



### PRICING SHEET to Pricing Supplement

**"Agency":** San Jose Police Department - City of San Jose

**Agency ID:** 1511

**TRADES Services:** TLOxp® Online – Non-Batch Flat Rate – Monthly.

**Effective Date:** 12/01/2023

**Supplement Term:** 12 month(s) without auto renewal.

**"Monthly Fee":** USD 1075.20

**"Number of Monthly Transactions":** 4000

The Monthly Fee includes the Number of Monthly Transactions, subject to the Excluded Items and Transactional Overage Pricing. Should Agency not submit the Number of Monthly Transactions, Agency shall not receive a refund of the Monthly Fees paid. Unused Number of Monthly Transactions do not rollover into a subsequent month.

#### **INCLUDED SEARCHES AND REPORTS:**

The Monthly Fee includes all searches and reports currently offered through the TRADES Services as of the Effective Date, with the exception of the searches and reports listed below ("Excluded Items"), unless checked, in which case, the checked items are included in the Monthly Fee.

<input type="checkbox"/>	TruLookup Social Media Comprehensive Report	<input checked="" type="checkbox"/>	TruLookup Comprehensive Report – Person
<input type="checkbox"/>	TruLookup Motor Vehicle Report	<input checked="" type="checkbox"/>	TruLookup Comprehensive Report – Business
<input type="checkbox"/>	TruLookup Super Reverse Phone Lookup	<input checked="" type="checkbox"/>	TruLookup Address Report
<input checked="" type="checkbox"/>	TruLookup Relationship Mapping	<input checked="" type="checkbox"/>	TruLookup Locate with Assets Report
<input type="checkbox"/>	TruLookup Real-Time Phone Carrier Search	<input checked="" type="checkbox"/>	TruLookup Phone Report
<input type="checkbox"/>	TruLookup Real-Time Incarcerations & Arrests Search		
<input type="checkbox"/>	TruLookup Household Search		TruLookup Predictive Attributes Suite

The Excluded Items are subject to TRADES' then-current fees and charges (unless a price is specified above) on a per Transaction basis, subject to Agency's data access rights. The fees and charges for Excluded Items are in addition to the Monthly Fee. TRADES reserves the right to exclude (as Excluded Items) future released searches and/or reports from the Monthly Fee.

#### **TRANSACTIONAL OVERAGE PRICING:**

Transactions exceeding the Number of Monthly Transactions are subject to overage pricing ("Transactional Overage Pricing") at TRADES' then-current fees and charges on a per Transaction basis, unless specified otherwise below and subject to Agency's data access rights. Transactional Overage Pricing is in addition to the Monthly Fee.

"Transactions" means any information returned by TRADES in response to a search query (whether in the form of search results or a report).

Agency acknowledges and agrees that Agency's signature on this page constitutes agreement to and acceptance of this Supplement in its entirety.

Acknowledged and agreed to by:

**City of San Jose ("Agency")**

By: Vickie J. Davis Digitally signed by Vickie J. Davis  
Date: 2023.12.08 15:33:24 -08'00'

Representative

Vickie J. Davis

Full Name

IT & Strategic Procurement Manager

Title

12/8/2023

Date Signed

January 12, 2024

Janet Phan  
Program Manager – Crime Analyst Unit  
BTS – San Jose Police Department  
(408) 277-4106

Ms. Phan,

LexisNexis is pleased to provide this quote to the San Jose Police Department - Intelligence Unit. The pricing is as follows:

**Accurint for Law Enforcement Plus**

**Term: 24-months beginning March 1, 2024, ending January 31, 2026**

LexisNexis® is providing this written quote detailing the purchase of the proposed software package for the San Jose Police Department – Intelligence Unit. The below pricing is for Accurint for Law Enforcement Plus.

<b>San Jose Police Department - Intelligence Unit</b>	
<b>Item</b>	<b>Annual Cost</b>
Accurint for Law Enforcement Plus	
Flat Rate - Monthly Cost	\$936.25
<b>Total Annual Cost:</b>	<b>\$11,235.00</b>

If during any given month Customer's combined actual use of the LN services listed herein ("Actual Use") exceeds \$9,362.50 (the "Cap"), Customer will be charged the Transactional Fees in effect at that time for all searches and reports in excess of the Cap.

Please review and let me know of questions or comments.

Thank you,

**Mark Staniak**  
Strategic Account Manager  
LexisNexis Risk Solutions

LexisNexis® Risk Solutions  
Mark Staniak  
Strategic Account Manager – Public Safety  
Direct 916.291.4834 • mark.staniak@lexisnexisrisk.com



TO:  
TRANSUNION  
4530 CONFERENCE WAY SOUTH  
BOCA RATON FL 33431



OP 64489

PURCHASE ORDER NUMBER:

OP 64489

DATE 12/13/23		EXPIRATION DATE 11/30/24		BUYER Tayler Burke 408-535-7049	
DELIVERY ADDRESS CSJ Police Department 201 West Mission St. San Jose, CA 95110		INVOICE ADDRESS CSJ/POLICE DEPARTMENT - FISCAL 201 WEST MISSION STREET SAN JOSE, CA 95110			
VENDOR NO. P7222		PAYMENT TERMS N30		VENDOR CONTACT SCOTT REVAH	
F.O.B. ELECTRONIC		SHIP VIA ELECTRONIC		ELECTRONIC	
UNIT PRICE		AMOUNT			
RENEWAL - TLOXP ONLINE INVESTIGATION SERVICES		DESCRIPTION OF ARTICLES OR SERVICES			
PERIOD: 12/01/23 - 11/30/24		PRICING PURSUANT TO TRANSUNION'S QUOTE# 1511 DATED 11/21/23 AND ATTACHED PRICING SHEET: FLAT RATE 4,000 TRANSACTIONS AT \$1,075 PER MONTH.			
DEPT CONTACT: SGT. SEAN PIERCE		BILLING CONTACT: LOAN NGUYEN 408-537-1622			
VENDOR CONTACTS: SCOTT REVAH 561-988-4200		ETHAN KREITMAN 561-981-1863			
VENDOR EMAILS: SCOTT.REVAH@TRANSUNION.COM		ETHAN.KREITMAN@TRANSUNION.COM			
PREV OP 63002 / RQ 37914 / CC 017200					
TOTAL		12,900.00			

This Purchase Order must be signed by the Director of Finance or the Director's authorized designee. No changes are authorized without a signed revised Purchase Order.

*Vickie J. Davis*  
Digitally signed by Vickie J. Davis  
Date: 2023.12.13 14:30:44 -08'00'

Director of Finance or authorized designee

The complete contract shall consist of this Purchase Order, Attachment A Terms and Conditions attached hereto, plus all of the applicable attachments checked below. In the event of a conflict between Attachment A Terms and Conditions and the terms and conditions contained in any other attachment hereto or incorporated by reference herein, the terms and conditions of Attachment A shall control.

Additional attachments (check attachments)  
☐ Labor Compliance Addendum  
☒ Scope of Services/Work  
☐ X\_ Pricing Supplement

OUT-OF-STATE-VENDORS:  
DO NOT CHARGE SALES TAX ON THIS PURCHASE. THE CITY OF SAN JOSE WILL PAY ALL APPLICABLE SALES/USE TAX DIRECTLY TO THE STATE OF CALIFORNIA.

## **ATTACHMENT A - CITY OF SAN JOSE PURCHASE ORDER STANDARD TERMS AND CONDITIONS**

- 1 **DEFINITIONS:** “City” shall mean the City of San José. “Vendor” shall mean the provider of goods and/or services which are the subject of this purchase order. “Director” shall mean the Director of Finance or Director’s authorized designee.
- 2 **CONTRACT:** This purchase order, which consists of these standard terms and conditions, and any attachments hereto, evidences City’s acceptance of Vendor’s offer to provide to City the goods and/or services which are the subject of this purchase order and constitutes a binding contract therefore upon the terms and conditions set forth herein without further action or agreement of Vendor. In the event of conflict between these standard terms and conditions and the provisions of any attachment hereto these standard terms and conditions shall control.
- 3 **SCHEDULE OF GOODS AND/OR SERVICES; TIME OF PERFORMANCE:** Vendor shall supply those goods and/or services which are specified herein, in accordance with the schedule and during the term which are specified herein. Time is of the essence in this purchase order.  
  
Notwithstanding this Section, the Parties agree that the ability of the Parties to provide and use the goods and/or services under this purchase order may be limited if business activities are subject to local, state, or federal mandates and advisories for managing public health and safety related to the COVID-19 pandemic or other force majeure. The Parties agree that the provision of goods and/or services and the payment for such goods and/or services may be postponed or suspended following execution of this purchase order by the City and that the Parties are not required to act on this purchase until the City issues a written notice to proceed.
- 4 **COMPENSATION; SCHEDULE OF PAYMENT:** The compensation to be paid and the method of payment to Vendor for goods and services shall be as set forth herein. Unless otherwise provided herein, payment shall not be due until thirty (30) calendar days after the later to occur of the date performance under this purchase order is completed to the satisfaction of City and the date City receives an acceptable invoice. No payment shall represent a waiver of City’s right to inspect for defects. Unless otherwise provided herein, Vendor shall be responsible for all costs and expenses incident to the performance of this purchase order, including without limitation all costs of equipment provided by Vendor, all fees, fines, licenses, bonds, or taxes required of or imposed against Vendor, and all other of Vendor’s costs of doing business.
- 5 **CURRENT PRICES OF GOODS:** Vendor shall work with the City upon request to demonstrate that prices charged to the City are fair and reasonable compared to the prices Vendor charges to other public entities for the same or substantially similar goods and services.
- 6 **DISCOUNT PERIODS:** Payment discount periods shall be calculated from the later of the date this purchase order is completed or the date City receives an acceptable invoice, to the date City’s payment is sent.
- 7 **SALES TAXES:** Vendor shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods and/or services; provided, however where a tax exemption is available, such tax shall be subtracted from the total compensation and identified. Municipalities are exempt from federal excise and transportation taxes, including the excise tax on gasoline. Exemption certificates will be furnished upon request.
- 8 **PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS:** All goods shall be delivered “free on board destination” to the location specified herein, full freight prepaid except for special or expedited orders. Deliveries of goods shall be made without charge for boxing, crating,

carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. City's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge.

Title to and risk of loss on all goods shall pass to City only upon delivery by Vendor in the manner specified herein and City's acceptance of such goods.

- 9 **WARRANTIES:** Vendor warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured or performed pursuant to detailed design furnished by City, Vendor assumes design responsibility, and warrants that all goods and services shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Vendor's warranties shall run to City and shall not be deemed to be exclusive. City's inspections, approval, acceptance, use of or payment for all or any part of the goods or services shall in no way affect its warranty rights whether or not a breach of warranty had become or should have become evident at the time.
- 10 **CHANGES:** City shall have the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. The only valid change is a change order signed by the Director. Upon receipt of any such notice, Vendor shall promptly make the changes in accordance with the terms of the notice. If any such changes cause an increase or decrease in the cost of or time for performance, an equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Vendor shall promptly deliver to City, and in any event within ten (10) calendar days after receipt of such notice, a statement showing the effect of any such changes in the cost of or time for performance. Failure of Vendor to submit the statement within the above time limit shall constitute its consent to perform the change without increase in compensation or time for performance.
- 11 **TERMINATION FOR DEFAULT OR CONVENIENCE:** City may, by written notice to Vendor, terminate this purchase order in whole or from time to time in part for default: (i) if Vendor fails to deliver the goods or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed do not conform to the requirements of this purchase order or if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (iii) if the Vendor becomes insolvent. If this purchase order is terminated for default, City, in addition to all other rights afforded by law for Vendor's default, shall have the right to charge Vendor the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and City may set off any such charge against any amounts which may become payable to Vendor under this purchase order or otherwise. City may, by not less than thirty (30) days written notice to Vendor, terminate this purchase order for convenience and without cause. In the event of such termination for convenience, Vendor will be paid for those goods delivered and services



performed pursuant to this purchase order to the satisfaction of City up to the date of termination. The Director is empowered to terminate this purchase order on behalf of City.

- 12 **INDEMNITY:** To the fullest extent permitted by law, Vendor agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, against any claim, loss or liability (collectively, "Claims"), including without limitation Claims for injuries or death to persons or damage to or destruction of property, caused by or resulting from the acts or omissions of Vendor, its officers, agents, employees or subcontractors, in the performance of this purchase order, or the breach by Vendor of any of its obligations under this purchase order.
- 13 **INSURANCE REQUIREMENTS:** If applicable, Vendor agrees to have and maintain the insurance policies specified herein. All policies, endorsements, certificates, and/or binders shall be subject to review and approval by the Risk Manager of the City of San José as to form and content. These insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Vendor agrees to provide City with a copy of applicable certificates and/or endorsements before work commences under this purchase order.
- 14 **COMPLIANCE WITH THE LAW:** Vendor shall in the performance of this purchase order comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.
- 15 **GOVERNING LAW:** City and Vendor agree that the law governing this purchase order shall be that of the State of California.
- 16 **VENUE:** In the event that suit shall be brought by either party to this purchase order, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- 17 **ASSIGNMENT OF CONTRACT:** Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent. Vendor may assign monies due under this purchase order. City will recognize such assignment, to the extent permitted by law, if City is given proper notice thereof. Any assignment shall be subject to set-off or recoupment for any present or future claim which City may have against Vendor.
- 18 **WAIVER:** Vendor agrees that City's waiver of any breach or violation of any provision of this purchase order shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Vendor's performance will not be a waiver of any provision of this purchase order.
- 19 **INDEPENDENT CONTRACTOR:** It is understood and agreed that Vendor shall act as and be an independent contractor and not an employee, agent, joint venturer, or partner of City. As an independent contractor, Vendor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Vendor hereby expressly waives any claim it may have to any such rights. Both parties acknowledge that Vendor is not an employee for state or federal tax purposes. Vendor shall retain the right to perform services for others during the term of this purchase order.
- 20 **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
- 21 **OWNERSHIP OF DATA AND MATERIALS:** The City shall maintain ownership and control of City's data (if applicable) throughout the purchase order period and in perpetuity. Vendor shall have

the right to use the City's data solely to perform services under the purchase order with the City. Vendor may not use City's data, a subset of City's data, and/or a summary of City's data, or, cause or permit City's data, a subset and/or a summary thereof, to be used by any third party, outside the scope of the purchase order without the express written consent of the City. Furthermore, City and Vendor agree that Vendor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by Vendor in the performance of this purchase order and developed using Vendor's facilities or personnel and that City has the right to use such materials as specified in this purchase order, provided City pays any applicable fees to Vendor. City and Vendor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by City's facilities or personnel. Work product that is jointly developed using both City and Vendor personnel and facilities shall be jointly owned and may be utilized by either party without restriction or limitation.

**22 VENDOR'S BOOKS AND RECORDS:** Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, for the date of final payment to Vendor pursuant to this purchase order. Vendor shall maintain all documents and records which demonstrate performance under this purchase order for a minimum of three (3) years, or for any period longer required by law, from the date of termination or completion of this purchase order. Any records or documents required to be maintained pursuant to this purchase order shall be made available for inspection or audit, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Vendor's business. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Vendor, Vendor's representatives, or Vendor's successor-in-interest.

**23 NON-DISCRIMINATION:**

a. Prohibition on Discrimination and Preferential Treatment.

Vendor shall fully comply with Chapter 4.08 of the San José Municipal Code and agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of City contracts.

b. Compliance Reports.

If directed by the Director of Office of Equality Assurance of the City, Vendor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the form and field at such times as may be designated by the Director of Office Equality Assurance. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Director of Office of Equality Assurance to determine whether Vendor or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

c. Failure to Comply with Nondiscrimination Provisions.

If the Director of Office of Equality Assurance determines that the Vendor has not complied with the nondiscrimination or non-preference provisions of this Agreement, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Vendor and/or subcontractor to debarment proceedings pursuant to provisions of the San José Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San José Municipal Code and is a misdemeanor.

d. Subcontracts.

Vendor shall include provisions a through c above, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

e. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Director of Office of Equality Assurance, if the Director of Office of Equality Assurance determines that the Vendor has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the Vendor or other governmental agency are substantially the same as those imposed by the City.

- 24 **GIFTS:** Vendor represents that it is familiar with the City's prohibition against the acceptance for any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Vendor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this purchase order by vendor. In addition to any other remedies City may have in law or equity, City may terminate this purchase order for such breach.
- 25 **CONFLICT OF INTEREST:** Vendor shall avoid all conflict of interest or appearance of conflict of interest in performance of this purchase order.
- 26 **DISQUALIFICATION OF FORMER EMPLOYEES:** Vendor is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). Vendor shall not utilize either directly or indirectly any officer, employee, or agent who would be in violation of the Revolving Door Ordinance.
- 27 **WAGE THEFT:** Vendor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. Vendor shall include these requirements in each subcontract entered into in furtherance of this purchase order so that such requirements are binding on each subcontractor.





TO: ACCURINT  
ACCT #1033059-ATTN: A/R  
PO BOX 7247-6157  
PHILADELPHIA PA 19170-6157



PURCHASE ORDER NUMBER:

OP 64653

DATE	02/08/24	EXPIRATION DATE	02/28/25	BUYER	Brianna Duran 408-535-7049
DELIVERY ADDRESS		INVOICE ADDRESS			
CSJ Police Department 201 West Mission St. San Jose, CA 95110		CSJ/POLICE DEPARTMENT - FISCAL 201 WEST MISSION STREET SAN JOSE, CA 95110			

VENDOR NO.		P4716		PAYMENT TERMS		F.O.B.		SHIP VIA		VENDOR CONTACT	
				N30		ELECTRONIC		ELECTRONIC		MARK STANIAK	
LINE	QTY.	UNIT	DESCRIPTION OF ARTICLES OR SERVICES					UNIT PRICE	AMOUNT		
			23-24 RENEWAL - ACCURINT FOR LAW ENFORCEMENT PLUS AND MOBILE INCLUDING TRAINING								
			. PERIOD: 03/01/24 - 02/28/25								
			. PRICING PURSUANT TO ACCURINT/LEXIS NEXIS'S QUOTE DATED 01/12/24 - FLAT RATE - MONTHLY COST: \$936.25								
			. DEPT CONTACT: JANET PHAN 408-277-4106								
			BILLING CONTACT: LOAN NGUYEN 408-537-1622								
			VENDOR CONTACT: MARK STANIAK 916-291-4834								
			VENDOR EMAIL: MARK.STANIAK@LEXISNEXISRISK.COM								
			. PREV OP 63232 / RQ 38204 / CC 017100								
			.								

<p>This Purchase Order must be signed by the Director of Finance or the Director's authorized designee. No changes are authorized without a signed revised Purchase Order.</p> <p><i>Garrett Dowgiallo</i> Garrett Dowgiallo 2024.02.23 14:04:50 -08'00'</p> <p>Director of Finance or authorized designee</p>	<p>The complete contract shall consist of this Purchase Order, Attachment A Terms and Conditions attached hereto, plus all of the applicable attachments checked below. In the event of a conflict between Attachment A Terms and Conditions and the terms and conditions contained in any other attachment hereto or incorporated by reference herein, the terms and conditions of Attachment A shall control.</p> <p>Additional attachments (check attachments) <input type="checkbox"/> Labor Compliance Addendum <input type="checkbox"/> Scope of Services/Work <input type="checkbox"/> Other</p>	<p><b>TOTAL</b> ↗</p> <p>11,235.00</p>
<p><b>OUT-OF-STATE-VENDORS:</b> DO NOT CHARGE SALES TAX ON THIS PURCHASE. THE CITY OF SAN JOSE WILL PAY ALL APPLICABLE SALES/USE TAX DIRECTLY TO THE STATE OF CALIFORNIA.</p>		

## **ATTACHMENT A - CITY OF SAN JOSE PURCHASE ORDER STANDARD TERMS AND CONDITIONS**

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- 8 **PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS:** All goods shall be delivered “free on board destination” to the location specified herein, full freight prepaid except for special or expedited orders. Deliveries of goods shall be made without charge for boxing, crating,

carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. City's order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge.

Title to and risk of loss on all goods shall pass to City only upon delivery by Vendor in the manner specified herein and City's acceptance of such goods.

- 9 **WARRANTIES:** Vendor warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured or performed pursuant to detailed design furnished by City, Vendor assumes design responsibility, and warrants that all goods and services shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Vendor's warranties shall run to City and shall not be deemed to be exclusive. City's inspections, approval, acceptance, use of or payment for all or any part of the goods or services shall in no way affect its warranty rights whether or not a breach of warranty had become or should have become evident at the time.
- 10 **CHANGES:** City shall have the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. The only valid change is a change order signed by the Director. Upon receipt of any such notice, Vendor shall promptly make the changes in accordance with the terms of the notice. If any such changes cause an increase or decrease in the cost of or time for performance, an equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Vendor shall promptly deliver to City, and in any event within ten (10) calendar days after receipt of such notice, a statement showing the effect of any such changes in the cost of or time for performance. Failure of Vendor to submit the statement within the above time limit shall constitute its consent to perform the change without increase in compensation or time for performance.
- 11 **TERMINATION FOR DEFAULT OR CONVENIENCE:** City may, by written notice to Vendor, terminate this purchase order in whole or from time to time in part for default: (i) if Vendor fails to deliver the goods or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed do not conform to the requirements of this purchase order or if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (iii) if the Vendor becomes insolvent. If this purchase order is terminated for default, City, in addition to all other rights afforded by law for Vendor's default, shall have the right to charge Vendor the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and City may set off any such charge against any amounts which may become payable to Vendor under this purchase order or otherwise. City may, by not less than thirty (30) days written notice to Vendor, terminate this purchase order for convenience and without cause. In the event of such termination for convenience, Vendor will be paid for those goods delivered and services

performed pursuant to this purchase order to the satisfaction of City up to the date of termination. The Director is empowered to terminate this purchase order on behalf of City.

- 12 **INDEMNITY:** To the fullest extent permitted by law, Vendor agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, against any claim, loss or liability (collectively, "Claims"), including without limitation Claims for injuries or death to persons or damage to or destruction of property, caused by or resulting from the acts or omissions of Vendor, its officers, agents, employees or subcontractors, in the performance of this purchase order, or the breach by Vendor of any of its obligations under this purchase order.
- 13 **INSURANCE REQUIREMENTS:** If applicable, Vendor agrees to have and maintain the insurance policies specified herein. All policies, endorsements, certificates, and/or binders shall be subject to review and approval by the Risk Manager of the City of San José as to form and content. These insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Vendor agrees to provide City with a copy of applicable certificates and/or endorsements before work commences under this purchase order.
- 14 **COMPLIANCE WITH THE LAW:** Vendor shall in the performance of this purchase order comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.
- 15 **GOVERNING LAW:** City and Vendor agree that the law governing this purchase order shall be that of the State of California.
- 16 **VENUE:** In the event that suit shall be brought by either party to this purchase order, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- 17 **ASSIGNMENT OF CONTRACT:** Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent. Vendor may assign monies due under this purchase order. City will recognize such assignment, to the extent permitted by law, if City is given proper notice thereof. Any assignment shall be subject to set-off or recoupment for any present or future claim which City may have against Vendor.
- 18 **WAIVER:** Vendor agrees that City's waiver of any breach or violation of any provision of this purchase order shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Vendor's performance will not be a waiver of any provision of this purchase order.
- 19 **INDEPENDENT CONTRACTOR:** It is understood and agreed that Vendor shall act as and be an independent contractor and not an employee, agent, joint venturer, or partner of City. As an independent contractor, Vendor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Vendor hereby expressly waives any claim it may have to any such rights. Both parties acknowledge that Vendor is not an employee for state or federal tax purposes. Vendor shall retain the right to perform services for others during the term of this purchase order.
- 20 **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
- 21 **OWNERSHIP OF DATA AND MATERIALS:** The City shall maintain ownership and control of City's data (if applicable) throughout the purchase order period and in perpetuity. Vendor shall have

the right to use the City's data solely to perform services under the purchase order with the City. Vendor may not use City's data, a subset of City's data, and/or a summary of City's data, or, cause or permit City's data, a subset and/or a summary thereof, to be used by any third party, outside the scope of the purchase order without the express written consent of the City. Furthermore, City and Vendor agree that Vendor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by Vendor in the performance of this purchase order and developed using Vendor's facilities or personnel and that City has the right to use such materials as specified in this purchase order, provided City pays any applicable fees to Vendor. City and Vendor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by City's facilities or personnel. Work product that is jointly developed using both City and Vendor personnel and facilities shall be jointly owned and may be utilized by either party without restriction or limitation.

**22 VENDOR'S BOOKS AND RECORDS:** Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, for the date of final payment to Vendor pursuant to this purchase order. Vendor shall maintain all documents and records which demonstrate performance under this purchase order for a minimum of three (3) years, or for any period longer required by law, from the date of termination or completion of this purchase order. Any records or documents required to be maintained pursuant to this purchase order shall be made available for inspection or audit, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Vendor's business. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Vendor, Vendor's representatives, or Vendor's successor-in-interest.

**23 NON-DISCRIMINATION:**

a. Prohibition on Discrimination and Preferential Treatment.

Vendor shall fully comply with Chapter 4.08 of the San José Municipal Code and agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of City contracts.

b. Compliance Reports.

If directed by the Director of Office of Equality Assurance of the City, Vendor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the form and field at such times as may be designated by the Director of Office Equality Assurance. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Director of Office of Equality Assurance to determine whether Vendor or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

c. Failure to Comply with Nondiscrimination Provisions.



If the Director of Office of Equality Assurance determines that the Vendor has not complied with the nondiscrimination or non-preference provisions of this Agreement, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Vendor and/or subcontractor to debarment proceedings pursuant to provisions of the San José Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San José Municipal Code and is a misdemeanor.

d. Subcontracts.

Vendor shall include provisions a through c above, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

e. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Director of Office of Equality Assurance, if the Director of Office of Equality Assurance determines that the Vendor has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the Vendor or other governmental agency are substantially the same as those imposed by the City.

- 24 **GIFTS:** Vendor represents that it is familiar with the City's prohibition against the acceptance for any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Vendor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this purchase order by vendor. In addition to any other remedies City may have in law or equity, City may terminate this purchase order for such breach.
- 25 **CONFLICT OF INTEREST:** Vendor shall avoid all conflict of interest or appearance of conflict of interest in performance of this purchase order.
- 26 **DISQUALIFICATION OF FORMER EMPLOYEES:** Vendor is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). Vendor shall not utilize either directly or indirectly any officer, employee, or agent who would be in violation of the Revolving Door Ordinance.
- 27 **WAGE THEFT:** Vendor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. Vendor shall include these requirements in each subcontract entered into in furtherance of this purchase order so that such requirements are binding on each subcontractor.