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SECOND AMENDMENT TO CONTRACT NO. 31168

31168

THIS SECOND AMENDMENT TO CONTRACT NO. 31168 is made and entered, in duplicate, as of June 23, 2011 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on June 23, 2009, by and between ALLSTAR FIRE EQUIPMENT CO., a California corporation ("Consultant"), with a place of business at 12328 Lower Azusa Road, Arcadia California 91006, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the parties entered Contract No. 31168 whereby Consultant agreed to furnish and deliver breathing apparatus and related equipment for a total estimated amount of \$1,200,000 for a period of one year, with the option to renew for two additional one-year periods, in the amount of \$225,000 annually; and

WHEREAS, for the first renewal period, City issued BPO Number: BPF09000018 to add \$225,000 and extend the term until June 23, 2011;

WHEREAS, the parties desire to utilize the second renewal period to extend the term until June 23, 2012 and add \$225,000;

NOW, THEREFORE, in consideration of the mutual terms and conditions in Contract No. 31168 and in this Second Amendment, the parties agree as follows:

1. Contract No. 31168 is amended by mutual agreement of the parties by extending the term to June 23, 2012 and by adding \$225,000 to the term ending June 23, 2012.
2. Except as expressly amended in this Second Amendment, all terms and conditions in Contract No. 31168 are ratified and confirmed and shall remain in full force and effect.

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11 JUN 2011 5:15 PM

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 IN WITNESS WHEREOF, the parties have caused this document to be duly
2 executed with all formalities required by law as of the date first stated above.

3 ALLSTAR FIRE EQUIPMENT CO.,
4 California corporation

5 July 12, 2011, 2011

By JA Spasato

President

6 Joseph A. Spasato

Type or Print Name

7 July 12,, 2011

By J. Hopper

Secretary

8 JILL A. HOPPER

Type or Print Name

9
10 "Consultant"

11 CITY OF LONG BEACH, a municipal
12 corporation, Assistant City Manager

13 July 26, 2011

By [Signature]

City Manager

14 "City"

15 EXECUTED PURSUANT
16 TO SECTION 301 OF
17 THE CITY CHARTER.

18 This Second Amendment to Agreement No. 31168 is approved as to form
19 on July 22, 2011.

20 ROBERT E. SHANNON, City Attorney

21 By [Signature]
22 Deputy



City of Long Beach
 City Purchasing Agent
 333 W. Ocean Blvd./7th Floor
 Long Beach, CA 90802

PURCHASE ORDER

BPO ID: BPDF09000018

PRINT DATE: 12/11/2009

PAGE: 01

** ORIGINAL **

ALLSTAR FIRE EQUIP INC

JOHN SPRENGELMEYER
 12328 LOWER AZUSA RD
 ARCADIA

CA 91006-5872

SHIP TO:
 AS SPECIFIED ON INDIVIDUAL ORDERS

PLEASE REFER ALL QUESTIONS
 CONCERNING THIS ORDER TO:
 LENORE BLUEFORD
 TEL: (562)570-5384

ITB ID	EXPR DATE	F.O.B. POINT	DISCOUNT TERMS	CONTRACT AMOUNT
	06/23/2011	DESTINATION	NET 30	225,000.00

TERMS:

REVISION ONE IS ISSUED TO INCORPORATE THE FOLLOWING CHANGES:

FIRST RENEWAL IS HEREBY EXERCISED EXTENDING PO AN ADDITIONAL 12 MONTHS TO 06/23/11; 5% PRICE INCREASE. (PO AMT INCREASE BY \$225,000)

CONTRACT PURCHASE ORDER FOR FURNISHING AND DELIVERING SCOTT HEALTH AND SAFETY PRODUCTS (SCBA'S) TO THE CITY OF LONG BEACH IN ACCORDANCE WITH BID #PA-01209 AND PRICES SET FORTH IN CONTRACT AGREEMENT #31168.

REFER TO POFD09000019 FOR ONE TIME PURCHASE ON UASI 06 GRANT. THIS BLANKET IS THE SECOND PART OF BID.

CONTRACT TERM: 06/23/09 TO 06/23/10

EXTENSION OPTION:
 CONTINUED, NEXT PAGE

**CITY OF LONG BEACH
PURCHASE ORDER – GENERAL CONDITIONS**

1. Issuance of this Purchase Order by City constitutes acceptance of Supplier's offer on the terms and conditions stated herein, and forms a contract.
 2. City will not pay charges for taxes, transportation, boxing, packaging, crating or returnable containers unless separately stated hereon. All sales, use, excise or similar taxes to be paid by City must be itemized separately hereon and on invoices. City is exempt from payment of Federal Excise Tax under Certificate Number 95-730502K and supplier shall not charge this tax to City.
 3. City's obligation to pay the sum herein stated for any one fiscal year shall be contingent upon the City Council appropriating the necessary funds. A fiscal year commences on October 1 and ends on September 30 of the following year. If the City Council fails to appropriate the necessary funds for any fiscal year, then the Purchase Order shall terminate at no additional cost or obligation to City.
 4. Time is of the essence. If at any time Supplier believes that goods, materials, equipment, supplies ("item"), labor or services will not be made as scheduled, supplier shall immediately give written notice stating the cause of the delay to City. Deliveries must be prepaid. City will not accept COD shipments.
 5. City reserves the right at any time to make changes in drawings and specifications, in methods of shipment and packaging, and in place(s) of delivery. If necessary, there will be an equitable adjustment in price and time of performance mutually satisfactory to Supplier and City; but any claim by Supplier for such an adjustment must be made in writing within thirty (30) days after such change.
 6. Supplier warrants that the items delivered and the work or services performed shall conform to the specifications, drawings, samples or other description specified by City and shall be fit and sufficient for the purpose intended, merchantable, of good materials and workmanship, in good working order and free from defect or faulty workmanship for a period of at least ninety (90) days, after delivery. When defective items or faulty workmanship is discovered, Supplier shall provide all labor, materials, parts and equipment to correct such defect or make such replacement at no expense to the City. Defective items not meeting City's specifications shall be held for Supplier's instructions at Supplier's risk and; if Supplier so directs, will be returned at Supplier's expense.
 7. Supplier shall defend, indemnify and hold harmless City, its officials, employees and agents harmless from all loss, damage, liability, demands, claims, causes of action, costs and expenses (including reasonable attorneys' fees) for injuries to persons (including death) or damage or destruction to property connected with or arising from the negligent acts or omissions, willful misconduct or misrepresentations of Supplier, its agents or employees in the performance of this Purchase Order or relating to a claim of infringement of a patent, trademark or copyright.
 8. City reserves the right to terminate this Purchase Order, or any part of it, at any time even though Supplier is not in default. On receipt of notice of termination, Supplier shall, unless such notice otherwise directs, immediately discontinue all work on the Purchase Order and deliver, if and as directed, to City all completed and partially completed items and work in process. This section shall not limit or affect the right of City to terminate this Purchase Order immediately upon Supplier's breach.
 9. City reserves the right to terminate this Purchase Order or any part of it and reject delivery of items if delivery is not made when and as specified. Supplier shall be charged for any direct losses, but not any consequential damages, sustained by City by reason of such delay or failure, except losses caused by a delay for reasons beyond Supplier's reasonable control. Direct losses shall include any costs to City in excess of the Purchase Order price of obtaining items or services from other sources similar to those terminated or rejected.
 10. Supplier shall not substitute items without written approval of the City Purchasing Agent or designee.
 11. All license fees for City's use of patented or copyrighted items for items furnished under this Purchase Order shall be included in the Purchase Order price.
 12. In cases where a price subject to escalation has been agreed upon, all claims for such price escalation must be received by City within sixty (60) days after date of final shipment. The price escalation shall be shown as a separate item on the invoice. Unless an escalator clause has been shown as a specific part of this Purchase Order, Supplier shall not be entitled to reimbursement for costs incurred due to escalation.
 13. All items or services provided under this Purchase Order shall comply with the Safety Orders and Regulations of the California Division of Industrial Safety, Title 8, California Code of Regulations (CAL/OSHA) and all applicable OSHA regulations as well as all other applicable sections of the California Code of Regulations. Supplier shall defend, indemnify and hold harmless City, its officials, employees and agents from any loss, claim, cause of action, liability, cost or expense, including but not limited to fines, penalties, corrective measures, and attorney's fees, City may sustain by reason of Supplier's failure to comply.
 14. Supplier shall keep confidential and not disclose or use in any way confidential business or technical information that the City may disclose in conjunction with this Purchase Order or Supplier may learn as a result of entering City property to deliver items or services or to perform work hereunder.
 15. Supplier shall not assign this Purchase Order or any part hereof or any payments due hereunder or delegate any duties without City's prior written approval.
 16. City's remedies herein are cumulative and additional to any other remedies at law or in equity. The waiver of any breach of this Purchase Order shall not be deemed a waiver of any other or subsequent breach. City's failure to object to provisions contained in any communication from Supplier shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Purchase Order.
 17. This Purchase Order shall not be amended, modified or rescinded, except by written agreement signed by the parties and expressly referring to this Purchase Order.
 18. Any indebtedness of Supplier to City may, at the City's option, be credited against amounts owing by City hereunder.
 19. Supplier shall furnish further itemization and breakdown of the Purchase Order price when requested by City.
 20. Supplier and its subcontractor(s) shall not discriminate against any person in the performance of this Purchase Order on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap or disability, and shall comply with applicable federal and state equal employment opportunity laws, ordinances, rules and regulations.
 21. Supplier shall comply with all applicable federal, state and local laws, rules, regulations and ordinances pertaining to the subject matter hereof, and shall obtain all necessary licenses and permits related to the items, work or services.
 22. Supplier, its employees, and agents shall be considered independent contractors and not employees or agents of City.
 23. City's purchases are based on its actual needs and requirements: City is obligated only to purchase those items and those quantities that City needs and requires, regardless of any estimated quantities provided to the Supplier.
 24. The issuance of this Purchase Order does not make Supplier the exclusive supplier of items or services that are the subject of this Purchase Order.
- THE FOLLOWING ADDITIONAL CONDITIONS APPLY WHEN SUPPLIER IS TO PERFORM WORK ON THE PREMISES OF CITY:**
25. If, during the work, Supplier allows any indebtedness or lien to accrue for labor, equipment or materials, which may become a claim against City, Supplier shall immediately pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond and, in case of failure to do so, City may withhold any money due to Supplier until such claim, indebtedness or lien is paid or may apply such money toward the discharge thereof; or City may, at its option, cancel this Purchase Order, take possession and control of the work, and complete the same or cause the same to be completed. Supplier shall pay to City the difference between the Purchase Order price and the actual cost to City in completing or causing the work to be completed.
 26. Supplier shall perform the work at Supplier's own risk until the same is fully completed and accepted and shall, in case of any accident, destruction or injury to the work or items before final completion and acceptance, repair or replace the work or items so injured, damaged or destroyed, at Supplier's own expense and to the satisfaction of City. When items are furnished by others for installation or erection by Supplier, Supplier shall receive, unload, store, and handle same at site and become responsible therefore, as though such items were being furnished by Supplier under the Purchase Order.
 27. Supplier shall maintain at its expense, until completion of performance and acceptance by City, from an insurer admitted (licensed) in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category of V (capital surplus and conditional surplus funds of greater than \$10 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager, or Non-admitted in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category of VIII (capital surplus and conditional surplus funds of greater than \$100 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager the following insurance:
 - a. **COMPREHENSIVE GENERAL LIABILITY:** naming City, its officials, employees and agents as additional insured's for injury to or death of persons or damage to or loss of property arising from or connected to Supplier's performance hereunder: \$1,000,000 combined single limit for each occurrence or \$2,000,000 general aggregate.
 - b. **AUTOMOBILE LIABILITY:** \$500,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.
 - c. **WORKERS' COMPENSATION:** As required by the California Labor Code. Self-insurance and self-insured retention must be approved in writing by City and protect City in the same manner and extent as if the policies had not contained retention. Each policy must be endorsed to state that coverage shall not be cancelled by either party or reduced in coverage except after 30 days prior written notice to City. Supplier shall furnish to City before performance Certificates of Insurance and original endorsements, with the original signature of one authorized by the insurer to bind coverage on its behalf. This insurance shall not be deemed to limit Supplier's liability hereunder. Supplier shall require that its subcontractors comply with this Section. City reserves the right to require complete certified copies of policies. If Supplier fails to furnish said insurance, City may terminate the Purchase Order.
 28. Supplier shall comply with the Standard Specifications for Public Works Construction, latest edition, and provide bonds required by the City.
 29. Supplier shall comply with prevailing wage requirements in Chapter 2.87 of the Long Beach Municipal Code, e.g. the requirement to pay prevailing wages to contractors or subcontractors for public work. Public work includes the construction or repair of any public building, street, sewer or other property or improvement work done under contract and paid for, in whole or in part, out of public funds. Prevailing wage determinations are made by the California Department of Industrial Relations (DIR) for per diem wages and holiday and overtime work in the locality in which the public work is to be performed for each craft, classification or type of worker needed to perform the work under the contract. Such wage rates are available on the DIR website at <http://www.dir.ca.gov/dlstr/>

This information is also available at www.longbeach.gov/purchasing



City of Long Beach
 City Purchasing Agent
 333 W. Ocean Blvd./7th Floor
 Long Beach, CA 90802

PURCHASE ORDER

BPO ID: BPDFD09000018

PRINT DATE: 12/11/2009

PAGE: 02

** ORIGINAL **

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THIS CONTRACT IS SUBJECT TO EXTENSION FOR TWO ADDITIONAL ONE (1) YEAR PERIODS FROM THE DATE OF EXPIRATION OF THIS CONTRACT, AT THE OPTION OF THE CITY, IN ACCORDANCE WITH THE OPTION GRANTED IN YOUR BID.

PRICE INCREASE SHALL NOT EXCEED 5 % DURING FIRST EXTENSION PERIOD.

PRICE INCREASE SHALL NOT EXCEED 5 % DURING SECOND EXTENSION PERIOD.

ITEM	COMMODITY ID	U/M	UNIT COST
001	345-80		

----- END OF ITEM LIST -----

THIS BLANKET PURCHASE ORDER IS BEING SENT TO YOU FOR YOUR FILES. EACH DEPT THAT USES THE BPO WILL CREATE THEIR OWN PO RELEASE AGAINST THE BPO. PO RELEASE WILL BE SENT TO YOU EITHER VIA US MAIL OR FAX. THE CITY PURCHASING AGENT'S SIGNATURE WILL NOT APPEAR ON THE RELEASE; AN AUTHORIZED PERSON IN THAT DEPT WILL SIGN THE RELEASE. SHIPMENT OR SERVICE SHALL BE MADE AGAINST THE RELEASE PO NUMBER.

 THIS BPO NUMBER SHOULD NOT BE USED ON THE INVOICE. ONLY THE PO NUMBER PROVIDED BY THE USING DEPARTMENT SHOULD BE USED. FAILURE TO OBTAIN THE PO NUMBER AND PROVIDE THAT NUMBER TO THE CITY ON ALL INVOICES WILL RESULT IN DELAYS IN PAYMENT.

 THE GENERAL CONDITIONS ARE HEREBY INCORPORATED BY REFERENCE.

QUESTIONS REGARDING THIS BLANKET PURCHASE ORDER SHOULD BE DIRECTED TO THE BUYER AS SHOWN ON THE BPO.

ISSUANCE OF THE PURCHASE ORDER BY THE CITY CONSTITUTES ACCEPTANCE OF SUPPLIER'S OFFER ON THE TERMS AND CONDITIONS STATED HEREIN AND IN ANY ADDENDUM HERETO.

TOTAL ESTIMATED EXPENDITURES (CONTRACT AMOUNT) ARE NOTED HEREIN. THE CONTRACT AMOUNT SHALL NOT BE EXCEEDED, INCLUDING TAX, WITHOUT WRITTEN AUTHORIZATION.

CONTINUED, NEXT PAGE

**CITY OF LONG BEACH
PURCHASE ORDER – GENERAL CONDITIONS**

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 3. City's obligation to pay the sum herein stated for any one fiscal year shall be contingent upon the City Council appropriating the necessary funds. A fiscal year commences on October 1 and ends on September 30 of the following year. If the City Council fails to appropriate the necessary funds for any fiscal year, then the Purchase Order shall terminate at no additional cost or obligation to City.
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 6. Supplier warrants that the items delivered and the work or services performed shall conform to the specifications, drawings, samples or other description specified by City and shall be fit and sufficient for the purpose intended, merchantable, of good materials and workmanship, in good working order and free from defect or faulty workmanship for a period of at least ninety (90) days, after delivery. When defective items or faulty workmanship is discovered, Supplier shall provide all labor, materials, parts and equipment to correct such defect or make such replacement at no expense to the City. Defective items not meeting City's specifications shall be held for Supplier's instructions at Supplier's risk and; if Supplier so directs, will be returned at Supplier's expense.
 7. Supplier shall defend, indemnify and hold harmless City, its officials, employees and agents harmless from all loss, damage, liability, demands, claims, causes of action, costs and expenses (including reasonable attorneys' fees) for injuries to persons (including death) or damage or destruction to property connected with or arising from the negligent acts or omissions, willful misconduct or misrepresentations of Supplier, its agents or employees in the performance of this Purchase Order or relating to a claim of infringement of a patent, trademark or copyright.
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 13. All items or services provided under this Purchase Order shall comply with the *Safety Orders and Regulations* of the California Division of Industrial Safety, Title 8, California Code of Regulations (CAL/OSHA) and all applicable OSHA regulations as well as all other applicable sections of the California Code of Regulations. Supplier shall defend, indemnify and hold harmless City, its officials, employees and agents from any loss, claim, cause of action, liability, cost or expense, including but not limited to fines, penalties, corrective measures, and attorney's fees, City may sustain by reason of Supplier's failure to comply.
 14. Supplier shall keep confidential and not disclose or use in any way confidential business or technical information that the City may disclose in conjunction with this Purchase Order or Supplier may learn as a result of entering City property to deliver items or services or to perform work hereunder.
 15. Supplier shall not assign this Purchase Order or any part hereof or any payments due hereunder or delegate any duties without City's prior written approval.
 16. City's remedies herein are cumulative and additional to any other remedies at law or in equity. The waiver of any breach of this Purchase Order shall not be deemed a waiver of any other or subsequent breach. City's failure to object to provisions contained in any communication from Supplier shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Purchase Order.
 17. This Purchase Order shall not be amended, modified or rescinded, except by written agreement signed by the parties and expressly referring to this Purchase Order.
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 19. Supplier shall furnish further itemization and breakdown of the Purchase Order price when requested by City.
 20. Supplier and its subcontractor(s) shall not discriminate against any person in the performance of this Purchase Order on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap or disability, and shall comply with applicable federal and state equal employment opportunity laws, ordinances, rules and regulations.
 21. Supplier shall comply with all applicable federal, state and local laws, rules, regulations and ordinances pertaining to the subject matter hereof, and shall obtain all necessary licenses and permits related to the items, work or services.
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25. If, during the work, Supplier allows any indebtedness or lien to accrue for labor, equipment or materials, which may become a claim against City, Supplier shall immediately pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond and, in case of failure to do so, City may withhold any money due to Supplier until such claim, indebtedness or lien is paid or may apply such money toward the discharge thereof; or City may, at its option, cancel this Purchase Order, take possession and control of the work, and complete the same or cause the same to be completed. Supplier shall pay to City the difference between the Purchase Order price and the actual cost to City in completing or causing the work to be completed.
 26. Supplier shall perform the work at Supplier's own risk until the same is fully completed and accepted and shall, in case of any accident, destruction or injury to the work or items before final completion and acceptance, repair or replace the work or items so injured, damaged or destroyed, at Supplier's own expense and to the satisfaction of City. When items are furnished by others for installation or erection by Supplier, Supplier shall receive, unload, store, and handle same at site and become responsible therefore, as though such items were being furnished by Supplier under the Purchase Order.
 27. Supplier shall maintain at its expense, until completion of performance and acceptance by City, from an insurer admitted (licensed) in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category of V (capital surplus and conditional surplus funds of greater than \$10 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager, or Non-admitted in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category of VIII (capital surplus and conditional surplus funds of greater than \$100 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager the following insurance:
 - a. **COMPREHENSIVE GENERAL LIABILITY:** naming City, its officials, employees and agents as additional insured's for injury to or death of persons or damage to or loss of property arising from or connected to Supplier's performance hereunder: \$1,000,000 combined single limit for each occurrence or \$2,000,000 general aggregate.
 - b. **AUTOMOBILE LIABILITY:** \$500,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.
 - c. **WORKERS' COMPENSATION:** As required by the California Labor Code. Self-insurance and self-insured retention must be approved in writing by City and protect City in the same manner and extent as if the policies had not contained retention. Each policy must be endorsed to state that coverage shall not be cancelled by either party or reduced in coverage except after 30 days prior written notice to City. Supplier shall furnish to City before performance Certificates of Insurance and original endorsements, with the original signature of one authorized by the insurer to bind coverage on its behalf. This insurance shall not be deemed to limit Supplier's liability hereunder. Supplier shall require that its subcontractors comply with this Section. City reserves the right to require complete certified copies of policies. If Supplier fails to furnish said insurance, City may terminate the Purchase Order.
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 29. Supplier shall comply with prevailing wage requirements in Chapter 2.87 of the Long Beach Municipal Code, e.g. the requirement to pay prevailing wages to contractors or subcontractors for public work. Public work includes the construction or repair of any public building, street, sewer or other property or improvement work done under contract and paid for, in whole or in part, out of public funds. Prevailing wage determinations are made by the California Department of Industrial Relations (DIR) for per diem wages and holiday and overtime work in the locality in which the public work is to be performed for each craft, classification or type of worker needed to perform the work under the contract. Such wage rates are available on the DIR website at <http://www.dir.ca.gov/dlsr/>

This information is also available at www.longbeach.gov/purchasing



City of Long Beach
 City Purchasing Agent
 333 W. Ocean Blvd./7th Floor
 Long Beach, CA 90802

PURCHASE ORDER

BPO ID: BPF09000018

PRINT DATE: 12/11/2009

PAGE: 03

** ORIGINAL **

PRICES SHALL BE IN ACCORDANCE WITH THOSE EXTENDED TO OTHER GOVERNMENTAL AGENCIES. APPLICABLE STATE AND COUNTY SALES TAX WILL BE ADDED TO INVOICE.

THIS PURCHASE ORDER AMOUNT IS ONLY AN ESTIMATE. THE CITY NEITHER WARRANTS NOR GUARANTEES THAT THE TOTAL PURCHASE ORDER AMOUNT WILL BE REACHED.

AUTHORIZED SIGNATURE: _____

DATE: _____

12-10-2009

***** LAST PAGE *****

**CITY OF LONG BEACH
PURCHASE ORDER – GENERAL CONDITIONS**

1. Issuance of this Purchase Order by City constitutes acceptance of Supplier's offer on the terms and conditions stated herein, and forms a contract.
 2. City will not pay charges for taxes, transportation, boxing, packaging, crating or returnable containers unless separately stated hereon. All sales, use, excise or similar taxes to be paid by City must be itemized separately hereon and on invoices. City is exempt from payment of Federal Excise Tax under Certificate Number 95-730502K and supplier shall not charge this tax to City.
 3. City's obligation to pay the sum herein stated for any one fiscal year shall be contingent upon the City Council appropriating the necessary funds. A fiscal year commences on October 1 and ends on September 30 of the following year. If the City Council fails to appropriate the necessary funds for any fiscal year, then the Purchase Order shall terminate at no additional cost or obligation to City.
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 6. Supplier warrants that the items delivered and the work or services performed shall conform to the specifications, drawings, samples or other description specified by City and shall be fit and sufficient for the purpose intended, merchantable, of good materials and workmanship, in good working order and free from defect or faulty workmanship for a period of at least ninety (90) days, after delivery. When defective items or faulty workmanship is discovered, Supplier shall provide all labor, materials, parts and equipment to correct such defect or make such replacement at no expense to the City. Defective items not meeting City's specifications shall be held for Supplier's instructions at Supplier's risk and; if Supplier so directs, will be returned at Supplier's expense.
 7. Supplier shall defend, indemnify and hold harmless City, its officials, employees and agents harmless from all loss, damage, liability, demands, claims, causes of action, costs and expenses (including reasonable attorneys' fees) for injuries to persons (including death) or damage or destruction to property connected with or arising from the negligent acts or omissions, willful misconduct or misrepresentations of Supplier, its agents or employees in the performance of this Purchase Order or relating to a claim of infringement of a patent, trademark or copyright.
 8. City reserves the right to terminate this Purchase Order, or any part of it, at any time even though Supplier is not in default. On receipt of notice of termination, Supplier shall, unless such notice otherwise directs, immediately discontinue all work on the Purchase Order and deliver, if and as directed, to City all completed and partially completed items and work in process. This section shall not limit or affect the right of City to terminate this Purchase Order immediately upon Supplier's breach.
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 11. All license fees for City's use of patented or copyrighted items for items furnished under this Purchase Order shall be included in the Purchase Order price.
 12. In cases where a price subject to escalation has been agreed upon, all claims for such price escalation must be received by City within sixty (60) days after date of final shipment. The price escalation shall be shown as a separate item on the invoice. Unless an escalator clause has been shown as a specific part of this Purchase Order, Supplier shall not be entitled to reimbursement for costs incurred due to escalation.
 13. All items or services provided under this Purchase Order shall comply with the Safety Orders and Regulations of the California Division of Industrial Safety, Title 8, California Code of Regulations (CAL/OSHA) and all applicable OSHA regulations as well as all other applicable sections of the California Code of Regulations. Supplier shall defend, indemnify and hold harmless City, its officials, employees and agents from any loss, claim, cause of action, liability, cost or expense, including but not limited to fines, penalties, corrective measures, and attorney's fees, City may sustain by reason of Supplier's failure to comply.
 14. Supplier shall keep confidential and not disclose or use in any way confidential business or technical information that the City may disclose in conjunction with this Purchase Order or Supplier may learn as a result of entering City property to deliver items or services or to perform work hereunder.
 15. Supplier shall not assign this Purchase Order or any part hereof or any payments due hereunder or delegate any duties without City's prior written approval.
 16. City's remedies herein are cumulative and additional to any other remedies at law or in equity. The waiver of any breach of this Purchase Order shall not be deemed a waiver of any other or subsequent breach. City's failure to object to provisions contained in any communication from Supplier shall not be deemed an acceptance of such provisions or a waiver of the provisions of this Purchase Order.
 17. This Purchase Order shall not be amended, modified or rescinded, except by written agreement signed by the parties and expressly referring to this Purchase Order.
 18. Any indebtedness of Supplier to City may, at the City's option, be credited against amounts owing by City hereunder.
 19. Supplier shall furnish further itemization and breakdown of the Purchase Order price when requested by City.
 20. Supplier and its subcontractor(s) shall not discriminate against any person in the performance of this Purchase Order on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap or disability, and shall comply with applicable federal and state equal employment opportunity laws, ordinances, rules and regulations.
 21. Supplier shall comply with all applicable federal, state and local laws, rules, regulations and ordinances pertaining to the subject matter hereof, and shall obtain all necessary licenses and permits related to the items, work or services.
 22. Supplier, its employees, and agents shall be considered independent contractors and not employees or agents of City.
 23. City's purchases are based on its actual needs and requirements; City is obligated only to purchase those items and those quantities that City needs and requires, regardless of any estimated quantities provided to the Supplier.
 24. The issuance of this Purchase Order does not make Supplier the exclusive supplier of items or services that are the subject of this Purchase Order.
- THE FOLLOWING ADDITIONAL CONDITIONS APPLY WHEN SUPPLIER IS TO PERFORM WORK ON THE PREMISES OF CITY:
25. If, during the work, Supplier allows any indebtedness or lien to accrue for labor, equipment or materials, which may become a claim against City, Supplier shall immediately pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond and, in case of failure to do so, City may withhold any money due to Supplier until such claim, indebtedness or lien is paid or may apply such money toward the discharge thereof; or City may, at its option, cancel this Purchase Order, take possession and control of the work, and complete the same or cause the same to be completed. Supplier shall pay to City the difference between the Purchase Order price and the actual cost to City in completing or causing the work to be completed.
 26. Supplier shall perform the work at Supplier's own risk until the same is fully completed and accepted and shall, in case of any accident, destruction or injury to the work or items before final completion and acceptance, repair or replace the work or items so injured, damaged or destroyed, at Supplier's own expense and to the satisfaction of City. When items are furnished by others for installation or erection by Supplier, Supplier shall receive, unload, store, and handle same at site and become responsible therefore, as though such items were being furnished by Supplier under the Purchase Order.
 27. Supplier shall maintain at its expense, until completion of performance and acceptance by City, from an insurer admitted (licensed) in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category of V (capital surplus and conditional surplus funds of greater than \$10 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager, or Non-admitted in the State of California with a current financial responsibility rating of A (Excellent) or better and a current financial size category of VIII (capital surplus and conditional surplus funds of greater than \$100 million) or greater rating as reported by A.M. Best Company or equivalent, unless waived in writing by City's Risk Manager the following insurance:
 - a. COMPREHENSIVE GENERAL LIABILITY: naming City, its officials, employees and agents as additional insured's for injury to or death of persons or damage to or loss of property arising from or connected to Supplier's performance hereunder: \$1,000,000 combined single limit for each occurrence or \$2,000,000 general aggregate.
 - b. AUTOMOBILE LIABILITY: \$500,000 combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.
 - c. WORKERS' COMPENSATION: As required by the California Labor Code. Self-insurance and self-insured retention must be approved in writing by City and protect City in the same manner and extent as if the policies had not contained retention. Each policy must be endorsed to state that coverage shall not be cancelled by either party or reduced in coverage except after 30 days prior written notice to City. Supplier shall furnish to City before performance Certificates of Insurance and original endorsements, with the original signature of one authorized by the insurer to bind coverage on its behalf. This insurance shall not be deemed to limit Supplier's liability hereunder. Supplier shall require that its subcontractors comply with this Section. City reserves the right to require complete certified copies of policies. If Supplier fails to furnish said insurance, City may terminate the Purchase Order.
 28. Supplier shall comply with the Standard Specifications for Public Works Construction, latest edition, and provide bonds required by the City.
 29. Supplier shall comply with prevailing wage requirements in Chapter 2.87 of the Long Beach Municipal Code, e.g. the requirement to pay prevailing wages to contractors or subcontractors for public work. Public work includes the construction or repair of any public building, street, sewer or other property or improvement work done under contract and paid for, in whole or in part, out of public funds. Prevailing wage determinations are made by the California Department of Industrial Relations (DIR) for per diem wages and holiday and overtime work in the locality in which the public work is to be performed for each craft, classification or type of worker needed to perform the work under the contract. Such wage rates are available on the DIR website at <http://www.dir.ca.gov/dlsr/>

This information is also available at www.longbeach.gov/purchasing