

**PURCHASE AGREEMENT BETWEEN THE
CITY OF SOUTH SAN FRANCISCO AND [NAME OF VENDOR]**

These terms and conditions govern the purchase of materials, supplies, and/or equipment, including any related installation, training, and/or minor services and repairs described in this Purchase Agreement ("Purchase Agreement") by [REDACTED] ("Vendor") for the City of South San Francisco ("City"). Vendor and City are collectively referred to in this Purchase Agreement as "the Parties." If the Vendor selects subcontractors to execute a portion the terms of this Purchase Agreement, that subcontractor is an agent of the Vendor, and is hereby included by reference as "the Vendor."

1. Time of Performance. This Purchase Agreement shall commence effective [REDACTED], [REDACTED], and shall end when Vendor has provided to the City the Products and Services described in this Purchase Agreement, and in Exhibit A ("Products" and/or "Services"). The equipment and products listed in Exhibit A must be delivered by [REDACTED], [REDACTED]. The installation and other services set forth in Exhibit A must be completed by [REDACTED], [REDACTED]. In the event that any of the terms of Exhibit A conflict with this Purchase Agreement, the terms of the Purchase Agreement shall prevail.
2. Description of Goods. Vendor shall perform everything required to be performed and shall provide and furnish to City with [description of Products] and shall complete delivery F.O.B. to the City of South San Francisco on or before [no.] days from the date of this Purchase Agreement in strict accordance with the specifications as established by this Purchase Agreement and Exhibit(s), which specifications are incorporated herein and made part of this Purchase Agreement.
3. Description of Purchase. The City hereby agrees to pay Vendor for the Products and/or Services with a not to exceed amount. The total compensation for Products and/or Services performed under this Purchase Agreement is **not to exceed** [REDACTED] (\$---.00).

The City shall pay Vendor invoices for Products and/or Services actually delivered in accordance with this Purchase Agreement. To be eligible for payment, Vendor invoices must itemize the Products and/or Services delivered and the corresponding prices in accordance with this Purchase Agreement. Payment of Vendor invoices does not constitute acceptance of Products and/or Services delivered. Prices of Products and/or Services delivered that are not in accordance with this Purchase Agreement are subject to adjustment. In no event will the prices of Products and/or Services delivered exceed that specified on this Purchase Agreement. Payments shall be subject to adjustment for defects in quality or failure of Vendor to meet terms and conditions herein and in Exhibit A. Such adjustments shall be equal to one hundred percent (100%) of City's costs to correct such defects or Vendor's failure to meet Purchase Agreement requirements.

4. Taxes. Vendor shall pay all applicable federal, state and local taxes, which may be chargeable against the delivery of the Products and/or Services listed herein.
5. General Warranties and Product Compliance. Vendor warrants that: (A) All Products and/or Services are as described on this Purchase Agreement conform to all drawings, samples, descriptions and specifications contained in Exhibit A; (B) All Products and/or Services delivered are new and of good merchantable quality, free from material defects of workmanship and fit for the purpose for which sold or provided; (C) Vendor has good title to all Products delivered and all Products delivered are free from liens and other encumbrances; and (D) Vendor's delivery and installation of the Products and/or Services will be in strict conformity with all applicable local, state, and federal laws. For purposes of this warranty, any Products or components not meeting the foregoing quality shall be deemed defective. The foregoing warranty provisions shall also be applicable to equipment or materials provided by a third party entity to Vendor via this Purchase Agreement.

Vendor also expressly warrants and guarantees, for [insert number of years] that the Products and/or Services furnished by it to City shall be free from breakage or defects of material and workmanship under normal use, service and maintenance from the date of acceptance of the City, and expressly agrees to repair or replace Products and/or Services or any part thereof which proves defective as a result of inferior or defective materials, equipment or workmanship. If within the period stated above, any repairs or replacements in connection with the Products and/or Services are, in the opinion of the City, rendered necessary as a result of the use of inferior or defective materials, equipment or workmanship, Vendor agrees on receipt of notice from City and without expense to the City, for freight, parts or labor, to properly repair, replace or correct any and all such defects therein. If Vendor, after such notice, fails to proceed promptly with the terms of this warranty and guarantee, the City may perform the work necessary to effectuate such corrections, repairs and replacements, and recover the cost thereof from Vendor.

6. Damage to City Facilities. Damage to City or public facilities or private property caused by the Vendor or by its subcontractors during delivery or installation shall be repaired and/or replaced in kind at no cost to the City.
7. Site Safety and Cleanup. The delivery and installation site shall be kept clean and free of hazards at all times during installation. After installation is completed at the site, Vendor shall clean the surrounding area to the condition prior to installation.
8. Final Inspection and Work Acceptance. Finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the City.
9. Indemnity. To the fullest extent permitted by law, Vendor shall indemnify, defend (with counsel acceptable to the City), and hold harmless the City and its elected and appointed officers, officials, employees, agents, contractors and consultants (collectively, the "City Indemnitees") from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorneys' fees and costs of litigation) (collectively, "Liability") of every nature arising out of or in connection with the delivery and installation of the Products and/or Services described on this Purchase Agreement or Vendor's failure to comply with this Purchase Agreement, except such Liability caused by the gross negligence or willful misconduct of the City Indemnitees.
10. Insurance. Before beginning any installation work and continuing throughout the term of this Purchase Agreement, Vendor, at its sole cost and expense, furnish the City with certificates of insurance evidencing that Contractor has obtained and maintains insurance in the following amounts:

A. Workers' Compensation that satisfies the minimum statutory limits.

B. Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any City-owned or City-furnished equipment used or operated by the Vendor, its personnel, agents or subcontractors.

C. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies shall be written on an occurrence basis and shall name the City Indemnitees as additional insureds with any City insurance shall be secondary and in excess to Vendor's insurance. If the Vendor's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

The City Risk Manager, in writing, may approve a variation in the foregoing insurance requirements. A valid and executed approval by Risk Manager must accompany this Purchase Agreement for a variation to be binding.

11. Prevailing Wage. Where applicable, the wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this Purchase Agreement, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770, *et seq.* Each laborer, worker or mechanic employed by Vendor or by any subcontractor shall receive the wages herein provided for. The Vendor shall pay two hundred dollars (\$200), or whatever amount may be set by Labor Code Section 1775, as may be amended, per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Vendor to each worker.

An error on the part of an awarding body does not relieve the Vendor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775. The City will not recognize any claim for additional compensation because of the payment by the Vendor for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Vendor.

A. Posting of Schedule of Prevailing Wage Rates and Deductions. If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Vendor shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

B. Payroll Records. Each Vendor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Vendor in connection with the public work. Such records shall be certified and submitted weekly as required by Labor Code Section 1776.

12. Payment of Employment Taxes; Tax Withholding. Vendor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Vendor must provide City with a valid California Franchise Tax Board form 590 ("Form 590"), as may be amended and such Form 590 shall be attached hereto and incorporated herein as Exhibit [REDACTED]. Unless Vendor provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Vendor as required by law. Vendor shall obtain, and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Vendor accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Vendor's withholding duty to City upon request.
13. Termination. In addition to all other legal and equitable rights of the City, the City may terminate this Purchase Agreement upon notice to the Vendor. If the City terminates this Purchase Agreement, the City will pay the Vendor for Products and/or Services accepted in accordance with this Purchase Agreement prior to the date of termination.
14. Prevailing Party. In the event that either party to this Purchase Agreement commences any legal action or proceeding (including but not limited to arbitration) to interpret the terms of this Purchase Agreement, the prevailing party in such a proceeding shall be entitled to recover its reasonable attorney's fees associated with that legal action or proceeding.
15. Notice. All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Vendor:

[REDACTED]

City:

City Clerk
City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080

16. Assignment, Governing Law. The Vendor may not assign any of Vendor's obligations under this Purchase Agreement without the City's prior written approval. This Purchase Agreement is governed by California law. The jurisdiction for any litigation arising from this Purchase Agreement shall be in the state of California, and shall be venued in the County of San Mateo.
17. Severability. If any portion of this Purchase Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Purchase Agreement.
18. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties. This Purchase Agreement may be modified or amended only by a subsequent written agreement signed by both Parties.

19. Execution in Counterpart. This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

CITY OF SOUTH SAN FRANCISCO
A Municipal Corporation

VENDOR

By: _____
Sharon Ranals, City Manager

By: _____
[Name], [Title]

Approved as to Form:

City Attorney

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