

MADERA COUNTY MASTER CONTRACT NO. 003
(Purchasing/Procurement Master Agreement)

AGREEMENT

1. **DELIVERY**. Delivery shall be as stated herein. Unless otherwise set forth herein, all items shall be suitable packed and marked. Time of delivery is a part of the consideration and must be stated in definite terms and adhered to. If time varies on different items, CONTRACTOR shall so inform COUNTY in writing. Unless otherwise noted, "days for delivery" or "days from receipt of order" mean calendar days.

2. **INVOICES**. Invoices must state that they cover, as the case may be, complete or partial delivery, and must show units and unit prices. Invoices will not be paid unless and until the requirements have been fully met. When price shown is a delivered price, all transportation and delivery charges must be prepaid in full to destination.

3. **PRICE, TAXES AND CHARGES**. Unless otherwise specified herein, the prices herein do not include sales or use tax. No charges for transportation, containers, packing, unloading, etc. shall be allowed unless specified herein. Cash discount periods shall be computed either from the date of delivery and COUNTY's acceptance or the date of COUNTY's receipt of correct and proper invoices, prepared in accordance with the terms herein, whichever date is later.

4. **PAYMENT TERMS**. Unless otherwise specified herein, payment terms are net thirty (30) days from the date COUNTY receives a correct and proper invoice. In no event shall COUNTY be liable for any late charges. Invoices shall only be issued after COUNTY's acceptance of the goods and/or products. Discounts shall be as set forth herein.

5. **ASSIGNMENT/SUBCONTRACTING**. CONTRACTOR shall not assign its rights or delegate its duties under this Master Agreement without COUNTY's prior written authorization and any assignment or delegation without such authorization shall be null and void and shall constitute a material breach of this Master Agreement upon which COUNTY may immediately terminate the Master Agreement.

6. **COMPLIANCE WITH LAW**. CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference. CONTRACTOR shall indemnify and hold harmless COUNTY from

and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any violation on the part of CONTRACTOR or its employees, agents, officers, or subcontractors of any such laws, rules, regulations, or ordinances.

7. **INDEMNIFICATION.** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with CONTRACTOR's acts and/or omissions arising from and/or relating to this Agreement. This indemnity shall include, but not be limited to, claims for or by reason of any actual or alleged infringement of any United States patent or copyright or any actual or alleged trade secret disclosure.

8. **WARRANTIES.** CONTRACTOR shall, at no cost to COUNTY, promptly correct any and all defects in the items provided hereunder. The term of this warranty shall be as set forth on the face thereof, or if no term is shown, ninety (90) days from the date of COUNTY's acceptance of the item or service. CONTRACTOR warrants that the items may be shipped, sold and used in a customary manner without violation of any law, ordinance, rule or regulation of any government or administrative body.

9. **DEFAULT.** In the event CONTRACTOR fails to perform hereunder and does not cure such failure within ten (10), or as otherwise specified herein, calendar days of the date COUNTY first notified CONTRACTOR, COUNTY may, at its sole discretion, cancel or terminate this Agreement. Such cancellation or termination shall be at no cost to COUNTY, and COUNTY may, at its sole discretion, procure the items or services from other sources. CONTRACTOR shall be liable to COUNTY for any and all excess costs, determined by COUNTY, for any such items or services.

10. **TERMINATION WITHOUT CAUSE.** COUNTY shall have the right to terminate this Agreement without cause by giving CONTRACTOR THIRTY (30) days prior written notice of its intention to terminate pursuant to this provision, specifying the date of termination.

11. **TERMINATION FOR IMPROPER CONSIDERATION.** COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of CONTRACTOR to proceed under this Agreement if it is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY

officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to CONTRACTOR's performance pursuant to this Agreement. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default by CONTRACTOR. CONTRACTOR shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to the COUNTY department head charged with the supervision of the employee, or to COUNTY Administrative Officer. Improper consideration may include, but is not limited to, cash, discounts, service, provision of travel or entertainment, or tangible gifts.

12. **TERMINATION FOR INSOLVENCY.** COUNTY may terminate this Agreement immediately in the event any of the following occurs:

12.01 CONTRACTOR becomes insolvent by failing to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due.

12.02 Filing of a voluntary or involuntary petition regarding CONTRACTOR under the federal Bankruptcy Code.

12.03 Appointment of a receiver or trustee for CONTRACTOR.

12.04 Execution by CONTRACTOR of a general assignment for the benefit of creditors.

13. **CALIFORNIA PUBLIC RECORDS ACT.** Any documents submitted by CONTRACTOR, all information obtained in connection with COUNTY's right to audit and inspect CONTRACTOR's documents, books, and accounting records pursuant to the "Records and Audit" section of this Agreement, and those documents which were required to be submitted in response to the solicitation process for this Agreement, become the exclusive property of COUNTY, and shall be regarded as public records under the California Public Records Act, Government Code section 6250 et seq. (hereinafter "CPRA"). Exceptions to disclosure will be those provided in the CPRA and which are marked "trade secret," "confidential," or "proprietary." COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction. In the event COUNTY is required to defend

an action on a CPRA request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," CONTRACTOR agrees to defend and indemnify COUNTY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the CPRA.

14. **RECORDS AND AUDIT.** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available to the COUNTY's auditor and to his agents and representatives, for the purpose of auditing and/or copying such records, for a period of five (5) years from the date of final payment under this Agreement.

15. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and interpreted under the laws of the State of California. The parties agree that this Agreement was executed in and shall be performed in Madera County, California. CONTRACTOR waives the removal provisions of California Code of Civil Procedure section 394. Venue for all disputes shall be in the Madera County Superior Court or in the United States District Court for the Eastern District of California, Fresno Division.

16. **ENTIRE AGREEMENT.** These Standard Contractual Clauses and Master Agreement Cover Sheet, and any exhibits specified in the Master Contract Cover Sheet and attached thereto and incorporated by reference shall constitute the complete and exclusive statement of the parties which supersedes all previous agreements, written or oral, and all communications between the parties relating to the subject matter hereof. This Master Agreement shall not be modified, supplemented, qualified or interpreted by any prior course of dealing between the parties or by any usage of trade. No part of this Agreement may be modified without the written consent of both parties.

17. **FURTHER ASSURANCES.** Each party agrees to execute any additional documents and to perform any further acts that may be reasonably required to affect the purposes of this Agreement.

///

18. **ASSURANCES OF NON-DISCRIMINATION.** CONTRACTOR expressly agrees that it will not discriminate in employment or the provision of services on the basis of any characteristic or condition upon which state or federal law or regulation prohibits discrimination.

19. **FORCE MAJEURE.** Neither party will be liable for delays in performance beyond its reasonable control, including, but not limited to, fire, flood, act of God or restriction of civil or military authority.

20. **NOTICES.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered or sent by first class mail, postage prepaid and addressed as follows:

COUNTY

(As stated in Purchasing/
Procurement Cover Sheet)

CONTRACTOR

(As stated in Purchasing/
Procurement Cover Sheet)

With copy to

Tanna G. Boyd, Chief Clerk
Madera County Board of Supervisors
200 West 4th Street
Madera, CA 93637

Notice delivered personally is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

21. **AUTHORIZATION WARRANTY.** CONTRACTOR represents and warrants that the person executing this Agreement on CONTRACTOR's behalf is an authorized agent who has actual authority to bind CONTRACTOR to the terms and conditions of this Agreement.

22. **CONFLICT OF INTEREST.** No COUNTY employee whose position with COUNTY enables such employee to influence the award of this Agreement or any competing agreement, and no spouse, registered domestic partner or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR or have any other direct or indirect financial interest in this Agreement. CONTRACTOR shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts that create a conflict of interest. If CONTRACTOR

hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to COUNTY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this section shall be a material breach of this Agreement.

23. **DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS.** CONTRACTOR shall repair, or cause to be repaired, at its own cost, any and all damage to COUNTY facilities, buildings or grounds caused by CONTRACTOR or employees or agents of CONTRACTOR, or its subcontractors. Such damage shall be made immediately after CONTRACTOR has become aware of such damage, but in no event later than thirty (30) days after the occurrence. If CONTRACTOR fails to make timely repairs, COUNTY may make any necessary repairs, and all costs incurred by COUNTY in doing so shall be repaid by CONTRACTOR by cash payment upon COUNTY's demand.

24. **FAIR LABOR STANDARDS.** CONTRACTOR shall comply with all applicable provisions of the federal Fair Labor Standards Act and shall indemnify, defend and hold harmless COUNTY and its officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Fair Labor Standards Act, for work performed by CONTRACTOR's employees for which COUNTY may be found jointly or solely liable.

25. **WAIVER.** No waiver by COUNTY of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of COUNTY to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

26. **MOST FAVORED PUBLIC ENTITY.** If CONTRACTOR's prices decline, or should CONTRACTOR at any time during the term of this Agreement provide the same goods or services under similar quality and delivery conditions to the State of California or any other county within the State of California at prices set below those set forth in this Agreement, then such lower prices shall be immediately extended to COUNTY.

27. **INDEPENDENT CONTRACTOR STATUS.** This Agreement is by and between COUNTY and CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between COUNTY and CONTRACTOR. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, all persons, performing work pursuant to this Agreement all compensation and benefits. COUNTY shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of CONTRACTOR. CONTRACTOR understands and agrees that all persons performing work under this Agreement are solely employees of CONTRACTOR, and not of COUNTY, for purposes of workers' compensation liability. CONTRACTOR shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of CONTRACTOR under this Agreement. CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services, and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with its requirements.

28. **NONEXCLUSIVITY.** Nothing herein is intended nor shall it be construed as creating any exclusive arrangement with CONTRACTOR.

29. **TIME IS OF THE ESSENCE.** If any anticipated or actual delays arise, CONTRACTOR shall immediately notify COUNTY. Unless subject to Section ____ (Force Majeure), untimely delivery may, at COUNTY's discretion, be cause for termination for default pursuant to Section ____ (Default).

30. **SPARE PARTS.** Unless otherwise set forth herein, CONTRACTOR shall make spare parts available to COUNTY for a period of two (2) years from the date of delivery of the items to COUNTY. If CONTRACTOR is unable to so provide spare parts, it shall provide COUNTY with the name(s) of CONTRACTOR's suppliers so that COUNTY may attempt to procure such parts directly. In the event of such unavailability,

CONTRACTOR shall provide, at no cost, reasonable assistance to COUNTY in obtaining spare parts.

31. **ACCEPTANCE OF GOODS.** Unless explicitly stated by COUNTY as otherwise, COUNTY may conduct, at its location or any other COUNTY designated location and at its expense, an incoming acceptance test on all items purchased hereunder. The acceptance test period shall not exceed thirty (30) days from receipt of such item by COUNTY. COUNTY may, at its sole discretion, reject all or any part of items or services not conforming to its specified requirements/specifications.

32. **DISPUTE RESOLUTION.** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The parties shall mutually select the mediator, but in case of disagreement, shall draw by lot from among two nominations provided by each party shall select the mediator. The parties shall equally split all costs and fees required by the mediator, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

33. **PARAGRAPH HEADING.** Paragraph headings are for convenience only and are not part of this Master Agreement and shall not be used in construing this Master Agreement.

34. **SEGREGATION; REMEDIES NOT EXCLUSIVE.** The invalidity in whole or in part of any term or condition of this Master Agreement shall not affect the validity of the remainder of this Master Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby. The rights and remedies provided herein shall not be exclusive and are in addition to any other rights and remedies in law or equity.

///

///

///

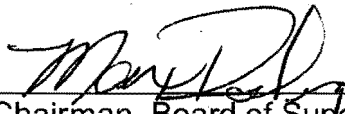
///

///

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and year first above-written.

COUNTY OF MADERA


Chairman, Board of Supervisors
3/17/2009



ATTEST:


Clerk, Board of Supervisors

Approved as to Form:
RISK MANAGEMENT

By: 

Approved as to Legal Form:
COUNTY COUNSEL

By: 

ACCOUNT NUMBER(S)

