

Purchase Order

Standard Terms and Conditions for the Purchase of Goods and Services

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL PURCHASES ARE 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 Vendor's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Vendor's execution and delivery to City of Vendor's own acknowledgment form; (b) Vendor's delivery of any goods ordered; or (c) Vendor's acceptance of any payment from City.
- 2. Prices:** All prices shall be as stated in the Purchase Order and are firm and not subject to escalation. Vendor represents and warrants that the prices set forth in the Purchase Order are at least as low as those currently being quoted by Vendor to commercial or government users for the same goods, in like quantities, under similar circumstances.
- 3. Taxes:** This purchase is subject to all applicable California sales and use taxes.
- 4. Terms of Payment:** Payment terms shall be net thirty (30) days from the date of receipt of invoice or acceptance of goods, whichever occurs last. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods by City, whichever occurs last. City may set off any amount owed by Vendor to City against any amount owed by City to Vendor under the Purchase Order. City shall endeavor to pay each invoice within thirty (30) days, but shall not be responsible to Vendor for additional charges, interest or penalties due to failure to pay within that period.
- 5. Quantities:** Vendor shall deliver the exact quantities specified in the Purchase Order. City reserves the right to reject incomplete deliveries and to return at Vendor's risk and expense excess quantities delivered.
- 6. Packaging and Shipment:** Goods shall be packaged, marked and otherwise prepared for shipment by Vendor in suitable containers in accordance with sound commercial practices. Vendor shall include an itemized packing list with each shipment.
- 7. Delivery:** Time is of the essence in the performance of the Purchase Order. If delivery of goods cannot be made at the specified time, Vendor shall promptly notify City of the earliest possible date for delivery. Notwithstanding such notice, if Vendor, for any reason whatsoever, fails to deliver goods within the time specified, City may terminate the Purchase Order or any part thereof without liability except for goods previously delivered and accepted. City's receipt or acceptance of all or part of a nonconforming delivery shall not constitute a waiver of any claim, right or remedy City has under the Purchase Order or applicable law.
- 8. Title and Risk of Loss:** The Purchase Order shall specify an FOB ("freight on board") point, which shall be either the shipping point or the destination of the goods. If the Purchase Order specifies FOB destination, all shipping charges shall be prepaid by Vendor in full and included in the unit price. Vendor retains title to the goods and risk of loss until the goods have reached the designated destination. If the Purchase Order specifies FOB shipping point, Vendor shall prepay all shipping charges, route the goods on the least expensive common carrier in compliance with the required delivery date, and add shipping charges to the invoice as a separate line item. Buyer assumes title to the goods and risk of loss at the shipping point. No shipping charges will be allowed unless specified.
- 9. Inspection and Rejection:** Goods shall be received subject to City inspection, testing, approval and acceptance at City premises notwithstanding any prior payment for such goods. Goods rejected by City as not conforming to the Purchase Order may be returned to Vendor at Vendor's risk and expense and shall not be replaced by Vendor without written authorization from City. Substitutions are not permitted except upon specific written authorization of City.
- 10. Warranties - Goods:** In addition to any other express or implied warranties, Vendor warrants that all goods delivered under the Purchase Order will be new; suitable for the use intended; of the grade and quality specified; free from all defects in design, material and workmanship; in conformance with all samples, drawings, descriptions and specifications furnished by City; in compliance with all applicable federal, state, and local laws and regulations; and free of liens and encumbrances. These warranties shall not be deemed to exclude Vendor's standard warranties or other rights or warranties which City may have or obtain. At its expense and option, Vendor shall replace or repair any goods not conforming to the foregoing warranties. If, after notice, Vendor fails promptly to replace or repair any such goods, Vendor shall promptly refund to City the full purchase price paid by City for such goods.
- 11. Compliance with Laws:** (a) Vendor shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans and orders in the performance of the Purchase Order.
(b) Vendor shall be in full compliance with any and all permit or licensing requirements in connection with the manufacture, sale, shipment and/or installation of the goods specified in the Purchase Order.
(c) If, in connection with the specified goods, Vendor is required to comply with the Occupational Safety and Health Act's hazardous communications standard, Vendor agrees to provide copies of the applicable Material Safety Data Sheets at the time of delivery of the goods.
- 12. Safety and Health Requirements:** Goods supplied shall comply with all federal and state Occupational Safety and Health Administration requirements and with all California safety and health requirements.
- 13. Assignment:** Vendor shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.
- 14. Waiver:** Failure of City to enforce any provision of the Purchase Order shall not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of the Purchase Order.
- 15. Severability:** If any provision of the Purchase Order is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the particular provision held to be invalid.
- 16. Patents, Copyrights or Trademarks:** Vendor shall hold harmless and fully indemnify City and its officers, employees and agents from all damages or claims for damages, costs or expenses in law or equity that may arise for any infringement of the patent right, copyright or trademark of any person as a consequence of the use by City or any of its officers, employees or agents, of goods supplied under this Purchase Order.
- 17. 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 Vendor for goods not authorized by written Change Order. Vendor's receipt of City's written Change Order without response received by City within ten (10) days or Vendor's shipment or other performance reflecting the change, whichever occurs first, shall constitute Vendor's acceptance of the change without any price or other adjustment.
- 18. Breach of Contract:** Should Vendor breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase Order upon written notice to Vendor and obtain such goods from another source. If a greater price than that named in the Purchase Order is

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paid for such goods, the excess price shall be charged to and collected from the Vendor. City shall have any and all remedies provided under the Uniform Commercial Code in the event of a breach of contract by Vendor.

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.

21. Entire Agreement: The Purchase Order, which includes any and all additional documents incorporated therein by reference, sets forth the entire agreement between Vendor and City with respect to the purchase of the goods.

22. Indemnification: Vendor shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Vendor's performance of its obligations under this agreement or out of the operations conducted by Vendor, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Vendor's performance of this agreement, the Vendor shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

23. Work to be Completed on City Premises by Vendor: In the event that Vendor is required, as part of its fulfillment of the terms of the Purchase Order, to install goods or perform any other work on City premises, Vendor assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death) or damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of the performance of such work by Vendor, and Vendor shall provide insurance coverage as listed in Attachment A to this document.

24. Time for Performance: Time is of the essence in the performance of the Purchase Order. If service cannot be performed at the specified time, Vendor shall promptly notify City of the earliest possible date for performance of the service. Notwithstanding such notice, if Vendor, 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.

25. Warranty - Labor: Vendor 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. Vendor agrees that the aforementioned warranties shall be in addition to any warranties provided by law or offered by Vendor. 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, Vendor shall, at City's option, take any necessary corrective action required to correct the defect.

26. Independent Contractor Status: Vendor is acting as an independent contractor 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 Vendor. Vendor is responsible for paying all required state and federal taxes.

27. Use of Subcontractors: Vendor 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.

28. Discrimination: Vendor 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.

29. Extra or Additional Work and Changes: Vendor 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. Vendor shall not be compensated for extra work without written authorization from the City. Vendor must have the written authorization from the City in advance of any work being done.

30. 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 Vendor, stating the extent and effective date of termination. Upon receipt of this written notice, Vendor shall stop performance under the Purchase Order as directed by City. If the Purchase Order is so terminated, Vendor shall be paid in accordance with the terms of the Purchase Order for work performed and accepted prior to termination.

31. Additional or Inconsistent Terms: Any term or condition set forth in any acknowledgment form provided to City by Vendor 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 Vendor objects to any term or condition set forth therein, this objection must be in writing and received by City's Buyer identified on the Purchase Order prior to Vendor's delivery of product(s). Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.

32. Exceptions to City's Terms and Conditions: If Vendor 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 Vendor'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.

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

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ATTACHMENT "A"

INSURANCE REQUIREMENTS FOR GENERAL SERVICES
CONTRACTS

Without limiting Vendor's indemnification of City, and prior to commencement of Work, Vendor 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

Vendor 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 CG 20 37 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 Vendor 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.

Maintenance of Coverage

Vendor 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 Vendor, his agents, representatives, employees, subcontractors, or subconsultants as specified in this Agreement.

Proof of Insurance

Vendor 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.

Primary/Non-Contributory

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

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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 Vendor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Vendor 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)

Vendor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Vendor 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 Vendor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Vendor.

Notice of Cancellation

Vendor 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.

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

Vendor shall give the City prompt and timely notice of claims made or suits instituted that arise out of or

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result from Vendor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Vendor 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.