

CONDITIONS: The following general terms and conditions are always applicable. (Commodities only)

1. Governing Law and Venue: This CONTRACT has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this CONTRACT shall be maintained in the county in which the District's administrative offices are located. (CC 1646)

2. Entire Contract: This CONTRACT, when accepted by the CONTRACTOR either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on DISTRICT unless authorized by DISTRICT in writing. Electronic acceptance of any additional terms, conditions or supplemental contracts by any DISTRICT employee or agent, including but not limited to installers of software, shall not be valid or binding on DISTRICT unless accepted in writing by DISTRICT'S Purchasing Manager or designee, hereinafter "PURCHASING Manager."

3. Amendments: No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on DISTRICT unless authorized by DISTRICT in writing. (PCC 10335-10381)

4. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

5. Delivery: Time of delivery of goods or services is of the essence in this CONTRACT. DISTRICT reserves the right to refuse any goods and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind DISTRICT to accept future shipments nor deprive it of the right to return goods already accepted at CONTRACTOR'S expense. Overshipments and undershipments of goods shall be only as agreed to in writing by DISTRICT. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by DISTRICT.

6. Acceptance: Unless otherwise agreed to in writing by DISTRICT, acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of DISTRICT.

7. Payment: Payment shall be made 30 days in arrears after acceptance of invoice and completion of the purchase order. Payment of interest for undisputed overdue payment request shall be equivalent to the legal rate set forth in CC 685.010.

8. Warranty: CONTRACTOR expressly warrants that the goods covered by this CONTRACT are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon CONTRACTOR'S part to indemnify, defend and hold DISTRICT and its indemnitees as identified in paragraph "16" below, and as more fully described in paragraph "16", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by DISTRICT by reason of the failure of the goods to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

9. Assignment or Sub-Contracting: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or subcontracted by CONTRACTOR without the express written consent of DISTRICT. Any attempt by CONTRACTOR to assign or sub-contract the performance or any portion thereof of this CONTRACT without the express written consent of DISTRICT shall be invalid and shall constitute a breach of this CONTRACT. (PCC 4100-4114)

10. Non-Discrimination: In the performance of this CONTRACT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

11. Termination: In addition to any other remedies or rights it may have by law, DISTRICT has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the CONTRACTOR. Exercise by DISTRICT of its right to terminate the CONTRACT shall relieve DISTRICT of all further obligation.

12. Consent to Breach Not Waiver: No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in

writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

13. Remedies Not Exclusive: The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.

14. Independent Contractor: CONTRACTOR shall be considered an independent contractor and neither CONTRACTOR, its employees, nor anyone working under CONTRACTOR shall be considered an agent or an employee of DISTRICT. Neither CONTRACTOR, its employees nor anyone working under CONTRACTOR shall qualify for workers' compensation or other fringe benefits of any kind through DISTRICT.

15. Performance: CONTRACTOR shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to DISTRICT'S satisfaction. CONTRACTOR shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the CONTRACTOR under this CONTRACT. CONTRACTOR shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of DISTRICT required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

16. Indemnification Provisions: To the furthest extent permitted by California law, CONTRACTOR shall defend, indemnify, and hold free and harmless the District, its Board of Education, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, suits, actions, costs, expenses, judgments, liability, loss, damage or injury of any kind, nature and description, in law or equity ("Claim"), to property or persons including, but not limited to, personal injury, bodily injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the negligence, recklessness, errors or omissions, or willful misconduct of contractor, its officials, officers, employees, subcontractors, consultants, or agents, directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this CONTRACT, including without limitation the payment of all consequential damages; or from any activity, work, or thing done, permitted, or suffered by the CONTRACTOR in conjunction with this CONTRACT, unless the claims are caused wholly by the sole negligence or willful misconduct of the District. The District shall have the right to accept or reject any legal representation that CONTRACTOR proposes to defend the indemnified parties. (CC 2772-2784.5)

17. Insurance Provisions: Prior to the provision of services under this CONTRACT, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the District Certificates of Insurance, including all endorsements required herein, necessary to satisfy the District that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the District during the entire term of this CONTRACT. In addition, all subcontractors performing work on behalf of contractor pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

This policy or policies of insurance maintained by the CONTRACTOR shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the DISTRICT, its elected and appointed officials, officers, All insurance policies required by this CONTRACT shall give the District notice in the event of cancellation. This shall be evidenced by an endorsement separate from the

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Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate.

18. **Bills and Liens:** CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements of paragraph "16" above, indemnify, defend, and hold DISTRICT harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto. (CC 3109)

19. **Changes:** CONTRACTOR shall make no changes in the work or perform any additional work without the DISTRICT'S specific written approval. (GC11010.5)

20. **Change of Ownership:** CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR'S business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR'S duties and obligations contained in this CONTRACT and complete them to the satisfaction of DISTRICT.

21. **Confidentiality:** CONTRACTOR agrees to maintain the confidentiality of all DISTRICT and DISTRICT-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR'S staff, agents and employees. (EC 4073)

22. **Compliance with Laws:** CONTRACTOR shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. CONTRACTOR shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If CONTRACTOR observes that any of the Work required by this CONTRACT is at variance with any such laws, ordinance, rules or regulations, CONTRACTOR shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this CONTRACT shall be appropriately amended in writing, or this CONTRACT shall be terminated effective upon CONTRACTOR'S receipt of a written termination notice from the District. If CONTRACTOR performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, CONTRACTOR shall bear all costs arising therefrom.

23. **Freight (F.O.B. Destination):** CONTRACTOR assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.

24. **Pricing:** The CONTRACT price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

25. **Fingerprinting of Employees:** The Fingerprinting/Criminal Background Investigation Certification may be required. If required, the Certificate must be completed and attached to the CONTRACT prior to CONTRACTOR'S performing of any portion of the Services. (EC 45125.1)

26. **Severability:** If any term, covenant, condition or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

27. **Interpretation:** This CONTRACT has been negotiated at arm's length and

between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the party that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to effect the purpose of the parties and this CONTRACT.

28. **Authority:** The parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

29. **Employee Eligibility Verification:** The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by District, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the District or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

30. **Limitation of District Liability.** Other than as provided in this CONTRACT, District's financial obligations under this CONTRACT shall be limited to the payment of the compensation provided in this CONTRACT. Notwithstanding any other provision of this CONTRACT, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this CONTRACT for the services performed in connection with this CONTRACT.

31. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this CONTRACT shall be deemed to be inserted herein and this CONTRACT shall be read and enforced as though it were included therein.