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KCDC's Purchase Order Terms & Conditions

The following terms, conditions and instructions apply to all KCDC's purchase orders. The fulfillment of a purchase order means that the vendor understands and agrees with KCDC's "Purchase Order Terms & Conditions." Any variance is to be resolved with KCDC prior to fulfillment of a purchase order.

1. ACCEPTANCE

This purchase order is KCDC's offer to purchase the goods and/or services described on the purchase order from the vendor. Vendor's written acceptance or commencement of work or shipment or delivery of an item or service call shall constitute acceptance by the vendor of the purchase order, its terms and conditions and applicable law.

2. ALTERATIONS OR AMENDMENTS

Alterations, amendments, changes, modifications or additions to the Purchase Order shall not be binding without KCDC's prior written approval.

3. APPROPRIATION

If KCDC does not appropriate funds for the goods or services in any fiscal year or if insufficient funds exist to purchase the goods or services, the Purchase Order shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.

4. ASSIGNMENTS

Vendor shall not assign the agreement its obligations or rights hereunder to any party, company, partnership, incorporation or person without KCDC's prior written specific consent. Any such assignment or any interest or any money due or to become due without KCDC's prior written consent shall be void.

5. BOOKS AND RECORDS

Vendor shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under the Purchase Order and make such materials available at its offices at all reasonable times during the contract period and for three years from the date of the final payment under the agreement for inspection by KCDC or by any other governmental entity or agency participating in the funding of the agreement, or any authorized agents thereof; copies of said records to be furnished if requested. Such records shall not include those books, documents and accounting records that represent the vendor's costs of manufacturing, acquiring or delivering the products and services governed by the agreement.



6. CHANGES

KCDC may at any time, in writing from the Procurement Division, direct or authorize the vendor to make changes or modifications to purchase orders. Should these changes or modifications result in price changes, the Procurement Division will amend the purchase order in writing prior to the changes occurring. KCDC will not make payment for changes or modifications not agreed to in writing.

7. CHILD LABOR

Vendor agrees not to provide products that were manufactured or assembled by child labor.

8. COMPLIANCE WITH ALL LAWS

Vendor agrees to comply with all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary permits.

9. CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION

The vendor agrees that all information, data, findings, recommendations, bids, et cetera by whatever name described and in whatever form secured, developed, written or produced by the vendor in furtherance of this contract shall be KCDC's property. The vendor shall take such action as is necessary under law to preserve KCDC's property rights while such property is within the control and/or custody of the vendor. The vendor specifically waives and/or releases to KCDC any cognizable property right of the vendor to copyright, license, patent or otherwise uses such information, data, findings, recommendations, responses, et cetera.

The vendor understands and agrees that data, materials, and information disclosed to vendor may contain confidential and protected data. Therefore, the vendor promises and assures that data, material, and information gathered, based upon or disclosed to the vendor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the KCDC.

10. DEFAULT

If vendor fails to perform or comply with any provision of the Purchase Order or the terms or conditions of any documents referenced and made a part hereof, KCDC may terminate the purchase order, in whole or in part, and may consider such failure or noncompliance a breach of contract. KCDC expressly retains all its rights and remedies provided by law in case of such breach, and no action by KCDC shall constitute a waiver of any such rights or remedies. In the event of termination for default, KCDC reserves the right to purchase its requirements elsewhere, with or without competitive bidding, and vendor agrees to pay any difference in costs above those conditions in the order.

11. DEFINITION OF PURCHASE ORDER

KCDC issues purchase orders as permission for the vendor to ship goods or perform services as indicated on the purchase order and according to the terms and conditions of the Invitation to Bid, Bid Response and attachments thereto (if applicable) Award and KCDC's Procurement Policy.

The terms and conditions of the Invitation to Bid, Bid Response, Award and KCDC's Procurement Policy are incorporated herein and made a part hereof by reference. Vendor shall not supply the goods or services if in disagreement with these terms. Vendor's provision of goods and services pursuant to this Purchase Order is evidence of its agreement with these terms and conditions and shall conform to same.

12. DELIVERY

Delivery shall be FOB to final destination, paid by the shipper, unless otherwise set forth on the purchase order. If complete deliveries are not made at the time agreed, KCDC reserves the right to cancel the purchase order and/or hold the vendor accountable. If the delivery dates cannot be met, the vendor agrees to notify the Purchasing Division, in writing, of the earliest suggested delivery date. KCDC decides whether the proposed delivery date is acceptable. KCDC's normal delivery timeframe is 7:30 to 3:30 eastern standard time. Actual hours may vary by the needs of the delivery site.

13. FEDERALLY REQUIRED ORDERS/DIRECTIVES

Both parties agree that they will comply with the following laws and directives that KCDC has received from HUD and all other branches of the federal government. Not all of these clauses are applicable. Read each paragraph to ascertain its applicability.

- a. **Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- b. **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- c. **Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- d. **Debarment:** The vendor, its principles and suppliers agree that acceptance and/or performance of this purchase order constitutes compliance with the Federal Debarment Certification, as required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR, Part 85, as defined at the 34 CFR Part 85.105 and 85.110 (ED80-0013).
- e. **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).

- f. **Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act 42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- g. **Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- h. **Executive Order 11061**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- i. **The Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age.
- j. **Anti-Drug Abuse Act of 1988** (42 U.S.C. 11901 et. seq.).
- k. **Public Law 88-352**, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. KCDC hereby extends this requirement to the vendor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et.seq.).
- l. **Public Law 90-284**, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, KCDC requires that the vendor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- m. **HUD Information Bulletin 909-23** which is the following:
 - 1. Notice of Assistance Regarding Patent and Copyright Infringement;
 - 2. Clean Air and Water Certification; and
 - 3. Energy Policy and Conversation Act.
- n. **Procurement of Recovered Materials**
In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the vendor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition unless the vendor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the vendor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the vendor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

The mention herein of any statute or Executive Order is not an indication that such statute or Executive Order is necessarily applicable nor is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, each provision of law and each clause, required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

14. EPA CERTIFICATIONS

Materials, supplies, equipment and services shall comply, in all respects, with the regulations imposed by the Environmental Protection Agency, where applicable.

15. FORCE MAJEURE

If either party is prevented from performing its obligations hereunder as a result of government regulations, fires, strikes, or other causes beyond the control of such party, the obligation to so perform shall be suspended for a reasonable time during which such condition continues to exist. If an actual or potential labor dispute delays or threatens to delay vendor's timely performance, vendor shall immediately notify KCDC in writing.

16. GOVERNING LAW

The laws of the State of Tennessee and all applicable federal laws and regulations govern KCDC purchase orders. All obligations of the parties are performable in Knox County, Tennessee. The Chancery Court and/or the Circuit Court of Knox County, Tennessee, shall have exclusive and concurrent jurisdiction of any disputes arising hereunder.

17. HUD FORMS/DOCUMENTS

The vendor should review the documents below for important details about a solicitation and an award and/ or contract. This reference incorporates these documents as if they are specifically in the solicitation document. These documents bind vendors when they submit a response to a solicitation and the particular document has relevance to the solicitation.

HUD Form 5369	HUD's Instructions to Vendors for Contracts
HUD Form 5369 C	Certifications & Representations of Offers – Non-Construction.
HUD Form 5370	General Conditions of the Contract for Construction.
HUD Form 5370 C	General Conditions for Non-Construction Contracts-Section I (with or without Maintenance).
HUD Form 5370 C	General Conditions for Non-Construction Contracts-Section II (with Maintenance)

18. INCORPORATION

All specifications, drawings, technical information, invitation to bid, request for proposals, request for qualifications, invitation for written quotes, bid, award and similar items referred to or attached or which are the basis for the purchase order are deemed incorporated by reference as if set out fully herein.

19. INDEMNIFICATION/HOLD HARMLESS

Vendor shall indemnify, defend, save and hold harmless KCDC, its officers, agents and employees from all suits, claims, actions or damages of any nature brought because of, arising out of, or due to breach of the agreement by vendor, its subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of vendor, its subcontractors, suppliers, agents or employees.

20. INDEPENDENT CONTRACTOR

Vendor shall acknowledge that it and its employees serve as independent contractors and that KCDC shall not be responsible for any payment, insurance or incurred liability.

21. INSURANCE

The vendor shall maintain insurance acceptable to KCDC throughout the term of the purchase order. The solicitation document and/or the purchase order will describe such insurance requirements.

22. INSPECTION AND ACCEPTANCE

Final inspection of any goods or services delivered or performed hereunder shall be made at final destination, the receiving department. KCDC reserves the right to reject any or all items not in conformance with applicable specifications, and vendor assumes the costs associated with such nonconformance. Acceptance of goods does not constitute a waiver of latent or hidden defects or defects not readily detectable by a reasonable person under the circumstances. KCDC reserves the right to inspect the goods at a reasonable time subsequent to deliver.

23. INVOICING

Within 90 days of the date the goods or services are delivered to KCDC, vendors are required to submit invoices. KCDC may not pay invoices submitted after the 90-day threshold. Invoices must show KCDC's purchase order number.

24. NONDISCRIMINATION AND NON-CONFLICT STATEMENT

Vendor agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the agreement, or in the employment practices of Vendor. Vendor shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Vendor covenants that it complies with the Fair Wage and Hour Laws, the National Labor Relations Act, and other federal and state employment laws as applicable. Vendor covenants that it does not engage in any illegal employment practices. Vendor covenants that it

has no public or private interest, and shall not acquire directly or indirectly any interest, that would conflict in any manner with the provision of its goods or performance of its services.

25. NON-WAIVER OF RIGHTS

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms thereof.

26. OFFICIALS NOT TO BENEFIT

KCDC employees or officials shall not share or part of the Purchase Order or any benefit that may arise therefrom. Vendor agrees not to provide any gratuity in any form, including entertainment, gifts, or otherwise, to any KCDC employee, buyer, agent, or representative, with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of any contract.

27. ORDER OF PRECEDENCE

In the event of inconsistent or conflicting provision of the Purchase Order and referenced documents, the following descending order of precedence shall prevail: (1) Item Description, (2) Invitation to Bid, (3) Bid, (4) Award, (5) Special Terms and Conditions, (6) General Terms and Conditions, (7) Specifications, (8) Drawings.

28. PACKING LISTS

An itemized packing list, bearing the Purchase Order number shall be attached to the outside of every shipping container.

29. PATENTS AND COPYRIGHTS

If an article sold and delivered to KCDC hereunder is protected by patent or copyright, the vendor agrees to indemnify and save harmless KCDC, from and against any all suits, claims, judgments and costs instituted or recovered against it by any person whomever.

30. PAYMENTS

KCDC makes payment upon satisfactory delivery and acceptance of all items or service, and submission of a proper invoice(s) bearing the purchase description, delivery date, and/or purchase order number. Separate invoices are required for each purchase order. Invoices are to be left/emailed with the ordering official or emailed/mailed to the KCDC Accounts Payable Division at P.O. Box 3550 in Knoxville, TN 37927-3550.

- a. Invoices will show KCDC's purchase order number.
- b. KCDC will not pay charges not on the purchase order.
- c. KCDC will not pay freight unless it is on the purchase order.
- d. KCDC pays by ACH and it is the vendor's responsibility to log onto KCDC's Vendor Portal to determine payment and its application.

- e. KCDC reserves the right to pay net 30.
- f. KCDC normally pays on the 15th and the last business day of the month (or the business day closest to these standards).
- g. KCDC does not normally pre-pay for work or goods.

31. REMEDIES

KCDC has all rights and remedies afforded under the U.C.C. and Tennessee law in contract and in tort, including but not limited to rejection of goods, rescission, right of act-off, refund, incidental, consequential and compensatory damages and reasonable attorney's fees.

32. RIGHT TO INSPECT

KCDC reserves the right to make inspections of service provision and/or the supply of goods.

33. SAFETY DATA SHEETS

The vendor must supply proper Safety Data Sheet information in compliance with OSHA's Hazard Communications Standard to KCDC at the time of purchase.

34. SEVERABILITY

If any provision of the Purchase Order is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.

35. SUB-CONTRACTING

Vendor shall not sub-contract the purchase order to any other vendor without KCDC's expressed prior written consent.

36. TAXES

KCDC's Purchase Orders are exclusive of all federal, state or local taxes. KCDC is exempt from sales tax and federal excise taxes. The State of Tennessee does not issue sales tax exemption numbers to local governments. However, KCDC will provide the State of Tennessee's Sales Tax Exemption forms upon request.

37. TERMINATION

KCDC may terminate this agreement, in part or in whole, for its convenience or the failure of the vendor to fulfill contractual obligations. KCDC terminates by delivering a written Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the vendor shall:

- a. Immediately discontinue all services affected (unless the notice directs otherwise).
- b. Deliver to KCDC all information, papers, reports and other materials accumulated or generated in performing the contract, whether completed or in progress.

If the termination is for KCDC's convenience, KCDC shall only be liable for payment for services rendered before the effective date of the termination.

If the termination is due to the failure of the vendor to fulfill its obligations under the contract, KCDC may:

- a. Require the vendor to deliver any work described in the Notice of Termination.
- b. Take over and prosecute the same to completion by contract or otherwise and the vendor shall be liable for any additional cost incurred by KCDC.
- c. Withhold any payments to the vendor for purpose of set-off or partial payment, as the case may be, of amounts owed by KCDC to the vendor.

In the event of termination for cause, KCDC is liable to the vendor for reasonable costs incurred by the vendor before the effective date of the termination. KCDC's Chief Contracting Officer shall decide any dispute.

38. VARIATION IN QUANTITY

Variation in the quantity of any item called for by the purchase order is not allowed, unless such variation is caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, set forth herein.

39. WARRANTY

Vendor warrants to KCDC that all items delivered and all services rendered shall conform to the specifications, drawings, bid and/or other descriptions furnished and/or incorporated by reference, and will be fit for the particular purpose purchased, of merchantable quality, good workmanship, and free from defects. Vendor extends to KCDC all warranties allowed under the U.C.C. Vendor shall provide copies of warranties to KCDC with invoice. Return of merchandise not meeting warranties shall be at vendor's expense.