CITY OF MILPITAS

**OPEN PURCHASE ORDER AGREEMENT**

**CONTRACT NO. 24-099**

1. **Parties And Date.**

This Open Purchase Order Agreement (“Agreement”) is made and entered on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between the City of Milpitas, a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”) and [\*\*\*INSERT NAME\*\*\*], a [\*\*\*[INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY]\*\*\*] with its principal place of business at [\*\*\*INSERT ADDRESS\*\*\*] (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

1. **Recitals.**
   1. **Contractor.**

Contractor desires to perform and assume responsibility for the provision of certain Goods as described herein, including **City of Milpitas Logo Apparel,** as required by City at the request of authorized City staff on an ongoing, as needed, and on-demand basis under the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing the Goods described herein, including **City of Milpitas Logo Apparel**, to public clients, that it and its employees, or subcontractors if permitted herein, have all necessary licenses and permits to provide these goods and perform all functions contemplated in this Agreement, and is familiar with the plans of City and all other information necessary for entering into this Agreement. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

* 1. **Project.**

City desires to engage Contractor to supply Goods for the as required by City at the request of authorized City staff on an ongoing, as needed, and on-demand basis under the terms and conditions set forth in this Agreement (“Project”). There is no guarantee of any of work under this Agreement or that any not-to-exceed compensation amount set forth herein will be spent.

1. **Terms.**
   1. **Scope of Goods and Term.**
      1. General Scope of Work. For the City’s benefit, Contractor promises and agrees to supply and deliver to authorized City staff the types of goods described in Exhibit “A,” attached hereto and incorporated herein by reference, including all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply and deliver these goods (“Goods”). Contractor shall supply and deliver the Goods on an ongoing, as needed, and on-demand basis to authorized City staff upon receipt of a Purchase Order from an authorized City staff member, as described herein, and compensation from that authorized City staff member at the rates set forth in Exhibit “B,” attached hereto and incorporated herein by reference. Purchase Orders from authorized City staff shall be submitted in a form established by Contractor set forth in Exhibit “C,” attached hereto and incorporated herein by reference. Contractor shall supply and deliver the Goods to authorized City staff expeditiously and in accordance with the terms of this Agreement, including the specific supply and delivery schedule set forth in Exhibit “D,” attached hereto and incorporated herein by reference, and any supply or delivery schedule or offer provided to authorized City staff at the time of purchase.
      2. Term. The term of this Agreement shall be from **July 1, 2024** through **June 30, 2025**, unless earlier terminated as provided herein. Contractor shall continue to supply and deliver the Goods to authorized City staff in accordance with this Agreement during its full term and as necessary thereafter to fulfill any Purchase Order(s) received during this term. The City reserves the right to review the Contractor’s performance at the end of each year and cancel all or part of the Agreement.
   2. **Responsibilities of Contractor.**
      1. Fulfilment of Purchase Orders. Upon receipt of a Purchase Order in the form provided by Contractor in Exhibit “C” and compensation at no more than the rates provided in Exhibit “B,” Contractor shall supply and deliver to the address provided by the authorized City staff member at the time of his or her purchase Goods from Exhibit “A” in the quantities requested by the employee and in conformity with at least the supply and delivery schedule set forth in Exhibit “D.”
      2. Click-Wrap Disclaimer. No “click to accept,” “browse-wrap,” “shrinkwrap,” or other agreement that may be required for the City or its authorized staff to submit a Purchase Order and/or obtain the Goods shall apply, including any such agreement required prior to submitting an order through Contractor’s website, platform, product, or program shall apply. No “terms of use,” “purchase policy,” or other user or purchase agreement or terms referenced therein or conditioned for obtaining the Goods, including through Contractor’s website, platform, product, or program, shall apply. Only the provisions of this Agreement shall apply to City and/or authorized City staff for obtaining the Goods promised under this Agreement. The Parties acknowledge that City and/or each authorized City staff member may be required to click “Accept” or otherwise signal agreement to such terms as a condition to submitting a Purchase Order or completing purchase or payment, including through Contractor’s website, platform, product, or program. The provisions of such agreements and other terms referenced therein shall be null and void for the City and/or each authorized City staff member. The foregoing does not apply to the City’s own agreements and terms in the event the City chooses to have Contractor include terms of use, purchase terms, privacy policies, or similar requirements drafted and approved by the City.
      3. Authorized City Staff. The Goods are intended for exclusive use as the uniform and apparel for authorized City staff, which may include the City’s officials, officers, employees, agents, volunteers, or independent contractors as authorized by the City. Any other person or entity’s possession of the Goods, or goods utilizing the same or similar design, would detract from the distinctiveness necessary for the Goods to fulfill their intended purpose and would create public confusion. Contractor shall exclusively use the design for the Goods in fulfillment of orders by authorized City staff. Contractor shall only supply and deliver the Goods to authorized City staff. Contractor may not otherwise supply or deliver the Goods, or any other goods utilizing the same or similar design, to any other person or entity and may not advertise or otherwise make them publicly available. Contractor shall provide a method for authorized City staff to authenticate themselves at the time a Purchase Order is placed and shall only supply and deliver to verified employees. Contractor shall set forth the method for this authentication and verification in the form of order established by Contractor in Exhibit “C.”
      4. Use of City’s Logo or Other Marks. Contractor shall not use the City’s name, mark, emblem, logo, seal, insignia, trade or brand name, or any other term, symbol, or other proprietary rights or content of the City (“Proprietary Content”) except as a necessary incorporated part of the Goods themselves in fulfillment of Work Orders from authorized City staff. Contractor shall not use such Proprietary Content in any other way, including for other customers, other projects, or other goods. Contractor has no other license or right to use the City Propriety Content, including by virtue of its incorporation in goods or designs Contractor creates. Contractor may not in any manner communicate or cause to be communicated to another person or entity a statement that reasonably could be interpreted or construed as stating or implying the City’s connection to, use of, or any approval or endorsement of Contractor or any product, service, or thing Contractor offers or does. Contractor shall return and not further use all designs, drawings, logos, marks, emblems, seals, insignia, templates, or other materials supplied by the City or containing the City’s Proprietary Content upon expiration or termination of this Agreement.
      5. Work for Hire and Custom Design. Any materials, equipment, tools, artwork, designs, or other property or Proprietary Content furnished by or specifically paid for by the City, including the Goods themselves and the designs related thereto (“Works”), are “works made for hire,” as that term is used and understood in the law, and shall be the City’s property. To the extent any such Works are not deemed “works for hire,” or the ownership, title, interest, and all rights to such Works do not otherwise by operation of law vest exclusively with the City, Contractor irrevocably assigns, transfers, and otherwise conveys to the City the entire right, title, ownership, and interest in any and all Works. Contractor shall ensure that all of its employees and contractors in any way involved in creating the Goods are subject to written agreements with Contractor that, on or before the effective date of this Agreement and any assignment necessary to this section, grant Contractor all such employees’ or contractors’ ownership and other rights in and to the Goods. Contractor shall give the City or its designee(s) all assistance reasonably required to perfect such rights and effectuate such assignment and free possession, ownership, and use by the City. Contractor will, upon request of the City, promptly execute a specific assignment of title and right to the City freely and voluntarily, without further consideration, expense, or charge. The rights and obligations granted in this section survive any termination or expiration of this Agreement or of Contractor’s engagement with the City.
      6. Control and Payment of Subordinates; Independent Contractor. The Goods and all work related thereto shall be supplied by Contractor or under its supervision. Contractor will determine the means, methods and details of supplying and delivering the Goods subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Similarly, the City retains the right to self-perform or hire similar or different services from others during the term of this Agreement. Any additional personnel supplying or delivering the Goods under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor’s exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their supplying or delivering of Goods under this Agreement and performing work related thereto and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.
      7. Schedule of Supply and Delivery. Contractor shall supply the Goods expeditiously, within the term of this Agreement, and in accordance with the specific schedule set forth in Exhibit “D” and any supply or delivery schedule or offer provided to authorized City staff at the time of purchase including in any Purchase Order(s) (“Schedule of Supply and Delivery”). Contractor represents that it has the professional and technical personnel, equipment, materials, logistics, and facilities required to supply the Goods in conformance with these conditions. In order to facilitate Contractor’s conformance with each Schedule, the City shall respond to Contractor’s submittals in a timely manner. Upon the City’s request, Contractor shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Supply and Delivery for each Purchase Order.
      8. Timely Supply and Delivery. Time is of the essence on all Purchase Orders under this Agreement. If delivery is not made in the quantity or Good(s) specified and at the time specified, the City and/or its authorized staff member shall have the right, at their option, to cancel the entire order or that part of same not so delivered.
      9. Delivery and Acceptance. Contractor expressly warrants and shall ensure that all Goods are free and clear of all liens and encumbrances whatsoever, and that Contractor has good and marketable title to same. Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. destination. No charge will be allowed for packing, crating, freight, express or other carrier’s charges, or cartage, unless specifically agreed to by the City and included in Exhibit “B.” Title to Goods purchased hereunder shall pass to the City or the authorized City staff member only at the point of actual receipt and delivery, subject to the City and the authorized City staff member’s rights to return and/or inspect and reject or revoke acceptance.
      10. Quality Control. Contractor shall assure and warrant that all Goods supplied and delivered under this Agreement are authentically produced by the manufacturers specified and made to the quality and standard of excellence common in the industry and the manufacturers specified. Contractor shall also assure and warrant for a period of 12 months following start of use or 18 months from receipt, whichever occurs first, that the Goods described herein will be free of defects in workmanship, design, materials, and title, and notwithstanding anything herein to the contrary, will conform to all applicable proposals, specifications, instructions, drawings, data, descriptions, and samples, and will be of good and merchantable quality and fit and sufficient for the purpose intended. Contractor shall obtain and provide to the City Material Safety Data Sheets (MSDS) for each product that contains hazardous substances as defined by CalOSHA. All manufacturer warranties shall be provided and also apply. All warranties provided by Contractor to other customers for comparable goods shall also apply.
      11. Conformance to Applicable Requirements. All work undertaken by Contractor shall be subject to the City’s approval, including the quality and timeliness of all Goods Contractor supplies or delivers to authorized City staff. In addition to any rights and remedies of the purchasing City employee, the City shall have the right, at its option, to reject or revoke acceptance of any Goods within 60 days of the employee’s receipt which do not meet the terms or specifications contained in this Agreement or Contractor’s proposal, are not made to the same standard of workmanship as other Goods supplied or delivered by Contractor, or otherwise do not conform to the requirements of this Agreement or any warranties contained herein. In case of such rejection or revocation of acceptance, transportation of the rejected Good(s), both to and from the City or its authorized staff member, shall be at the expense of Contractor, said rejected Goods are not to be replaced except upon specific instruction from the City or its authorized staff member, and the City shall have the right at its option to cancel the remainder, if any, of the Purchase Order or any other outstanding Purchase Order, by notice to Contractor at the time notice is given of rejection or revocation of acceptance.
      12. Returns. The City or its authorized City staff may exchange or return for full credit any defective Goods or Goods that otherwise qualify for Contractor’s return and exchange policy submitted at the time of its proposal.
      13. Breach of Warranties. In addition to all other remedies allowed by law, including those specifically provided for in this Agreement, Contractor shall be liable to City for all damages proximately caused by breach of any of the warranties contained in this Agreement, including incidental damages but excluding special or consequential damages.
      14. City’s Representative. The City hereby designates **Christian Di Renzo Public Works Director** or his or her designee, to act as its representative for the performance of this Agreement (“City’s Representative”). City’s Representative shall have the power to act on behalf of the City for all purposes under this Agreement. With the exception of fulfilling Purchase Order(s) from authorized City staff, Contractor shall not accept direction or orders from any person other than the City’s Representative or his or her designee.
      15. Contractor’s Representative. Contractor hereby designates [INSERT CONTRACTOR REPRESENTATIVE NAME], or his or her designee, to act as its representative for the performance of this Agreement (“Contractor’s Representative”). Contractor’s Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor’s Representative shall supervise and direct the supplying Goods and fulfillment of all Purchase Orders, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Goods and fulfillment of all Purchase Orders under this Agreement.
      16. Coordination of Goods. Contractor agrees to work closely with City staff in the supplying of Goods and shall be available to City’s staff, including authorized City staff, consultants and other staff at all reasonable times.
      17. Standard of Care; Performance of Employees. Contractor shall supply all Goods under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to supply and deliver the Goods. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to supply and deliver the Goods assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to supply and deliver the Goods, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor’s failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to supply or deliver the Goods in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to supply or deliver any of the Goods or to work on the Project.
      18. Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to supply the Goods while said dispute is decided by the City. If Contractor disputes the City’s decision, Contractor shall have such remedies as may be provided by law.
      19. Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or supplying or delivering the Goods, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Goods. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. As applicable, these include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours’ labor shall constitute a legal day’s work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.
          1. Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor’s compliance with the requirements provided for in Section 3.2.19 or any of its sub-sections.
          2. Employment Eligibility; Subcontractors, Sub-subcontractors and consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants, if any, performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.19.
          3. Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontracts, sub-subcontractors or consultants, if any, to meet any of the requirements provided for in Sections 3.2.19.1; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.19.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.
          4. Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before supplying any of the Goods.
          5. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, if any, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
          6. Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements application to “portable equipment”, which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall comply with the CARB’s regulation regarding the use of off-road diesel fueled fleets, sections 2449, 2449.1, and 2449.2 of Title 13 of the California Code of Regulations. Contractor shall provide the City with a Certificate of Reported Compliance for all applicable vehicles used by Contractor or any subcontractor with diesel-fueled or alternative diesel fueled off-road compression-ignition engines with a maximum power of 25 horsepower or greater provided the vehicles cannot be registered and driven safely on-road or were not designed to be driven on-road, even if they have been modified so that they can be driven safely on road. Noncompliant fleets are prohibited from being used on the Project. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, it subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.
          7. Water Quality.
             1. Management and Compliance. To the extent applicable, Contractor’s Goods must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board, the City’s ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.
             2. Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor’s non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence or willful misconduct of the City, its officials, officers, agents, employees or authorized volunteers.
             3. Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors, if any, shall have sufficient skill and experience to supply and deliver the Goods and perform all related work assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors, if any, will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Goods provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.
      20. Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit “E” (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.
      21. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In supplying and delivering the Goods and performing all work related thereto, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, if any, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.
      22. Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.
   3. **Compensation and Payments.**
      1. Compensation. Contractor shall receive compensation from the authorized City staff member placing the relevant Purchase Order for all Goods supplied and delivered under this Agreement at the rates set forth in Exhibit “B.” These rates include all charges for labor, administration, materials, manufacture, supplies, shipping/handling, delivery/unloading, insurance, equipment necessary to supply the Goods, regulatory compliance, and all of Contractor’s other business expenses and no such charge or any other charge beyond the rates specified in Exhibit “B” shall be charged to the authorized City staff member submitting a Purchase Order. If at the time of purchase Contractor has established a price for comparable goods for other customers that is less than the rates specified in Exhibit “B,” Contractor shall offer that lower price to the authorized City staff member at the time of purchase and shall accept as full compensation that lower price. The maximum compensation for Goods to be provided pursuant to each Purchase Order shall be set forth in the relevant Purchase Order.
      2. Additional Fees. Unless otherwise required by law or provided herein, Contractor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the article sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with performance under this Agreement or any Purchase Order.
      3. Payment of Compensation. Contractor shall collect from the authorized City staff member placing the Purchase Order all compensation owed for the Goods ordered under this Agreement. The City is not responsible for the payment of any compensation under this Agreement.
      4. California Labor Code Requirements
         1. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Goods are being supplied or delivered as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
         2. If the Goods are being supplied or delivered as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Goods must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
         3. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Goods, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
   4. **Termination of Agreement.**
      1. Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those Goods which have been adequately supplied and delivered to the City or its authorized staff member, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.
      2. Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the supplying or delivering Goods under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.
      3. Additional Goods. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, goods and related services similar to those terminated.
   5. **General Provisions.**
      1. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**

[INSERT NAME]

[INSERT ADDRESS]

Attn: [INSERT NAME AND TITLE]

**City:**

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

* + 1. Indemnification.
       1. Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, if any, consultants or agents in connection with the supply and delivery of Contractor’s Goods or the Goods themselves, this Agreement or performance thereunder, or any Purchase Order or performance thereunder, including without limitation the payment of all consequential damages, expert witness fees and attorneys’ fees and other related costs and expenses, except for any claims, demands, causes of action, costs, expenses, liabilities, losses, damage or injuries arising through the sole negligence or willful misconduct of the City, or its officials, officers, employees, agents or independent contractors.
       2. Additional Indemnity Obligations. Contractor shall defend, with Counsel of City’s choosing and at Contractor’s own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against the City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding, except for any judgments, awards or decrees arising through the sole negligence or willful misconduct of City, or its officials, officers, employees, agents or independent contractors. Contractor shall also reimburse City for the cost of any settlement paid by the City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding, except for any costs of settlements arising through the sole negligence or willful misconduct of the City, or its officials, officers, employees, agents or independent contractors. Such reimbursement shall include payment for City’s attorney’s fees and costs, including expert witness fees. Contractor shall reimburse the City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided, except for any legal expenses and costs arising through the sole negligence or willful misconduct of the City, or its officials, officers, employees, agents or independent contractors. Contractor’s obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials officers, employees, agents, or volunteers.
    2. Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.
    3. Time of Essence. Time is of the essence for each and every provision of this Agreement.
    4. City’s Right to Employ Other Contractors. City reserves right to employ other contractors in connection with the Project or in supplying or delivering the Goods or comparable goods.
    5. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.
    6. Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
    7. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, subcontractors, if any, and agents of Contractor, except as otherwise specified in this Agreement. All references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.
    8. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
    9. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.
    10. No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.
    11. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
    12. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors, if any, to file, a Statement of Economic Interest with the City’s Filing Officer as required under state law in the performance of the Goods. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
    13. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
    14. Attorney’s Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney’s fees and all other costs of such action.
    15. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.
    16. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
    17. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.
    18. Recitals. The recitals set forth above are true and correct and incorporated herein by reference.
    19. Wage Theft Prevention.
        1. Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.
        2. BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.
        3. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.
        4. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.
        5. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
        6. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

**[Signatures on Next Page]**

**Signature Page for OPEN PURCHASE ORDER Agreement**

**Between the City of Milpitas**

**and [\*\*\*INSERT CONTRACTOR NAME\*\*\*]**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

|  |  |
| --- | --- |
| **CITY OF MILPITAS**  *Approved By:*    Ned Thomas, City Manager    Date  *Approved As To Form:*    Michael Mutalipassi, City Attorney | **[\*\*\*INSERT CONTRACTOR NAME\*\*\*]**  Signature    Name    Title  Date |

*Approved:*

Luz Cofresi-Howe

Finance Director/Risk manager

*Approved As To Scope:*

Christian Di Renzo, Director of Public Works

**EXHIBIT “A”**

**SPECIFICATION OF GOODS**

The City of Milpitas is seeking responses from qualified vendors to provide shirts, jackets, outerwear, and hats with screen printing and/or embroidery logos for approximately 65 staff members of the Public Works Department.**Direct orders from individual staff members will be placed throughout the year.** Authorized City employees may also place orders, potentially increasing the total purchased amount of apparel from this contract. **Bidding vendors understand that continuation of this pilot program is subject to Council approval after initial year for up to five (5) years.**

Vendor shall have a digital/online storefront for employees to view clothing/miscellaneous items, pricing, and have the ability to place individual orders and pay the vendor directly. The digital/online storefront must be in place by the time a contract is signed, but not required in order to submit a bid. Submitted prices are to include all charges for labor, administration, materials, manufacture, supplies, shipping/handling, delivery/unloading, insurance, and equipment necessary to supply the clothing and miscellaneous items as listed in this bid.

**Scope or Work**

**1.1. General**

1. In general, the successful bidder will provide shirts, jackets, outerwear, and hats with imprinting, screen printing, and/or embroidery logos for staff uniforms.
2. Various sizes, colors, and logos/designs will be required; the awarded bidder will be provided with print ready logos at time of setup/order.
3. All items listed in the Price Proposal have a preferred manufacturer SKU number for that item. If an item other than what is specified is quoted, include the proposed manufacturer and proposed SKU number of item being quoted. Any substituted item must be of **equal or better** quality as solely determined by the City and **must** be listed on the City Approved Manufacturers list. Items listed as "No Substitutes" must be quoted as the actual item listed.
4. The historical data provided is based on a two (2) year average and available in the Pricing Proposal. The quantity information is for planning purposes only, and no quantities are implied nor guaranteed.
5. Historically, the total annual estimated average spend is $40,000 - $45,000.
6. Submitted prices are to include all charges for labor, administration, materials, manufacture, supplies, shipping/handling, delivery/unloading, insurance, and equipment necessary to supply the commodities as listed within this bid.
7. Pricing shall remain firm throughout the initial term of the contract. Price increases must be specifically detailed on the Pricing Proposal and must list unit price per item, for each year of the contract with a maximum of five (5) years.
8. The City intends to award the pricing agreement to one (1) vendor, however, multiple vendors may be considered due to manufacturer, brand, availability, pricing, delivery, etc. as best meets the needs of the City of Milpitas.
9. The City shall provide a point of contact to administer the contract, assist with planning, and promptly respond to issues and inquiries so as not to hinder the progress, completion, or compensation of the work.

**1.2. Specifications - City will NOT allow manufacturer substitutions once the contract is awarded.**

1. The following apparel manufacturers have been approved for this solicitation. Any changes to the apparel manufacturers will need prior City approval:

|  |  |  |
| --- | --- | --- |
| Berne | Hanes | Richardson |
| Carhartt | Port Authority | Westend |
| Cornerstone | Port & Company | Yupoong |
| Fruit of the Loom | Ultra Club |  |
| Gildan | Red Kap |  |

1. Apparel Types:

|  |  |
| --- | --- |
| T-Shirt | Polo Shirt |
| Sweatshirt (Crewneck, Hooded, Zip-Up) | Hats (caps/sun hats) |
| Jacket | Beanie |

1. Upon awarding of the bid, selected vendor must provide a sample garment of each item in the Pricing Proposal.  Samples shall be provided at no cost to the City and will not be returned to the vendor.
2. **City Seal Placement and Colors**. All items listed below are to have the City seal screen printed or embroidered in a single color as follows:

* **Screen Printed Item**s:  City seal shall measure 2.75”W, printed on the left chest. City seal shall be screen-printed Gold (Pantone 142) on black items and Royal Blue (Pantone 281) on grey items.  Apparel items requiring screen printing are:
  + T-shirts
  + Sweatshirts
  + ANSI Class 2 Lime Shirts
  + ANSI Class 2 long and short sleeve shirts: City seal shall be screen printed on the left chest pocket and measure 1.75”W in Royal Blue (Pantone 281); as well as on the back, between the reflective stripes and measure 7”W in Royal Blue (Pantone 281).
* **Embroidered Items**: Apparel requiring embroidery shall have the City seal embroidered Gold (1125) on black items and Royal Blue (1076) on grey items. City seal shall measure 2.16”W x 2.16”H.  Items requiring embroidery are:
  + Polos
  + Jackets
  + Hats (caps, sunhats)
  + Beanies

**1.3. Ordering and Delivery**

1. Vendor shall have a digital/online storefront for employees to view clothing/miscellaneous items, pricing, and have the ability to place individual orders and pay the vendor directly.
2. Employees shall have the ability to place orders throughout the calendar year.
3. The City of Milpitas requests delivery within 10 business days once an order is put into production.
4. Vendor shall provide a receipt itemizing items, proof of payment, and estimated delivery timeframe upon receipt of an order. On delivery, items must be packed together, by order, for easy distribution to the respective employee.
5. All orders will be delivered to the City of Milpitas, Public Works Department, 1265 N. Milpitas Boulevard, Milpitas, California 95035. Deliveries will be accepted Monday through Friday, from 8:00AM to 5:00 PM.
6. A phone number and/or e-mail shall be provided for employees to ask questions or interact directly with vendor.
7. Any defective items shall be replaced at no additional cost to the City or employee.
8. Vendor shall state their return and exchange policy in the submitted proposal.

**1.4. Quality Control**

The selected vendor shall assure that the apparel furnished from this solicitation are authentically produced by the manufacturers specified. Furthermore, the selected vendor shall assure that all items furnished will be free from defect in material workmanship and damage. Manufacturer warranties shall be provided.

**1.5. Use of City Logo**

**Upon contract award, the selected vendor will be provided reproduction quality graphics for silk-screening and embroidery of the City standard logo. Under no circumstances shall the City logo be used for any other purposes, except those stipulated in this bid and the contract to be awarded thereafter. A proof of the City logo shall be provided by the selected vendor to the City's project manager for written approval prior to applying to any garments ordered.**

*The City reserves the right to add any additional information from the vendor’s proposal.*

**EXHIBIT “B”**

**COMPENSATION**

**[\*\*\*INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES\*\*\*]**

*Price table submitted from vendor in proposal.*

**EXHIBIT “C”**

**CONTRACTOR’S FORM OF PURCHASE ORDER**

**[\*\*\*INSERT CONTRACTOR’S PROPOSAL FORM OF PURCHASE, INCLUDING AUTHENTICATION AND VERIFICATION OF AUTHORIZED STAFF\*\*\*]**

*Purchase Order form submitted from vendor in proposal.*

***The requirements for the order form will be finalized and updated via addendum before proposals are due. The City reserves the right to collaborate with the awarded vendor to finalize the order form.***

**EXHIBIT “D”**

**SUPPLY AND DELIVERY SCHEDULE**

The City of Milpitas requests delivery within 10 business days once an order is put into production.

*Additional data can be submitted from vendor in proposal.*

**EXHIBIT “E”**

**INSURANCE REQUIREMENTS**

Please refer to the insurance requirements listed below. **Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement 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 and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

**Commercial General Liability (CGL):**

\_\_\_ Coverage at least as broad as Insurance Goods Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**\_X\_** Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

\_\_\_ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**Automobile Liability:**

**\_X\_** Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than $1,000,000.00 combined single limit for bodily injury and property damage.

\_\_\_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than $5,000,000.00 combined single limit for bodily injury and property damage.

\_\_\_ Garage keepers’ extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

**Professional Liability (Errors and Omissions):**

\_\_\_ Insurance appropriates to the Contractor or Consultant’s profession, with limit no less than $1,000,000.00 per occurrence or claim, $2,000,000.00 aggregate.

\_\_\_ (If Design/Build), with limits no less than $1,000,000.00 per occurrence or claim, and $2,000,000.00 policy aggregate.

\_\_\_ Insurance appropriates to the Contractor or Consultant’s profession, with limit no less than \_\_\_\_\_\_ per occurrence or claim, \_\_\_\_\_\_ aggregate

**Workers’ Compensation Insurance:**

**\_X\_** Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer’s Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

**Builder’s Risk (Course of Construction):**

\_\_\_ Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City’s site.

**Contractor’s or Consultant’s Pollution Legal Liability:**

\_\_\_ Contractor’s or Consultant’s pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than $1,000,000.00 per occurrence or claim and $2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**Cyber Liability Insurance**

\_\_\_ Cyber Liability Insurance with limits not less than $1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

**Surety Bonds:**

Contractor shall provide the following Surety Bonds:

\_\_\_\_ Bid Bond

\_\_\_\_ Performance Bond

\_\_\_\_ Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

**Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain the following provisions:

**\_X\_ Additional Insured Status and Primary/Non-Contributory Language:**

Contractor’s general liability and automobile liability policies shall be primary and shall not seek contribution from the City’s coverage and be endorsed to add the City and its elected and appointed officials, officers, attorneys, agents employees and volunteers as additional insureds under such policies using Insurance Goods Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

**\_\_\_ Loss Payee Status – Builder’s Risk/Course of Construction Insurance (applicable to Construction Contracts only)**

Contractor or Consultant may submit evidence of Builder’s Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

**\_X\_ Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days’ prior written notice by certified mail, return receipt requested to the City.

**\_X\_ Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

**\_\_\_ Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

**Deductibles and Self-Insured Retentions (“SIR”):**

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self‑insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

**Acceptability of Insurers:**

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-:VII, unless otherwise acceptable to City.

**Claims Made Policies: (note - should be applicable only to professional liability, see below)**

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at leastfive (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**Subcontractors:**

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor’s work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

**Verification of Coverage:**

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

**Failure to Comply:**

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

**Applicability of Coverage:**

Each insurance policy required above shall contain or be endorsed to contain that the Contractor’s or Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.