PHA is not obligated by Vendor's increased prices, alterations, substitution, or extra charges.

5. **Tax-Exempt Status.** PHA is exempt from Federal Excise and Transportation Tax, State Sales and Use Tax, and State Fuel Tax. Unless the Solicitation or Proposal documents so indicate, prices are exclusive of such taxes. Vendors may submit requests for refunds or exemptions from taxes paid on Items, and the PHA Procurement Director may approve or issue the necessary certificates.

6. **Packaging and Delivery; Services.** Vendor shall package Items in accordance with good commercial practice. Vendor shall supply a delivery ticket upon delivery. Delivery terms are F.O.B. to PHA facilities during normal business days and hours. Alternative delivery options must be approved in writing in advance by the appropriate Deputy Executive Director. Deliveries prior to the delivery date(s) scheduled in this PO may be accepted; however, payment terms shall be unchanged. PHA may return quantities delivered in excess of those specified on the PO at its discretion, and the risk and expense thereof shall be borne by Vendor. Vendor shall perform services in accordance with specifications in this PO and the related Solicitation and Proposal documents.

7. **Time of the Essence, Etc.** PHA reserves the right to terminate the entire PO or its purchase of Items improperly delivered if delivery or performance is not at the time(s) or in the quantity specified.

8. **Inspection.** PHA reserves the right to inspect Items prior to acceptance and/or payment. Items which, in the opinion of PHA, do not conform to PHA's specifications or are determined to be defective may be rejected, and shall be promptly replaced by Vendor at its risk and expense, or refurbished or completed by PHA, the cost which may be deducted from payments made or owing to Vendor.

9. **Title and Risk of Loss.** Title and risk of loss of Items shall pass to PHA when it receives, accepts, and takes possession at the point of delivery.

10. **Invoices.** Vendor shall **submit an original invoice bearing this PO number**, for Items received and accepted by PHA, to the PHA address on this PO, Attn: Accounts Payable, signed by an authorized representative of Vendor. Excess items provided by Vendor are at its expense. The amount due Vendor hereunder is limited to the PO amount, the sum certified as available by PHA Financial Services, when PHA has expended such sum, PHA shall have no further obligation or duty hereunder.

11. **Payments; Discounts.** Under Texas Govt. Code 2251.021, payments by PHA are not overdue until 46 days after the later of the date PHA receives the goods under the contract; the date the performance of the service under the contract is completed; or the date PHA receives an invoice for the goods or service. Cash discounts shall be shown on face of invoice. For the purpose of discounts, payment is deemed made on the date of check mailing. If invoices are not mailed on the date Items are furnished, discounts are calculated from the date the invoice is received.

12. **Termination.** Either party may terminate the PO, for any reason, following thirty (30) calendar days written notice to the other party. All or any part of this PO shall terminate if Vendor defaults, and fails to cure following ten (10) calendar days written notice and demand to cure by PHA. In such event, PHA may obtain similar Items elsewhere and Vendor shall be liable to PHA for any damages including additional costs.

13. **Warranties.** Vendor warrants that all Items are new (unless otherwise specified on the face hereof or in the Solicitation or Proposal documents), free from defects (including defects in title, and in Vendor's right to sell a patented or copyrighted product or to use a patented process), conform to industry standards and good practice and all specifications including those in the Solicitation and Proposal documents, and suitable for their intended purpose. Neither acceptance

of, nor payment for, an Item shall constitute a waiver or modification of any warranties by Vendor or any rights of PHA. Vendor shall transfer to PHA any manufacturers' warranties for Items. If an Item does not conform to these warranties during one year from the date of acceptance of the Item by PHA, and the Procurement Director so notifies Vendor, Vendor shall correct such Item to the PHA's satisfaction, or PHA may revoke acceptance by purchasing a substitute item or correcting the nonconformity. Costs of such correction shall be borne by Vendor.

14. **Intellectual Property.** When PO is for design services, all ideas, design, drawings, and specifications created under it ("Work Product") are PHA's property upon creation, provided that Work Product shall not include pre-existing proprietary information of the Vendor. Vendor agrees that it has been hired to create all Work Product and assigns to PHA all Vendor's right, title, and ownership in Work Product.

15. **Indemnity.** Vendor shall INDEMNIFY, DEFEND and HOLD HARMLESS PHA, as well as PHA's commissioners, officers, employees, and agents (collectively, "PHA Indemnitees") from and against all claims, lawsuits, judgments, liabilities, losses, costs, damages, injuries, fines, penalties, expenses, awards, and reasonable attorneys' fees and court costs, arising under Vendor's performance under or breach of this PO, or under any negligence, strict liability, or other torts or any violation of laws, including any obligation to protect health or the environment caused by or on behalf of Vendor (collectively "Liabilities"). This indemnity shall not apply to any liability resulting from the sole negligence or fault of the PHA Indemnitees, and in the event of joint and concurrent negligence of both Vendor and the PHA Indemnitees, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas, without, however, waiving PHA's governmental immunity under Texas law. This indemnity shall survive any acceptance of the item or payment therefor by PHA.

16. **Insurance.** Unless otherwise agreed to in writing by PHA, Vendor shall obtain and maintain at all times during the term of this PO, or as otherwise required in the Solicitation, insurance specified in the Solicitation, and provide PHA proof of coverage.

17. **Communications.** Communications concerning this PO shall be directed to PHA's Procurement Director at the address on this PO.

18. **Compliance with Laws.** Vendor agrees to comply with all applicable federal and state of Texas laws, regulations, and policies, including those regarding discrimination, unfair labor practices, and collusion.

19. **Ethical Conduct.** Vendor shall familiarize itself with the PHA Code of Ethics governing PHA commissioners and employees, and any Guidelines for PHA Employee Interaction with Contractors, Consultants, and Vendors, and not violate them, including offering, conferring, or agreeing to confer any prohibited benefit as consideration for a commissioner's or employee's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, or in exchange for the commissioner's or employee's exercise of official powers or performance of official duties, or participating in the violation of any provision of the Code or Guidelines. PHA reserves the right to cancel Vendor's contracts and exclude it from future business in the event of its breach of this provision.

20. **Independent Contractor.** Vendor is an independent contractor and not an agent, representative, or employee of PHA.

21. **Assignment; Third Parties.** Vendor's rights and obligations hereunder shall not be assigned, delegated, sold, or otherwise transferred without PHA's prior written consent. This PO shall not confer any rights upon any third party but rather shall benefit only PHA and Vendor.

22. **Controlling Documents.** The description, quantity, price, or delivery schedule of the Items included in Vendor's Proposal control over any conflicting provisions included in any other documents. Any other terms of this PO or PHA's Solicitation documents control over the terms of any documents submitted by Vendor, including Vendor's Proposal. Any contract terms in PHA's Solicitation documents control over the terms of this PO.

23. **Valid Terms.** Terms not contained or expressly incorporated herein are not binding on PHA, unless specifically accepted in writing by PHA's Procurement Director. Oral instructions by PHA staff are valid only as confirmed by this PO.

24. **Waiver.** Failure to insist upon strict compliance with any provision shall not be a waiver of any provision of this PO, which shall only occur by written instrument signed by the party waiving such provision. Failure to object to any breach of this PO shall not waive rights to object to that breach or any subsequent breach of the same or any other provision.

25. **Entire Agreement; Amendments.** This PO and the Solicitation and Proposal provisions expressly incorporated herein constitute the entire agreement between the parties and supersede prior offers, negotiations, exceptions, and understandings, whether oral or written, between the parties. This PO shall not be modified except by written amendment signed by the parties.

26. **Interpretation, Jurisdiction, Venue.** This PO and related Solicitation and Proposal documents shall be construed in accordance with the laws of Texas, without regard to its conflict of laws provisions. Venue of any suit or cause of action arising under or in connection with this PO and its related documents shall lie exclusively in Harris County, Texas.

27. **Savings Clause.** The invalidity, illegality, or unenforceability of any provision of this PO or its related documents, or the occurrence of any event rendering any provision of this PO or its related documents void, shall not affect the validity or enforceability of any other provision. Any such provision shall be severed from this PO and the remainder shall be construed and enforced as if it did not contain it.