

TUALATIN HILLS PARK & RECREATION DISTRICT (THPRD)

TERMS & CONDITIONS

1. ACCEPTANCE: This Purchase Order (PO) issued by THPRD (Purchaser) and all terms and conditions herein, become the exclusive contract for this transaction when accepted by acknowledgement or commencement of the performance by seller (Contractor), unless a two-party agreement (e.g. consulting agreement) exists between THPRD and seller. If so and to the extent there are any conflicts between the terms of the two-party agreement and these terms and conditions the terms contained in the two-party agreement will prevail. This contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representation, oral or written, not specified herein, regarding this contract.

2. PAYMENT: Contractor shall send invoices addressed to Accounts Payable as indicated on the front page and must include at a minimum: Services performed, Service dates, what was delivered, the rates (as applicable), the total amount due, and the payment address. Payment is net 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later.

3. TERMINATION: THPRD may terminate this contract without cause and for its convenience upon seven days written notice to Contractor. Contractor will be paid for service performed or goods provided up to the date of termination.

4. RECOVERY OF OVERPAYMENTS: If billings under this contract, or under any other contract between contractor and THPRD, result in payments to contractor to which contractor is not entitled, THPRD after given written notification to contractor, may withhold such amounts from payments due to contractor.

5. INDEMNIFICATION: Contractor shall indemnify, hold harmless, and defend THPRD and its District Board members, Administrators, and employees, from all claims, suits or actions of any nature arising out of or related to the activities of contractor or its officers, subcontractors, agents, or employees under this contract.

6. GOVERNING LAW, VENUE: This contract is governed by Oregon law, without regard to principles of conflicts of law. Any claim, suit, or proceeding between THPRD and the Contractor that relates to this contract ("Claim") must be brought in the Circuit Court of Washington County or the Federal District Court for Oregon. Contractor consents to the in personam jurisdiction of these courts.

7. FORCE MAJEURE: No party is responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. THPRD may terminate this contract without Liability to Contractor upon written notice after determining the delay/default reasonably prevents performance of this contract.

8. INTENDED BENEFICIARIES: THPRD and Contractor are the only parties to this contract and the only parties entitled to enforce the contract.

9. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights or responsibilities under this contract in whole or in part, without the prior written approval of THPRD. This contract's provisions are binding upon and inure to the benefit of the parties to the contract and their respective successors and assigns.

10. ACCESS TO RECORDS: Contractor shall maintain all records according to Generally Accepted Accounting Principles (GAAP) & OAR 166-150-0110. Contractor agrees that THPRD will have access to all records related to this Contract.

11. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS: Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods under this contract, including, without limitation, the applicable provisions of the Oregon Public Contracting Code (ORS 279A, 279B and 279C), such as ORS 279A.110 (non-discrimination), 279B.020 (279B.220 (payment of laborers), 279B.230 (Medical Care and Workers Compensation), and 279B.235 (Hours of Labor, Pay Equity, salary discussion), ORS 279B.225 (recycling), 282.210 (printing), and 468A.710 (Asbestos Abatement License). Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: Title VI of the Civil Rights Act of 1964; Section V of the Rehabilitation Act of 1973; The Americans with Disabilities Act of 1990 (Pub L No. 101-336). ORS 659A.142, and all amendments of and regulations and administrative rules established pursuant to those laws; and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

12. DELIVERY: All deliveries shall be FOB destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to THPRD except as to latent defects, fraud, and Contractor's warranty obligations.

13. INSPECTION: Goods and materials must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the time of delivery the goods shall be returned at no cost to THPRD. THPRD reserves the right to inspect the goods at a reasonable time subsequent to delivery where conditions or circumstances prevent effective inspection of the goods at the time of delivery. Title to the Goods passes to THPRD and this section does not affect or limit THPRD's rights.

14. OWNERSHIP OF WORK PRODUCT: All work product created by Contractor as part of Contractor's performance of this Contract, including background data, documentation, and staff work that is preliminary to final reports, shall be the exclusive property of THPRD. If any such work product contains intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants District a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, reuse (in whole or in part), all such work product, and to authorize others to do so. District shall have no rights in any preexisting work product of Contractor provided to District by Contractor in the performance of this Contract except to copy, use, and reuse any such work product for District use only. If this Contract is terminated by either Party or by default, District, in

addition to any other rights provided by this Contract, may require Contractor to transfer and deliver such partially completed work product, reports, or other documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.

15. AMENDMENTS: The terms of this contract may only be amended in writing signed by both parties. Any amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of an amendment so executed shall constitute an original.

16. WAIVER: Failure of THPRD to enforce any provision of this contract shall not be a waiver or relinquishment by THPRD of its right to such performance in the future nor of the right to enforce any other provisions of this contract.

17. SEVERABILITY: If a court of competent jurisdiction declares any provision of this contract to be illegal or in conflict with the law, the parties intend that the validity of the remaining terms and provisions not be affected, and that the rights and obligations of the parties be construed and enforced as if the contract did not contain the particular terms of provision held to be invalid.

18. INSURANCE: For services: Contractor agrees to provide public liability insurance covering Bodily Injury and property damage in a responsible company with limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. Automobile liability limits of \$1,000,000 per occurrence combined bodily injury and property damage for owned and non-owned exposures. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities on THPRD premises. THPRD reserves the right to require additional insurance coverage, limits, and terms.

19. WORKERS' COMPENSATION: The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this purchase order are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers or are exempt under ORS 656.126.

20. SAFETY DATA SHEETS (SDS): As applicable, Contractor shall provide THPRD with a Safety Data Sheet (SDS) for any Goods which may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use 29 CFR 1910.1200(g)(6)(iii). Contractor shall label, tag or mark such Goods.

21. WARRANTIES: Unless otherwise stated, all Goods shall be new and current model and shall carry full manufacturer warranties. All warranties shall run to THPRD. Contractor warrants that, to the best of its knowledge, the Goods and/or Services furnished do not infringe any patent, registered service mark, trademark, trade dress, copyright, or other intellectual property rights, and agrees to save, hold harmless, and indemnify THPRD in the event of any claim of infringement, to the extent found to have been caused by the actions, errors, or omissions of Contractor.

22. BREACH: THPRD reserves the right to cancel all or any part of the undelivered portion of this order if Contractor does not make deliveries as specified, time being of the essence, or if Contractor breaches any of the terms hereof including, without limitation, the warranties of Contractor. Contractor shall be liable for any and all damages suffered by THPRD as the result of Contractor's breach of Contract, including, but not limited to, incidental and consequential damages. In the event of repeated breach, Contractor shall be subject to disqualification for THPRD contracts.

23. LIMITATION OF LIABILITIES: THPRD shall not be liable for any indirect, consequential, special, incidental, or reliance damages of any kind or nature whatsoever (including but not limited to any lost profits, lost revenues, lost savings, lost data, or harm to business), regardless of the foreseeability thereof, arising out of or related to this contract, Contractor hereby releases THPRD and their divisions, officers, employees, agents and members from any such claims.

24. NOTICES: All notices required or permitted under this PO shall be in writing and shall be deemed delivered when delivered in person, or any notice addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing.

25. AWARD TO FOREIGN CONTRACTOR: If the amount of this PO exceeds \$10,000 and if the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this purchase order. THPRD shall withhold final payment under this Purchase Order until Contractor has met this requirement.

26. INDEPENDENT CONTRACTOR STATUS: The service or services to be rendered under this purchase order are those of an independent contractor. Contractor is not an officer, employee or agent of THPRD, as those terms are used in ORS 30.265.

27. UNIFORM COMMERCIAL CODE (UCC): These terms and conditions are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be available under Oregon Law, including ORS Chapter 71-83.

28. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO.

29. TAX COMPLIANCE WARRANTY: Contractor represents and warrants that Contractor has complied with the applicable tax laws of the State of Oregon or a political subdivision of the State of Oregon (collectively, the "Tax Laws"), including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. Contractor covenants that it will continue to comply with the Tax Laws during the term of this Contract. Contractor's failure to comply with the Tax Laws before the execution of this Contract or during the term of this Contract is a default for which District may terminate this Contract and seek damages and other relief available under the terms of this Contract or applicable law.