Master Purchase Order

DO NOT INVOICE TO THIS ADDRESS		Workday™ Supplier Contract No.		SC-00007957
City & County of Denver		Date: 05/16/2023		Revision No. 1
Purchasing Division		Payment Terms		Resolution (as applicable):
201 West Colfax Avenue, Dept. 304		Freight Terms	FOB DESTINATION	
Denver, CO 80202		Ship Via	BEST WAY	
United States		Analyst:	Christina Buster	
Phone: 720-913-8100 Fax: 720-913-8101		Email:	Christina.buster@denvergov.org	

Workday Supplier ID: SUP-00015002 Phone: 303-748-2935 Email: darin.miller@heritageppg.com

HERITAGE LANDSCAPE SUPPLY GROUP INC
7440 State Highway 121
Mckinney, Texas 75070
Attn: Darin Miller
Colorado Secretary of State ID: 20191120722
U.S. Federal SAM Registry Verification Date: 05/15/2023

Ship To: Various locations with City and County of Denver

Bill To: As Specified By Agency

1. **Goods/Services:**
   HERITAGE LANDSCAPE SUPPLY GROUP, INC., is an entity formed or registered under the law of Delaware, "Vendor" shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.
2. **Ordering:**
   The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Master Purchase Order for purposes of such Order only.
3. **Pricing:**
   The pricing/rates for the goods contained in **Exhibit A** and shall be held firm for the first quarter of this Master Purchase Order. Thereafter, price increases will be allowed on a quarterly basis.
4. **Term/Renewal:**
   The term of this MPO shall extend three years from date of City signature. The City and the vendor may mutually agree to renew and continue this MPO for additional periods at the same pricing structure, terms, and conditions. However, no renewal shall exceed a total five (5) years.
5. **Non-Exclusive**:
   This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.
6. **Inspection and Acceptance:**
   Vendor shall perform any services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services. City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Purchase Order.
7. **Shipping, Taxes and Other Credits and Charges:**
   All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within

twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

8. **Risk of Loss:**
Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.

9. **Invoice:**
Each invoice shall include: (i) the Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

10. **Payment:**
Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq., after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of **one million dollars ($1,000,000)**. The Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** are performed at Vendor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may set off against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

11. **Amendments/Changes:**
Only the Executive Director of General Services or his/her delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.

12. **Warranty**:
Vendor warrants and guarantees to City that all goods furnished under this Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Master Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third-party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

13. **Indemnification/Limitation of Liability:**
Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost forthose

goods/services that have been accepted by City under this Purchase Order up to the total Master Purchase Order Amount. Notwithstanding anything contained in this Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.

14. Termination:

City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

15. Interference:

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

16. Venue, Choice of Law and Disputes:

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C.§ 56-106. Director of Purchasing shall render the final determination.

17. Assignment/No Third Party Beneficiary:

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

18. Notice:

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

19. Compliance With Laws:

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendre, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

20. Insurance:

Vendor agrees to secure, at or before the time of execution of this Master Purchase Order, the following insurance covering all operations, goods or services provided pursuant to this Master Purchase Order. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Master Purchase Order. Such notice shall reference the Master Purchase Order listed on the signature page of this Master Purchase Order. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's Master Purchase Order. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Master Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of the Vendor. The Vendor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Master Purchase Order.

Vendor may not commence services or work relating to this Master Purchase Order prior to placement of coverages required under this Master Purchase Order. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Master Purchase Order shall not act as a waiver of Vendor's breach of this Master Purchase Order or of any of the City's rights or remedies under this Master Purchase Order. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Vendor and sub-contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured. For all coverages required under this Master Purchase Order, Vendor's insurer shall waive subrogation rights against the City. Vendor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Master Purchase Order) procure and maintain coverage as approved by the Vendor and appropriate to their respective primary business risks considering the nature and scope of services provided. Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims. Vendor shall maintain a Commercial General Liability insurance policy with minimum limits of $1,000,000 for each bodily injury and property damage occurrence, $2,000,000 products and completed operations aggregate (if applicable), and $2,000,000 policy aggregate. Vendor shall maintain Automobile Liability with minimum limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Master Purchase Order.

21. Severability:

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

22. Survival:

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period.

23. No Construction Against Drafting Party:

No provision of this Master Purchase Order shall be construed against the drafter.

24. Status of Vendor/Ownership of Work Product:

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction. Ownership rights shall include, but not be limited to the right to copy, publish, display, transfer, prepare derivative works, or otherwise use materials. Software licenses terms may be incorporated herein by an End User License Agreement signed by the Director of Purchasing. Any 'click-wrap' electronic acceptance or other terms and conditions not agreed to in writing by the Director of Purchasing are of no force and effect.

25. Examination of Records and Audits:

Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Vendor's performance pursuant to this Master Purchase Order, provision of any goods or services to the City, and any other transactions related to this Master Purchase Order. Vendor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Master Purchase Order or expiration of the applicable statute of limitations. When conducting an audit of this Master Purchase Order, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require

Vendor to make disclosures in violation of state or federal privacy laws. Vendor shall at all times comply with D.R.M.C. 20-276.

26. **Remedies/Waiver:**
No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

27. **No Discrimination in Employment:**
In connection with the performance of work under the Master Purchase Order, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

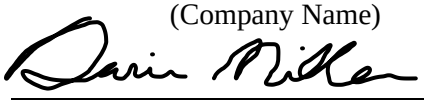
28. **Use, Possession or Sale of Alcohol or Drugs:**
Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

29. **Conflict of Interest:**
No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

30. **Advertising and Public Disclosure:**
The Vendor shall not include any reference to the Master Purchase Order or to services performed or goods purchased pursuant to the Master Purchase Order in any of the Vendor's advertising or public relations materials without first obtaining the written approval of the Director of Purchasing.

31. **Intellectual Property:**
Any research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by Vendor in performance of its obligations under this Master Purchase Order shall be the exclusive property of City. Ownership rights shall include, but not be limited to the right to copy, publish, display, transfer, prepare derivative works, or otherwise use materials. Software license terms may be incorporated herein by an End User License Agreement signed by the Director of Purchasing. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions not agreed to in writing by the Director of Purchasing are of no force and effect.

This Master Purchase Order is acknowledged and agreed to by:

		City & County of Denver, Purchasing Division	
Vendor Name:	Heritage Professional Products Group (Company Name)		
By:	 (Authorized Signature)	By:	Christina Buster
Print Name:	Darin Miller	Print Name:	Christina Buster
Title:	Territory manager Golf Sales	Title:	Associate Buyer
Date:	5/22/23	Date:	05/22/2023

Procurement Manager: bdh

EXTENSION / RENEWALS CONT'D:

Revision No. _1__
The City and County of Denver desires to increase the above referenced Supplier Contract No. (SC) from $**400,000** to $**1,000,000** at the same terms and conditions.

Should you desire to accept the above referenced revisions, please return this page with your signature.

Vendor Name:	Heritage Professional Products Group (Company Name)	**City & County of Denver, Purchasing Division**	
By:	(Authorized Signature)	By:	Christina Buster
Print Name:	Darin Miller	Print Name:	Christina Buster
Title:	Territory Manager - Golf Sales	Title:	Associate Buyer
Date:	10/17/24	Date:	10/17/2024

Note: Purchase pursuant to 3.26(e)-This Master Purchase Order is contingent on City Council approval and is void without such action.

Extension No. ___
The contract made and entered into by your company and the City and County of Denver pursuant to the above referenced Supplier Contract No. (SC) expires on _____.

Should you desire to extend this contract to and including _____ and revise the aggregate amount to $_____, please return this page with your signature.

Vendor Name:	Heritage Professional Products Group (Company Name)	**City & County of Denver, Purchasing Division**	
By:	(Authorized Signature)	By:	
Print Name:	Darin Miller	Print Name:	
Title:	Territory Manager - Golf Sales	Title:	
Date:	10/17/24	Date:	

EXHIBIT "A"

Supplier: HERITAGE LANDSCAPE SUPPLY GROUP INC
Solicitation/ Award Title: Fertilizer and Pesticide
Solicitation No. /Internal File Reference Location: 11056A

It is recommended that you use your Supplier Contract No. SC-00007957 in all future correspondence and/or other communications.

Description of the goods, and services related thereto, being purchased and pricing:

The City is purchasing fertilizers and pesticides to be used citywide and specifically on the City's golf courses.

This Master Purchase Order is for product only and does not include any labor to spread a product.

ESTIMATED QUANTITIES: The City does not guarantee any quantity of item listed herein to be ordered during the coming year.

DELIVERY CONSIDERATIONS: All deliveries shall be made between the hours of 8 AM and 2 PM, Monday through Friday, excluding holidays.

EMERGENCY PURCHASES: The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the awarded vendor.

PALLET CHARGE: All pallets supplied shall be non-returnable, no deposit.

SPILLAGE: Vendor will be responsible for the cleanup of any contamination or spillage resulting from the delivery and unloading within twenty-four (24) hours of such spillage.

VENDOR PERFORMANCE MANAGEMENT: Awarded vendors are required to furnish a performance report to the analyst on an annual basis, no later than the anniversary date of the applicable Master Purchase Order or City Contract, providing at a minimum the following information:

FOR GOODS
- Total dollar value of purchases per City Agency
- Total number of transactions per City Agency

Supplier may also be required to provide additional specific reporting/data as required.

COOPERATIVE PURCHASING: The City encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental jurisdictions, pursuant to Denver Revised Municipal Code Sec. 20-64.5. To the extent other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, the City supports such cooperative activities. Further, it is a specific requirement of this solicitation that pricing offered herein to the City may be offered by the vendor to any other governmental jurisdiction purchasing the same products. Vendor(s) must contract directly with any interested governmental agency concerning the matters within this IFB.

PRICING INSTRUCTIONS: All discounts quoted shall be firm and fixed for the specified contract period. Pricing shall be in the format contained in the invitation. Do not include cost or price figures anywhere except in the cost and pricing section.

QUARTERLY PRICING UPDATES: Due Dates for Quarterly Pricing Updates on List & Discount Bids ONLY

QUARTER	PRICING UPDATE DUE DATE	PRICING PERIOD
1	December 15th	January 1 through March 31
2	March 15th	April 1 through June 30
3	June 15th	July 1 through September 30
4	September 15th	October 1 through December 31

Pricing updates must be based upon documented manufacturer's price increases and must be verifiable (e.g., letter from the manufacturer(s), market indexes, and etcetera). Discount percentages quoted must remain constant.

The vendor must provide a complete template that includes both items with price changes as well as items where changes are not requested. Items with price increases must be clearly identified.

If the 15th of the month falls on a Holiday or Weekend, pricing update is due the next business day.

If the pricing update for items in the Item File is not submitted by the 15th, pricing will remain unchanged for the following quarter.

EXHIBIT A

Vendor Name: Heritage PPG			Price Percentage Adjustment (- for Discount, + for Premium)		
Fertilizer Price List			$ -		
Publish Date of List:					
Pesticide Price List			$ -		
Publish Date of List:					
Pricing if discounts, etc. are different by category/bulk					
BID ITEM	DESCRIPTION	UNIT OF MEASURE			
Fertilizer				6 tons, or 30 gallon drum or more liquid fertilizer only	truckload (22 tons) or 260 gallon tote or more liquid fertilizer only
1	Fertilizer (Granular) - Bulk Delivery	1,000lb/tote	0%	-10%	-20%
2	Fertilizer (Granular) - Bagged Delivery	50# bag	0%	-10%	-20%
3	Fertilizer (Liquid)	Gallon	0%	-10%	-20%
Pesticide					
4	Insecticides (powder or granular)	lb	discounts do not apply to agency or MSRP pesticide and growth regulator products.	30lb or 5 gallons or more liquid pesticides only	
5	Insecticides (liquid)	gallon	-10%		
6	Herbicides (powder or granular)	lb	-10%		
7	Herbicides (liquid)	gallon	-10%		
8	Fungicides (powder or granular)	gallon	-10%		
9	Fungicides (liquid)	gallon	-10%		
Other					
10	Plant Growth Regulators	gallon	-20%		
11	Surfactants	gallon	-20%		
12	Organics	50# bags	-20%		
13	Plant and Soil Health Products	gallon/50#bag	-15%		