

Purchase Order

Standard Terms and Conditions for the Purchase of Consultant Services

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UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, THE PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1. Offer and Acceptance:** The Purchase Order is an offer by the City of Madera ("City") to enter into a contract; and any of the following acts constitute Consultant's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Consultant's commencement of work or (b) Consultant's acceptance of any payment from City.
- 2. Prices:** All rates and/or prices itemized in the Purchase Order are firm and not subject to escalation unless so stated on the face of the Purchase Order. Consultant represents and warrants that all rates and/or prices itemized in the Purchase Order are at least as low as those currently being quoted by Consultant to commercial or government users for the same work of similar scope under similar circumstances.
- 3. Taxes:** This purchase is subject to all applicable California sales and use taxes.
- 4. Terms of Payment:** Full payment shall be made within thirty (30) days from the date of receipt of invoice or acceptance of work, whichever occurs last, with the exception of instances where specific codes or terms dictate alternate payment schedules. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of work by City, whichever occurs last. Partial payments may be made with City's concurrence at no less than monthly intervals. City shall endeavor to pay each invoice within thirty (30) days but shall not be responsible to Consultant for additional charges, interest or penalties due to failure to pay within that period.
- 5. Time for Performance:** Time is of the essence in the performance of the Purchase Order. If service cannot be performed at the specified time, Consultant shall promptly notify City of the earliest possible date for performance of the service. Notwithstanding such notice, if Consultant, for any reason whatsoever, fails to perform the work within the time specified, City may terminate the Purchase Order or any part thereof without liability except for work previously performed and accepted.
- 6. Warranty:** Consultant warrants that the work performed under the Purchase Order complies with all specifications and that workmanship and materials are free from defects. If any portion of the work has not been completely described in the Purchase Order, it shall comply with State and Local codes, if applicable and established industry standards. Consultant agrees that the aforementioned warranties shall be in addition to any warranties provided by law or offered by Consultant. In addition to any other right City may have, if any work is found not to be in compliance with specifications or if workmanship and/or materials are found to be defective within ninety (90) days after the conclusion of performance of the work, Consultant shall, at City's option, take any necessary corrective action required to correct the defect.
- 7. Independent Consultant Status:** Consultant is acting as an independent Consultant in performing the work required by the Purchase Order and is not an agent or employee of City. Nothing in the Purchase Order shall be interpreted or construed as creating or establishing the relationship of employer and employee between City and Consultant. Consultant is responsible for paying all required state and federal taxes.
- 8. Use of Subconsultants:** Consultant shall perform the work with its own employees under its immediate supervision and shall not subcontract any portion of the work unless approved by City in advance in writing.
- 9. Discrimination:** Consultant shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
- 10. Compliance with Laws:** (a) Consultant shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans, and orders in the performance of work under the Purchase Order.
(b) Consultant shall obtain and maintain throughout the life of the Purchase Order all permits and licenses required in connection with the work to be performed and shall provide copies of such permits and licenses to City, upon request.
- 11. Extra or Additional Work and Changes:** Consultant shall perform no extra or additional work or alter or deviate from the work specified in the Purchase Order unless agreed in writing by City. Consultant shall not be compensated for extra work without written authorization from the City. Consultant must have the written authorization from the City in advance of any work being done.
- 12. Change Orders:** City shall have the right to revoke, amend, or modify the Purchase Order at any time by issuance of a written Change Order. No verbal revocations, amendments or modifications shall be held binding on City; and City is not required to compensate Consultant for services not authorized in advance by written Change Order. Consultants must respond within ten (10) days of receipt of City's written Change Order. If written response is not received by City within ten (10) days or upon Consultant's performance of work reflecting the change, whichever occurs first, either of these actions shall constitute Consultant's acceptance of the change without any price or other adjustment.
- 13. Indemnification for Professional Liability:** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.
- 14. Indemnification for Other Than Professional Liability:** Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.
- 15. Insurance:** Consultant shall provide insurance coverage as listed in Attachment A to this document.
- 16. Assignment:** Consultant shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.
- 17. Termination:** The Purchase Order may be terminated by mutual consent of both parties or by City at its discretion. City may cancel the Purchase Order at any time with written notice to Consultant, stating the extent and effective date of termination. Upon receipt of this written notice, Consultant shall stop performance under the Purchase Order as directed by City. If the Purchase Order is so terminated, Consultant shall be paid in accordance with the terms of the Purchase Order for work performed and accepted prior to termination.
- 18. Breach of Contract:** Should Consultant breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase

Purchase Order
Standard Terms and Conditions for the Purchase of Consultant Services

Order upon written notice to Consultant and obtain such services from another source. If a greater price than that named in the Purchase Order is paid for such services, the excess price shall be charged to and collected from the Consultant.

19. Governing Law; Public Records: The Purchase Order shall be governed by and construed in accordance with the laws of the State of California as interpreted by the California courts, and any litigation arising out of the Purchase Order shall be conducted in the courts of the State of California. California law requires that the contents of the Purchase Order be open to inspection and copying by the public.

20. Force Majeure: Neither party to the Purchase Order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. City may terminate the Purchase Order upon written notice after determining such delay or default will reasonably prevent successful performance of the Purchase Order.

20 Exceptions to City's Terms and Conditions: If Consultant objects to any term or condition set forth in the Purchase Order, this objection must be in writing and received by City's Purchasing Division as identified below prior to Consultant's commencement of the work. Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.

22. Additional or Inconsistent Terms: Any term or condition set forth in any acknowledgment form provided to City by Consultant which is in any way different from, inconsistent with, or in addition to the terms and conditions of the Purchase Order will not become a part of the Purchase Order nor be binding on City. If Consultant objects to any term or condition set forth therein, this objection must be in writing and received by City's Purchasing Division as identified in this document prior to Consultant's delivery of product(s) or service(s). Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.

23. All notifications provided by Consultant as a result of or relating to this Purchase Order must be sent to: City of Madera, Purchasing Division, 205 W. 4th Street, Madera, CA 93637

Purchase Order
Standard Terms and Conditions for the Purchase of Consultant Services

ATTACHMENT "A"

INSURANCE REQUIREMENTS FOR CONSULTANTS

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 and must name the City and its officers, officials, employees and agents as additional insureds under such policies; blanket additional insured forms or language will not be accepted.
- **\$2,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to name the City and its officers, officials, employees and agents shall be additional insureds under such policies; blanket additional insured forms or language will not be accepted.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

Maintenance of Coverage

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Consultant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Purchase Order
Standard Terms and Conditions for the Purchase of Consultant Services

Primary/Non-Contributory

Service Provider's insurance shall allow and be endorsed as primary and not seek contribution from the City's coverage.

Umbrella or Excess Liability

The limits of liability for commercial general liability and automobile liability may be provided through a combination of primary and umbrella or excess liability policies provided each policy complies with the requirements set forth in this agreement. Policies shall be follow-form to the underlying policies shall include City and its officers, officials, employees, agents, and volunteers as additional insured. Umbrella or excess policies that do not provide a follow-form acknowledgement from the insurer/broker shall be required to provide any endorsements required on the primary policy that the Umbrella or excess policy is supplementing to meet coverage minimums.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors. Broad coverage or blanket coverage forms will not be accepted; waiver of subrogation endorsements must name City of Madera.

Enforcement of Contract Provisions (non estoppel)

Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

Notice of Cancellation

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Purchase Order
Standard Terms and Conditions for the Purchase of Consultant Services

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.