

Purchase Order
Standard Terms and Conditions for the Purchase of Services

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 Contractor's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Contractor's commencement of work or (b) Contractor'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. Contractor 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 Contractor 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 Contractor 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, Contractor shall promptly notify City of the earliest possible date for performance of the service. Notwithstanding such notice, if Contractor, 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:** Contractor 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. Contractor agrees that the aforementioned warranties shall be in addition to any warranties provided by law or offered by Contractor. 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, Contractor shall, at City's option, take any necessary corrective action required to correct the defect.
- 7. Independent Contractor Status:** Contractor 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 Contractor. Contractor is responsible for paying all required state and federal taxes.
- 8. Use of Subcontractors:** Contractor 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:** Contractor 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) Contractor 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) Contractor 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:** Contractor 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. Contractor shall not be compensated for extra work without written authorization from the City. Contractor 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 Contractor for services not authorized in advance by written Change Order. Contractors 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 Contractor's performance of work reflecting the change, whichever occurs first, either of these actions shall constitute Contractor's acceptance of the change without any price or other adjustment.
- 13. Indemnification:** Contractor shall indemnify, defend and hold harmless City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in the Purchase Order, caused in whole or in part by Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the sole negligence, or willful misconduct of City.
- 14. Insurance:** Contractor shall provide insurance coverage as listed in Attachment A to this document.
- 15. Assignment:** Contractor shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.
- 16. 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 Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under the Purchase Order as directed by City. If the Purchase Order is so terminated, Contractor shall be paid in accordance with the terms of the Purchase Order for work performed and accepted prior to termination.
- 17. Breach of Contract:** Should Contractor breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase Order upon written notice to Contractor 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 Contractor.
- 18. 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.
- 19. 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 Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor'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 Contractor as a result of or relating to this Purchase Order must be sent to:** City of Madera, Purchasing Division, 1030 South Gateway Drive, Madera, CA 93637
- 23. Labor Compliance Requirements (Prevailing Wage, SB854 Etc).** Contractor/Vendor must comply with all labor compliance requirements

Purchase Order
Standard Terms and Conditions for the Purchase of Services

including but not limited to prevailing wage requirements, SB 854, Labor Code sections 1771.1(a) & 1725.5, Public Works Contractor Registration Program, Electronic Certified Payroll Records to Labor Commissioner, and other requirements if applicable.

ATTACHMENT "A"

Insurance Requirements

Service Provider 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 the Service Provider, his/her agents, representatives, or employees.

Minimum Scope and Limits of Insurance

Service Provider shall maintain limits no less than:

- \$1,000,000 General Liability (including operations, products and completed operations) per occurrence for bodily injury, personal injury and property damage at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01).
- \$1,000,000 Automobile Liability per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 covering Automobile Liability, code 1 (any auto).
- Worker's Compensation as required by the State of California.
- \$1,000,000 Employer's Liability per accident for bodily injury or disease.
- \$1,000,000 Errors & Omissions Liability appropriate to the Service Provider's profession. Architect's and Engineer's coverage is to be endorsed to include contractual liability.

If Service Provider maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Service Provider.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the entity.

Other Insurance Provisions

The general liability policy and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- The entity, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Service Provider; and with respect to liability arising out of work or operations performed by or on behalf of the Service Provider. General Liability coverage can be provided with one of two endorsement options: 1) in the form of an additional insured endorsement to the Service Provider's insurance, or as a separate owner's policy (CG 20 10 11 85 or its equivalent language) OR 2) a CG 20 37 10 01 along with CG 20 10 10 01 endorsement forms or their equivalent language.
- For any claims related to this project, the Service Provider's insurance coverage shall be primary insurance as respects the entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the entity.
- Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Waiver of Subrogation

Service Provider hereby agrees to waive subrogation which any insurer of Service Provider may acquire from Service Provider by virtue of the payment of any loss. Service Provider agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

Purchase Order
Standard Terms and Conditions for the Purchase of Services

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the Service Provider, its agents, employees, independent contractors and subcontractors.

Acceptability of Insurers

Insurance is to be placed with California admitted insurers with a current AM Best's rating of no less than A:VII, unless otherwise acceptable to the entity.

Verification of Coverage

Service Provider shall furnish the entity with copies of original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the entity before work commences; however, failure to do so shall not operate as a waiver of these insurance requirements. The entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Subcontractors

Service Provider shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.