

CONDITIONS: The following general terms and conditions are always applicable. (Services 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 Agreement 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 Agent or designee, hereinafter "PURCHASING AGENT."
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 services is of the essence in this CONTRACT. DISTRICT reserves the right to refuse any services and to cancel all or any part of the services 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. 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 in 30 days arrears after acceptance of invoice. Invoices are to reference the purchase order number. 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 services 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 "15" below, and as more fully described in paragraph "15", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by DISTRICT by reason of the failure of the services 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. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this CONTRACT, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONTRACTOR warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, property right, or trade secret right of any third party. CONTRACTOR agrees that, in accordance with the more specific requirement contained in paragraph "17" below, it shall indemnify, defend and hold DISTRICT AND DISTRICT INDEMNITIEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorneys fees, costs and expenses.
10. **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 subcontract 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)
11. **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.
12. **Termination for Convenience:** District may, at any time, with or without reason, terminate this Agreement and compensate Service Provider only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Service Provider. Notice shall be deemed given when received by the Service Provider or no later than three days after the day of mailing, whichever is sooner. (48CFR52.249-2)
13. **Termination: Without Cause by District:** 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.
14. **Termination With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: a) material violation of this Agreement by the Service Provider; or b) any act by Service Provider exposing the District to liability to others for personal injury or property damage; or c) Service Provider is adjudged a bankrupt, Service Provider makes a general assignment for the benefit of creditors or a receiver is appointed on account of Service Provider's insolvency. Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Service Provider. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Service Provider shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
15. **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.
16. **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.
17. **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 Agreement, 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 Agreement, 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)
18. **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.

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All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the Board.

If the CONTRACTOR fails to maintain insurance acceptable to the District for the full term of this CONTRACT, the DISTRICT may terminate this CONTRACT.

Qualified Insurer: The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A-(Secure Best's Rating) and VIII (Financial Size Category).

If the insurance carrier is a non-admitted carrier in the state of California, the Board retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

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
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence
Sexual Misconduct Liability	\$1,000,000 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, employees, agents as Additional Insureds.

A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the DISTRICT shall be excess and non-contributing.

All liability insurance, except Professional Liability, required by this contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

All insurance policies required by this contract shall waive all rights of subrogation against the District and members of the Board, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the District, and members of the Board, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the District 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy). Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the CONTRACTOR fails to provide the insurance certificates and endorsements within seven days of notification by Purchasing department, award may be made to the next qualified vendor.

District expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by Board as appropriate to adequately protect District.

District shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with District incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and District shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

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

19. **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 "15" 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)
20. **Changes:** CONTRACTOR shall make no changes in the work or perform any additional work without the DISTRICT'S specific written approval. (GC1010.5)
21. **Force Majeure:** CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to DISTRICT within 36 hours of the start of the delay and CONTRACTOR avails himself of any available remedies.
22. **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)
23. **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 agreement 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 Agreement shall be appropriately amended in writing, or this Agreement 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.
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 Agreement prior to CONTRACTOR'S performing of any portion of the Services. (EC 45125.1)
26. **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.
27. **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

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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 DISTRICT, 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.

28. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, 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 Agreement for the services performed in connection with this Agreement.
29. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
30. **Information Access.** The District may require all CONTRACTOR personnel performing services under this Agreement to execute confidentiality and non-disclosure agreement concerning access protection and data security in the form provided by District. The District shall authorize, and CONTRACTOR shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall CONTRACTOR permit any such mechanisms to be shared or used by other than the individual CONTRACTOR personnel to whom issued. CONTRACTOR shall provide each CONTRACTOR person with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All District systems, and all data and software contained therein, including District data, District hardware and District software, used or accessed by CONTRACTOR: (a) shall be used and accessed by such CONTRACTOR solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of CONTRACTOR's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by CONTRACTOR, at any time.
31. **Conduct on District Premises.** CONTRACTOR shall, at all times, comply with and abide by all reasonable policies and procedures of the District (or that may be established thereby, from time to time) that pertain to conduct on the District's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that the CONTRACTOR has been provided with a copy of each such policy or procedure. CONTRACTOR shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party. CONTRACTOR's employees shall not smoke or use profanity or other inappropriate language while on site. CONTRACTOR's employees shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession. (GC8355)
32. **DIR Compliance:** No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Any project that was being monitored by the CMU/Labor Commissioner prior to the adoption of SB 854 will continue to be monitored by the Labor Commissioner afterward; and the contractors on those projects must continue to furnish certified payroll records to the Labor Commissioner until the project is complete.. **April 1, 2015:** For all new projects awarded on or after this date, the contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner.

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