

Terms and Conditions for Purchase Order (or “PO” or “Contract”)

- 1. DEFINITIONS:** “Work” or “Services”: All work and services that the Contractor must perform pursuant to this PO. “Site”: The site(s) at which the Work must be performed. “Parties”: The District and the Contractor.
- 2. SITE EXAMINATION:** Contractor has examined the Site and (1) accepts all measurements, specifications and conditions affecting the Work to be performed and (2) warrants that it has examined the Site to the extent it deems necessary for accessibility for materials, workers and utilities, and for protection of existing surface and subsurface improvements. No claim as to undiscovered conditions on the Site will be allowed.
- 3. EQUIPMENT & LABOR:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material to perform the Work at the times and places directed by and approved by District.
- 4. SUBCONTRACTORS:** District reserves the right to approve any subcontractors engaged for any Work. Contractor agrees to bind every subcontractor by the terms of this PO, including, without limitation, indemnification, insurance, and warranty requirements. If Contractor subcontracts any of the Work or Contract, Contractor shall be fully responsible to District for the Work of its subcontractors and persons directly or indirectly employed by them. The Contract shall not create any contractual relationship between any subcontractor and District.
- 5. TERMINATION:** District may terminate the Contract immediately upon District’s written notice to Contractor. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.
- 6. CHANGE IN SCOPE OF WORK:** District shall not accept any change in the scope of Work, performance method, materials, price, or any other matter affecting the Work unless District approves the change in advance by a written, executed change order. Contractor agrees that District may request changes, reductions, or additions to the Work. The Contract Price shall be adjusted by reasonable valuations of the cost. Contractor shall provide District with all information to substantiate the cost whether the Work will be done by Contractor or a subcontractor. Prior to approval of a change order, Contractor shall submit any request for a time extension, and all information substantiating its claim for delay. If Contractor fails to submit a time extension request or all supporting information, it shall have waived any extension.
- 7. TRENCH SHORING:** If a Contract for the excavation of a trench deeper than five (5) feet exceeds \$25,000, Contractor shall obtain District’s prior acceptance of a detailed plan for shoring, bracing, sloping, or other plans for worker protection from caving. The plan shall be prepared by a registered civil or structural engineer if it varies from shoring system standards.
- 8. EXCAVATIONS OVER 4 FEET:** If the Contract includes excavations over four (4) feet, Contractor shall, before the conditions are disturbed, notify District, in writing, of any: (1) Material that may be hazardous waste, as defined in Health & Safety Code § 25117 that must be removed to a Class I, II, or III disposal site in accordance with existing law; (2) Subsurface or latent physical Site conditions differing from those indicated; or (3) Unknown or unusual Site conditions. After receipt of Contractor’s notice, District shall investigate the conditions, and may issue a change order under the Contract procedures. A District and Contractor dispute as to whether the conditions differ materially, involve hazardous waste, or cause a change in Contractor’s cost or time to perform the Work shall not excuse Contractor from a Contract completion date. Contractor shall proceed with all Work. Contractor shall retain any rights from the Contract or law regarding dispute resolution.
- 9. WORKERS:** Contractor shall enforce discipline and order among employees performing the Work and shall not employ any person who is unfit or unskilled in assigned Work. Contractor shall dismiss and not reemploy any person whom District deems incompetent or unfit.
- 10. CORRECTION OF ERRORS:** Contractor shall perform, at its own cost, without reimbursement from the District, any work necessary to correct errors or omissions caused by Contractor’s failure to comply with the standard of care required herein.
- 11. SUBSTITUTIONS:** No substitutions of material shall be made without District’s prior written approval.
- 12. CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel on the Site and of equipment use.
- 13. CLEAN UP:** Contractor shall remove all debris. Contractor shall keep the Site in order at all times when Work is being performed and shall maintain the Site in a reasonably clean condition.
- 14. ACCESS TO WORK:** Contractor shall provide the District safe and proper access to all Work at all times.
- 15. SAFETY; PROTECTION OF WORK & PROPERTY:** Contractor shall maintain safety in the performance of the Work and shall erect and maintain, as required by conditions and progress of Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of Work or property, Contractor may act to prevent loss or injury. Contractor shall ascertain from District all rules and regulations about safety, security, and driving on school grounds.
- 16. ASSIGNMENT OF CONTRACT:** Contractor shall not assign or transfer any of its rights, burdens, duties, or obligations under the Contract without District’s prior written consent.
- 17. TIME IS OF THE ESSENCE:** Time is of the essence in each Contract provision and condition.
- 18. OCCUPANCY:** District may occupy buildings before Contract completion and occupancy shall not constitute acceptance of any Work, nor shall occupancy extend the Contract completion date.
- 19. INDEMNIFICATION:** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, and volunteers (“Indemnified Parties”) from any and all demands, losses, liabilities, claims, suits, and actions (“Claims”) of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from performance of the Contract unless Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. District may reject any legal representation that Contractor proposes to defend District.
- 20. PAYMENT:** Unless otherwise specified, Contractor shall submit an invoice for materials or Work under the Contract. District shall make payment for materials, supplies or Work in a lump sum within thirty (30) days of: (1) completion of Work, and (2) delivery to and approval by authorized District agents of all invoices and evidence required by District. District may deduct from payment amounts to protect District from loss because of: (1) liquidated damages as of date of payment application; (2) sums spent by District performing Contractor’s obligations; (3) defective Work not remedied; (4) stop notices; (5) doubt that the Work can be completed for the unpaid Contract balance or by the scheduled completion date; (6) unsatisfactory Contractor Work; (7) unauthorized deviations from Contract; (8) Contractor failure to maintain or submit timely, sufficient documentation; (9) false estimates of the value of Work performed; (10) expenses, losses, or damages, determined and incurred by District for which Contractor is liable under the Contract; and (11) any other sums which District may recover from Contractor under the Contract or state law, including Labor Code § 1727. District’s failure to deduct from a progress payment shall not waive District’s right to such sums. District shall retain 5% from all payments as retention for PO’s/contracts in excess of \$25,000. Retention shall be paid pursuant to Public Contract Code §§ 7107 and 7200.
- 21. PERMITS & LICENSES:** Contractor and its employees, agents, and subcontractors shall maintain in force, at Contractor’s sole cost, all licenses and permits required for furnishing the materials, supplies, or Work.
- 22. FORCE MAJEURE CLAUSE:** Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, or pandemics when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor.
- 23. DRUG-FREE / SMOKE FREE POLICY:** No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants or contractors are to use drugs on these sites.
- 24. WARRANTY/QUALITY:** Unless specified otherwise, Contractor, manufacturer, or their assigned agents shall guarantee workmanship, products or Work against defects or failures for a minimum of one (1) year from filing of Notice of Completion or acceptance of Work by final payment or other written form. All Work shall be performed to the standard of care of entities performing similar work for California school districts in or around the same geographic area of the District and all workmanship and merchandise must comply with California energy, conservation, environmental, and educational standards.

25. CONFIDENTIALITY: Contractor shall maintain confidentiality of all information, documents, procedures, and other items Contractor encounters while performing Work to the extent allowed by law. This requirement shall survive expiration or termination of the Contract and includes student, parent, and disciplinary information.

26. COMPLIANCE WITH LAWS: Contractor shall give all notices and comply with all laws, ordinances, rules and regulations concerning the Work (“Laws”). If Contractor observes that any Work varies from any Laws, Contractor shall notify District, in writing, and, at District’s sole option, any necessary changes to the scope of Work shall be made by written change order, or the Contract shall be terminated upon Contractor’s receipt of District’s written termination notice. If Contractor performs any work that is in violation of Laws, without first notifying District, Contractor shall bear all costs

27. COVID 19: Contractor shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain including, without limitation, providing personal protective equipment (“PPE”) to its employees and to ensure that its subcontractors provide PPE equipment to its employees to prevent the spread of COVID-19 or any other similar virus or derivative strain at the Project Site(s). Contractor shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Project Site(s).

28. DISPUTES/CLAIMS: Any dispute or “Claim” as defined in Public Contract Code Section 9204 (“Section 9204”), subdivision (c)(1), shall be resolved pursuant to the provisions of Section 9204. The Parties hereby incorporate each requirement of the Section 9204 by reference into the text of this section as though fully set forth herein, and agree to abide by those requirements during the pendency of any “Claim” as defined in Section 9204. Pending resolution of the dispute or Claim, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District’s administration office is located, having competent jurisdiction of the dispute. Nothing in this Article shall prevent the Parties from resolving any disputes or claims pursuant to Public Contract Code section 20104, et seq., if applicable. Nothing in this Contract, waives, modifies or tolls the Contractor’s obligation to present a timely claim under Government Code § 910, et seq. Therefore, in addition to complying with the contractual Claims procedures, the Contractor is required to present claims to the District pursuant to Government Code § 910, et seq.

29. ANTI-TRUST CLAIM: Contractor and its subcontractor(s) assign to District all rights, title, and interest to all causes of action under § 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to a contract or subcontract. This assignment shall become effective when District tenders final payment to Contractor, without further acknowledgment.

30. GOVERNING LAW: The Contract shall be governed by and construed in accordance with California laws with venue in the District’s County.

31. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Every provision required by law to be in the Contract shall be deemed to be inserted and the Contract shall be read and enforced as though included.

32. BINDING CONTRACT: The Contract shall be binding upon the Parties and their successors and assigns, and inure to the benefit of the Parties’ successors and assigns.

33. DISTRICT WAIVER: District’s waiver of any term, condition, covenant (“Term”) or of a breach of any Term shall not constitute waiver of any other Term or of a breach of any other Term.

34. INVALID TERM: If a Court determines any Contract term to be illegal, invalid or unenforceable (“Illegal Term”), the legality of the remaining terms shall not be affected, and the Illegal Term will not be part of the Contract.

35. ENTIRE CONTRACT: This PO and the documents expressly incorporated herein set forth the entire agreement between the Parties and supersedes all prior agreements or understandings between the Parties concerning the subject of this PO. Where a conflict exists between provision(s) in a District-prepared form of agreement that is expressly incorporated into this PO, the provision(s) of that agreement shall control. In all other instances where a conflict exists between the provision(s) of this PO and an incorporated document, the provision(s) of this PO shall control.

36. CONTRACTOR’S INSURANCE: Unless specified otherwise, Contractor shall have in force, and throughout the Work shall maintain with the minimum limits, the following insurance: Commercial General Liability (“CGL”) insurance: \$1,000,000 per occurrence and \$2,000,000 aggregate or \$2,000,000 for each occurrence and \$4,000,000 general aggregate with Products and Completed Operations Coverage and \$5,000 Medical Payment; Automobile Liability—Any Auto: combined single limit of \$1,000,000; Professional Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate; Sexual Abuse and Molestation (SAM); \$1,000,000 per occurrence and \$2,000,000 aggregate if interacting with student. In addition to the CGL insurance Commercial Umbrella/Excess Liability insurance: \$4,000,000; Workers Compensation: Statutory limits; and Employers’ Liability: \$1,000,000. Contractor shall provide District certificate(s) of insurance and additional insured endorsements satisfactory to District. Policy(ies) shall not be modified or terminated and coverage amounts shall not be reduced without thirty (30) days written notice to District. Except for worker’s compensation insurance, District, Architect, and the Project Manager (if applicable) shall be named as additional insured(s) on all policies. Contractor’s policy(ies) shall be primary; insurance carried by District shall be secondary. Contractor shall not allow any subcontractor, employee, or agent to commence Work until required insurance has been obtained.

37. DELIVERIES. Unless otherwise indicated in the PO, the delivery of all materials, equipment, supplies, or other items related to the Work shall be (1) part of the Contract Price; (2) delivered by Contractor at no additional cost to the District, (3) accompanied by all necessary MSDS(s).

38. LABOR CODE REQUIREMENTS: If the Contract Price is more than \$1,000, and the Work is a “public works” as defined in the Labor Code including, without limitation, §§ 1720 - 1720.6 and 1771 then this subsection applies. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4. Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District and available on the DIR website. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. **Certified Payroll Records:** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

CERTIFICATES

1. FINGERPRINTING/CRIMINAL BACKGROUND: Contractor shall meet applicable fingerprinting and criminal background investigation requirements of Education Code sections 45125.1 or 45125.2. **Contractor shall execute an applicable Fingerprinting/Criminal Background Investigation Certification.**

2. WORKERS’ COMPENSATION: Contractor shall meet applicable codes including but not limited to Labor Code sections 3550 to 3553 and 3700. **Contractor shall execute an applicable Workers’ Compensation Certificate.**

THE FOLLOWING PROVISION(S) ARE ONLY APPLICABLE TO POS FOR PROFESSIONAL SERVICES (E.G., ARCHITECT, CONSTRUCTION MANAGER, PROJECT MANAGER, ETC.)

1. PROFESSIONAL LIABILITY: Contractor has in force, and throughout the Work shall maintain with the minimum limits, the following insurance: Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor’s profession: \$1,000,000 for each occurrence and \$2,000,000 general aggregate.

THE FOLLOWING PROVISION(S) ARE ONLY APPLICABLE TO POS FOR CONSTRUCTION

PAYMENT & PERFORMANCE BONDS: Contractor shall not commence Work until it has provided to District, in an acceptable form, a Payment (Labor and Material) Bond (for contracts in excess of \$25,000 and/or as specified in Notice to Bidders or bid/quote request) and a Performance Bond (as specified in Notice to Bidders or bid/quote request), each in an amount equivalent to 100% of the Contract Price issued by a surety admitted to issue bonds in California.