

PURCHASE AGREEMENT

Contract No.: 40590
Supplier: Haaker Equipment Company
D/B/A Total Clean Equip.
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Financial ID: 40J.5J55.05 / 50J.4J55.05
Bid No.: FE-23-04-RFB

THIS MASTER PROCUREMENT AGREEMENT BETWEEN DISTRICT AND SUPPLIER FOR CUSTODIAL EQUIPMENT AND SUPPLIES ("Purchase Agreement") is entered into on this 4th Day of May, 2023 by and between the LOS ANGELES COMMUNITY COLLEGE DISTRICT, a community college district organized under the laws of the State of California ("District") and the undersigned Supplier ("Supplier") / Vendor ("Vendor").

ARTICLE 1 GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

Capitalized terms used in the contract documents shall have the meanings assigned to them below. Capitalized terms not defined shall have the meanings assigned to them in, or if none is assigned as reasonably understood to apply to them by the context of, the portion of the contract documents where such terms are used.

1.1.2. Addendum means written or graphic information prepared and issued prior to the receipt of Supplier's Bid, which modifies or interprets the Bidding Documents by additions, deletions, clarifications, or corrections.

1.1.3. Alternate means a proposed alternative described in the Bidding Documents for adding, deleting or replacing a particular item of Goods Applicable Laws means all statutes, ordinances, rules, regulations, policies and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts of the State of California, which are in effect at any time during performance of the Purchase Agreement or any Order.

1.1.4. Application for Payment (Invoice) means Supplier's certified application for payment or Invoice in accordance with the Contract Documents.

1.1.5. Award means the action of the Board of Trustees duly approving by resolution District's entering into the Purchase Agreement with Supplier.

1.1.6. Base Bid means the sum of money stated in a Bid for which the Bidder proposes to perform the obligations described in the Bidding Documents, exclusive of adjustments for Alternates.

1.1.7. Bid means the bid price submitted by Supplier to District in accordance with the Bidding Documents.

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1.1.8. Bidder means a person or entity submitting a Bid. **Bid Classification** means a grouping of Goods of various Product Types, for the purpose of facilitating bidding and Award to the successful Bidder of a Purchase Agreement for all of the Goods within that Bid Category.

1.1.9. Bid Form means the form prescribed by the Bidding Documents to be completed and signed by the Bidder and submitted as the Bid.

1.1.10. Bid Price means the Bid Price for one (1) unit of Goods of a particular Product Type, based upon the unit of measurement applicable to such Product Type as set forth in the Bidding Documents.

1.1.11. Bidding Documents means the following collection of documents prepared and issued for the purpose of soliciting Bids for Award of a Purchase Agreement: (1) Notice to Bidders; (2) Instructions to Bidders; (3) Bid Form; (4) Form of Purchase Agreement;; (5) Performance Specifications; (7) Addenda; and (8) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (7) hereinabove, are expressly cross-referenced therein or attached thereto.

1.1.12. Board of Trustees means the governing board of the Los Angeles Community College District.

1.1.13. Bond Program means the Los Angeles Community College Propositions A and AA and Measure J Bond Programs.

1.1.14. CADD Drafting Manual (sometimes referred to "BIM/CADD Standards") means the manual and standards developed by District or its Program Manager setting forth the basic requirements for production and use of electronic files and documents.

1.1.15. Chancellor means the Chancellor of District.

1.1.16. Chief Facilities Executive means District's Chief Facilities Executive, Facilities Planning & Development, or his/her designee designated by District in writing to act on his/her behalf.

1.1.17. Claim is as defined in Article 16 of this Purchase Agreement.

1.1.18. Claims Dispute Resolution Process means the process of resolution of Claims set forth in Article 16 of this Purchase Agreement.

1.1.19. College means a college, or satellite college, of District, acting by and through the College President or his/her designee.

1.1.20. College Construction Health, Safety and Environmental Program means the plan prepared by College Project Director setting forth the policies, procedures and forms to be followed and used by Supplier and others in connection with safety, health and environmental conditions at a Site.

1.1.21. College President means the person duly appointed by the Board of Trustees as President for a College.

1.1.22. College Project Director means the District's Consultant primarily responsible for management, oversight and supervision of the implementation of the Bond Program as they relate to particular management of improvements being performed for a College.

1.1.23. Community Economic Development Program Outreach Forms means the forms, so titled, that are referenced in the Bidding Documents.

1.1.24. Completed Delivery means the point at which the entirety of a Lot of Goods covered by an Order that has been issued, has been delivered, placed and set-up in conformance with the requirements of the Contract Documents.

1.1.25. Compliant Goods means the Goods described in Exhibit "D" hereto in strict accordance with the requirements of this Purchase Agreement and the other Contract Documents, including, without limitation, the Performance Specifications attached hereto as Exhibit "D"

1.1.26. Contract Documents means the following collection of documents governing Supplier's performance associated with an Order: (1) the Purchase Agreement between District and Supplier, Addenda issued prior to execution of the Purchase Agreement; (2) the Order; and (3) those documents, or those portions or provisions of documents that, although not listed among the documents described in Clauses (1) through (2) hereinabove, are expressly cross-referenced therein or attached thereto.

1.1.27. Date for Receipt of Bids means the date and time specified in the Notice to Bidders as the deadline for receipt of Bids, as amended by Addendum.

1.1.28. Day, whether capitalized or not, and unless otherwise specifically provided, means calendar day, including weekends and Holidays.

1.1.29. Defective Goods means any portion of the Goods, or the services provided by Supplier in connection therewith, that is unsatisfactory, faulty, omitted, incomplete, and deficient or does not conform to Applicable Laws, the Contract Documents or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.30. Delay, whether capitalized or not, means any circumstances involving delay, disruption, hindrance or interference in the delivery of Goods.

1.1.31. Delivery Date means the Day designated in an Order for Completed Delivery of all or a portion of the Goods to a Destination, as adjusted for changes in the Delivery Date communicated to Supplier in accordance with District's rights under the Contract Documents and for extensions of time authorized by the Purchase Agreement.

1.1.32. Design Consultant means a person or entity under contract with District primarily responsible to provide design, engineering and related construction administration services to District for a project in which some or all of the Goods furnished by Supplier will be placed or incorporated.

1.1.33. Design Documents means all plans, drawings, tracings, specifications, programs, reports, calculations, models, presentation materials and other materials or documents containing designs, specifications or engineering information prepared by or at the request of District, including, without limitation, computer aided design materials, electronic data files and paper copies. The term "Design Documents" includes, without limitation, all building and other designs depicted therein, as well as the physical documents themselves.

1.1.34. Destination means the destination at a College campus designated in an Order for delivery of Goods.

1.1.35. Disability Laws means applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Government Authority, which regulate, relate to or impose liability or standards of conduct with respect to, or accessibility for, persons with disabilities, including, without limitation, the Americans with Disabilities Act (42 USCA §§ 12101 et seq.) and the Fair Housing Amendments Act of 1988 (42 USCA §§ 3604 et seq.).

1.1.36. Discovery Date, used in reference to Supplier's obligation to give written notice of certain facts, conditions or circumstances, means the earlier of the dates that Supplier either: (1) discovered such facts, conditions or circumstances, or (2) should have discovered such facts, conditions or circumstances in the exercise of reasonable care practiced by the those furnishing materials of the same or similar type to those provided for purchase under the Purchase Agreement.

1.1.37. District means the Los Angeles Community College District, a community college district organized under the laws of the State of California, acting through its Chancellor, Executive Director or their designees designated by him/her to act on his/her behalf.

1.1.38. District Consultant means a consultant engaged by District to provided professional advice.

1.1.39. District Website means the website maintained by District at <http://www.laccd.edu>, including, without limitation, any related websites for which links are provided on the District Website.

1.1.40. Environmental Laws means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about a Site (including, without limitation, soil, groundwater, and indoor and ambient air conditions), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about a Site), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act [49 U.S.C.A. §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A. §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Air Act [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§4821 et seq.] the California Underground Storage of Hazardous Substances Act [Cal. Health & Safety Code §§ 25280 et seq.]; the California Hazardous Substances Account Act [Cal. Health & Safety Code §§ 25300 et seq.]; the California Hazardous Waste Control Act [Cal. Health & Safety Code §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Cal. Health & Safety Code §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code §§ 13000 et seq.], and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

1.1.41. Evidence of Insurance means the statement, completed by Bidder as specified in the Instruction to Bidders, evidencing the Bidder's compliance with the insurance requirements of the Bidding Documents.

1.1.42. Excusable Delay means a Delay to Supplier's ability to achieve Completed Delivery of Goods by the Delivery Date and that is: (1) not caused in whole or in part by the failure of Supplier or its Sub-Suppliers to comply with any obligation under the Contract Documents (including, without limitation, the furnishing of Defective Goods by Supplier or its Sub-Suppliers); and (2) unforeseeable, unavoidable and beyond the control of Supplier and its Sub-Suppliers. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Supplier or any of its Sub-Suppliers, of any Tier, to perform any obligation imposed by Purchase Agreement or Applicable Law shall constitute grounds for Excusable Delay.

1.1.43. Existing Improvements means improvements on a Site, including, but not limited to, buildings, utilities, infrastructure improvements and other facilities.

1.1.44. Goods means collectively generally the materials, items or equipment that are the subject of purchase under the Purchase Agreement, including any incidental services or other documentation required to be furnished by Supplier under the terms of the Contract Documents.

1.1.45. Governmental Authority means the United States, the State of California, and any local, regional, state or federal political subdivision, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Goods, Site, Supplier or District.

1.1.46. Guaranteed Minimum means the minimum dollar value the District has guaranteed will be purchased from Supplier.

1.1.47. Hazardous Substance means: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste", "contamination" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

1.1.48. Holidays means: (1) Martin Luther King Day; Presidents' Day; Cesar Chavez Day; Memorial Day; Fourth of July; Labor Day; Veteran's Day; Thanksgiving (two Days); Christmas (two Days); and New Year's (two Days); and (2) any other holidays hereafter declared by the executive or legislative branches of the United States or State of California as legal holidays and recognized as such by District.

1.1.49. Indemnitees means those persons or entities listed in Paragraph 5.13.1, below, as the "Indemnitees".

1.1.50. Instructions to Bidders (AKA Request for Bids) means the portion of the Bidding Documents setting forth the requirements to be followed by Bidders in preparing and submitting Bids.

1.1.51. Los Angeles Community College District or LACCD mean the Los Angeles Community College District.

1.1.52. Loss, Losses mean any and all economic and non-economic injuries, losses, costs, liabilities, claims, cost escalations, damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorney's fees or court costs, whether arising as an expense or cost of legal proceedings to which Supplier is a party or as a consequential damage claimed against Supplier by any third person or entity.

1.1.53. Lot means a quantity of Goods, of any amount and from one or any combination of Product Types that is designated by District in an Order.

1.1.54. Purchase Agreement means the written Purchase Agreement between District and Supplier for Purchase of Goods contained in the Bidding Documents and executed between District and Supplier.

1.1.55. Master Files Archives System means the master filing system prepared by or at the request of District whereby all documents (electronic and hard copy) are stored for ready access by District, auditors of District or other authorized persons.

1.1.56. Modification means a written agreement between District and Supplier that amends, adds to or revises the provisions of the Purchase Agreement or other Contract Documents.

1.1.57. Non-Collusion Declaration means the form, so titled, required by the Bidding Documents to be submitted by Bidder.

1.1.58. Notice of Completed Delivery means a written notice issued by the College Project Director or District Consultant confirming Completed Delivery.

1.1.59. Notice of Delivery means a written notice required to be issued by Supplier notifying District placing an Order of the date of anticipated delivery of the Goods covered by such Order.

1.1.60. Notice of Intent to Award means a written notice issued by or on behalf of District stating its intent to Award the Purchase Agreement to Supplier.

1.1.61. Notice to Bidders means a written notice issued by or on behalf of District inviting submission of Bids.

1.1.62. Order means a written request by District to Supplier for the purchase and delivery of Goods.

1.1.63. Performance Specifications means the performance standards set forth in or attached to the Purchase Agreement applicable to Supplier's performance under the Contract Documents.

1.1.64. Policy on Local, Small and Emerging Businesses means District's policy on affording opportunities for local, small and emerging businesses as set forth in District's Board Rule 7103.17, which is available on the District Website.

1.1.65. Post-Award Submittals means the collection of documents described in the Request for Bid that is required to be submitted by the successful Bidder following its receipt of the Notice of Intent to Award.

1.1.66. Pre-Bid Conference means the conference, specified in the Notice to Bidders as either mandatory or optional, held prior to the Date for Receipt of Bids for the purpose, without limitation, of introducing the Bidders generally to the scope of the purchases being proposed under the terms of the Bidding Documents.

1.1.67. Price Schedule means the list of unit prices and discounts, based upon the Bid submitted by Supplier, that are used to calculate the Purchase Price for the Goods covered by the Purchase Agreement.

1.1.68. Product Data means illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by Supplier to illustrate a portion of the Goods.

1.1.69. Product Type means a specific type of Goods described in the Bidding Documents for purposes of bidding and purchasing.

1.1.70. Program Manager means the District Consultant primarily responsible for management, oversight and supervision of the implementation of all aspects of the Bond Program.

1.1.71. Project Safety Program means the plan, if any, prepared by or at the request of District setting forth the safety policies, procedures and forms to be followed and used by Supplier and Sub-Suppliers when they are on a Site.

1.1.72. Proprietary Information means (in lieu of any other definitions applicable to proprietary information or trade secrets that may exist or apply under Applicable Laws) technical or pricing information in the form of design details, manufacturing techniques, procedures, means and methods and other technical design and manufacturing information that: is (1) patented; or (2) is (a) only known to those persons within Supplier's company in whom such technical information is confided; or (b) has unique or special qualities (including, without limitation, a unique or special assembly) not generally known in the industry among competing manufacturers or suppliers furnishing materials of the type to be provided under the Purchase Agreement.

1.1.73. Purchase Price means the total compensation payable to Supplier for the Goods, exclusive of Applicable Sales Taxes.

1.1.74. Receipt of Order means either: (1) the date of actual receipt of any Order by Supplier if sent by facsimile, personal delivery or electronic transfer; or (2) in the case of an Order sent by mail, the third (3rd) Working Day after the Order is deposited for mailing in regular mail.

1.1.75. Request for Extension means a formal written notice and request required to be submitted by Supplier pursuant to Paragraph 9.2.2, below, setting forth the justification and support for Supplier's request for adjustment to a Delivery Date due to Excusable Delay.

1.1.76. Samples means physical examples that, when approved as required by the Contract Documents, illustrate the standards by which the Goods requested in an Order are to be evaluated and judged.

1.1.77. Separate Contractor means a person or entity under contract with District to perform construction of, or furnish labor, materials or equipment to a Site.

1.1.78. Services means additional Services as requested in the Bidding Documents which are required beyond the cost of Goods as defined in the Bidding Documents.

1.1.79. Shop Drawings means drawings, diagrams, schedules and other data specially prepared by Supplier or a Sub-Supplier to illustrate some portion of the Goods.

1.1.80. Site means: (1) a parcel(s) of land that is (are) owned or leased by District for use by a College; and (2) all areas adjacent to such parcel(s) that may be used by Supplier or Sub-Suppliers for preparation, drop off or delivery of Goods.

1.1.81. Sub-Supplier means a person or entity that has a contract to perform some portion of the obligations of Supplier under the Contract Documents, including without limitation, suppliers, manufacturers and vendors, of any and every Tier. Sub-Supplier does not include suppliers of raw materials that are furnished to Supplier for processing or manufacture by Supplier or a Sub-Supplier.

1.1.82. Submittal means Shop Drawings, Product Data, Samples and other detailed designs, exemplars, fabrication and installation drawings, lists, graphs, owner's instructions and similar documents required to be submitted by Supplier under the Contract Documents.

1.1.83. Substitution means an item of Goods proposed by the Bidder or Supplier in place of that specified in the Bidding Documents and Contract Documents.

1.1.84. Substitution Request Form means the form, so titled, that is part of the Bidding Documents and that the Bidders are required to use when requesting a Substitution.

1.1.85. Supplier (aka Vendor) means the person or entity under contract with District pursuant to the Purchase Agreement.

1.1.86. Supplier's Own Expense, when used in the Contract Documents with regard to a stated circumstance, means that Supplier agrees to pay for any Loss associated with such circumstance without reimbursement by District and without extension of a Delivery Date. References to Supplier's Own Expense in relation to a set of circumstances stated in one portion the Contract Documents shall not be interpreted as implying that such circumstances are the sole or exclusive circumstances under which Supplier is responsible to bear, at its own expense, risk or cost without compensation or reimbursement by District.

1.1.87. Tier means the contractual level of a Sub-Supplier with respect to Supplier. For example, a "first-tier" Sub-Supplier is a supplier that has a direct contract with Supplier. A supplier that has a direct contract with a first-tier Sub-Supplier is in the "second tier," and so on. Use of the phrase "of every Tier", or similar phraseology, in the Contract Documents shall not be interpreted as implying that other provisions of the Contract Documents, where such phrases are not used, are intended to be limited application to only the first Tier or to only certain Tiers of Sub-Suppliers.

1.1.88. Unexcused Delay means any Delay that is not an Excusable Delay, including, without limitation, Delays for which Supplier is not permitted an adjustment to a Delivery Date due to Supplier's failure to comply with the requirements of the Purchase Agreement pertaining to proper and timely notice and proof of entitlement to an extension of time for Excusable Delay.

1.1.89. Worker's Compensation Certificate means the statement, completed by Bidder in the form specified in the Instruction to Bidders, evidencing the Bidder's compliance with the worker's compensation insurance requirements of the Bidding Documents and Applicable Laws.

1.1.90. Working Day means any Day other than Saturdays, Sundays and Holidays.

1.2. PARTIES

1.2.1. District and Supplier. The parties to the Purchase Agreement are Supplier and District.

1.2.2. No Third Party Contracts. The Contract Documents shall not be construed to create a contractual relationship, of any kind, between: (1) a Design Consultant or District Consultant, on the one hand, and Supplier or a Sub-Supplier of any Tier, on the other hand; (2) the College Project Director and Supplier or a Sub-Supplier of any Tier; (3) the Program Manager and Supplier or a Sub-Supplier of any Tier; (4) a Design Consultant and the College Project Director; (5) a Design Consultant and the Program Manager; (6) District and a Sub-Supplier of any Tier; or (7) the College Project Director and the Program Manager. The enumeration of parties set forth in this Paragraph 1.2.2 shall not be interpreted as implying the existence of any direct or indirect contractual relationship between District and any other third party not mentioned.

1.3. CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

1.3.1. Intent. Unless specifically indicated in the Contract Documents to the contrary, the intent of the Contract Documents is for Supplier to provide all items necessary to furnish the Goods, complete in all of parts, suitable for use for their intended purpose.

1.3.2. Complementary. Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. All the obligations of Supplier mentioned or indicated in the Contract Documents shall be performed by Supplier unless specifically indicated in the Contract Documents to be done by others.

1.3.3. Technical Words. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.4. Trade Names. It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under a "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to Supplier that it will be required to provide the Goods so named with all its appurtenances and incidentals included.

1.3.5. Dimensions. Figured, derived or numerical dimensions on shall govern over designs without such dimensions.

1.3.6. Applicable Laws. Compliance with Applicable Laws shall be considered as a part of Supplier's obligations under the Contract Documents.

1.3.7. Modifiers. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.8. Singular, Gender, Captions. When appropriate to the context, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.9. Cross-References. Any cross-references indicated between various paragraphs or other portions of the Contract Documents are provided for the convenience of Supplier and shall not be deemed to be all-inclusive.

1.3.10. Omissions. Items missing from the Contract Documents shall nevertheless be provided by Supplier, without additional compensation or extension to a Delivery Date, to the extent reasonably inferable from the Contract Documents as being necessary to complete performance of Supplier's obligations under the Contract

Documents. Any obligations performed by Supplier under circumstances in which Supplier was obligated, but failed, to timely seek such clarification shall be at Supplier's own risk.

1.3.11. Conflicts. All conflicts in the Contract Documents shall be reported to District, in writing before proceeding with the preparation or performance affected thereby. Notwithstanding the order of precedence provisions set forth in this Paragraph 1.3.11, in the event of conflict between any provision of the Contract Documents, the provision placing a more stringent requirement or greater burden on Supplier or requiring the greater quantity or higher quality shall prevail, unless otherwise directed by District in writing. Conflicts that cannot be so resolved shall be interpreted in accordance with the following order of precedence (the first being the highest order of precedence):

.1 Applicable Laws (provided, however, that where the Contract Documents require standards higher than those of Applicable Laws, the Contract Documents shall control).

.2 Orders.

.3 Addenda.

.4 Purchase Agreement and Exhibits.

1.4. OWNERSHIP AND USE OF DESIGN DOCUMENTS

1.4.1. Rights of District. With the exception of Proprietary Information, all Design Documents, Contract Documents and Submittals (including, without limitation, all electronic versions and paper copies thereof), including, without limitation, all designs and building designs depicted therein, are and shall remain the sole and exclusive property of District on whose behalf they were prepared. With respect to Proprietary Information, Supplier hereby grants to District an irrevocable, non-exclusive license to use and reproduce such Proprietary Information for the purposes solely related to the use, maintenance or replacement of the Goods covered by such Order.

1.4.2. Supplier License. Without derogation of District's rights under this Paragraph 1.4, Supplier and the Sub-Suppliers are granted a limited, non-exclusive license, revocable at will of District, to use and reproduce applicable portions of the Contract Documents and Submittals owned by it as appropriate to and for use in the performance of Supplier's obligations under the Contract Documents and for no other purpose.

1.4.3. Document Availability. Supplier shall at all times during performance of its obligations under the Contract Documents keep and make available at a location in the County of Los Angeles, for inspection by District and such others as requested by District, a complete set of the Design Documents, Contract Documents and Submittals.

1.4.4. Delivery to District. All Design Documents, Contract Documents and Submittals (including electronic versions and paper copies) in the possession of Supplier or the Sub-Suppliers pertaining to Goods covered by an Order shall be returned to District upon the earlier of Completed Delivery of the Goods covered by the Order or termination of the Purchase Agreement; provided, however, that Supplier and the Sub-Suppliers shall have the right to retain one (1) copy of the Contract Documents and Submittals as a permanent record.

1.4.5. Reproduction. Supplier shall, at Supplier's Own Expense, from reproducible prints provided by District, provide all reproduction and distribution of copies of Design Documents, Contract Documents and Submittals as necessary for the complete performance by Supplier.

1.4.6. Sub-Suppliers. Supplier shall take all necessary steps to ensure that a provision is included in all contracts with the first-Tier Sub-Suppliers, establishing, protecting and preserving District's rights as set forth in this Paragraph 1.4.

ARTICLE 2 TERM

The term of the Agreement is three (3) base years and two (2) one-year options at the sole discretion of the District. The base year term begins to run from the date of approval of this Purchase Agreement by the Board of Trustees of the Los Angeles Community College District or until the earlier of either of the following occurrences: (1) purchases are made

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under this Purchase Agreement equal to the Maximum Authority set forth in Paragraph 4.2, below; or (2) or termination of this Purchase Agreement by District in accordance with the provisions of Article 14, below.

Vendor does hereby agree that Orders may be issued by the District under this Agreement for a term of no less than three (3) years from the date of execution of this Agreement, after that period, no additional Orders may be issued by the District. However, this Agreement and any incomplete Order will remain in effect until all Order(s) are completed. The DISTRICT, at its option, may extend the Agreement for up to two (2) years beyond the initial three (3) year term in which case additional Orders can be authorized during the period of any such extension. The first optional additional year (4th year) shall be considered effective at the end of the three (3) year term unless you receive notice from the DISTRICT that it is exercising its sole right not extend the current term. The second optional additional year (5th year) shall be considered effective at the end of the four (4) year term unless you receive notice from the DISTRICT that it is exercising its sole right not extend the current term. None of the foregoing impacts the DISTRICT's rights to Terminate for Cause or Terminate for Convenience this Contract as defined throughout this Contract.

ARTICLE 3 DISTRICT

3.1. COMMUNICATIONS

District shall forward to supplier all communications that it receives addressed to supplier and pertaining to an order.

3.2. DISTRICT'S RIGHT TO STOP PERFORMANCE

With respect to Goods covered by an Order, if Supplier fails to correct Defective Goods or fails to perform in accordance with the Contract Documents or violates any Applicable Law, District may, without limitation to District's other rights under Article 14, below, or elsewhere in the Contract Documents immediately direct Supplier to stop performance thereof, or any portion thereof, until the cause for such order has been eliminated by Supplier. Supplier shall immediately comply with such notice and not be entitled to any adjustment of the Delivery Date or additional compensation as a result of any such direction. District shall have no duty or responsibility to Supplier or any other party to exercise the right to stop the performance.

3.3. DISTRICT'S RIGHT TO CARRY OUT PERFORMANCE

If Supplier defaults or neglects to perform in accordance with the Contract Documents and fails after receipt of written notice from District as provided for under Article 14, below, to commence and continue correction of such default or neglect with diligence and promptness, District may after expiration of the period of time provided for in Article 14, below, for curing of such default by Supplier, without prejudice to other remedies District may have, correct such deficiencies. In such case an appropriate deduction shall be made from payments then or thereafter due Supplier for the cost of correcting such deficiencies, including compensation for the additional services and expenses of the District Consultants, Separate Contractors or others to whom District may be liable, made necessary by such default, neglect or failure.

3.4. DISTRICT'S AUDIT RIGHTS

3.4.1. Maintenance of Records. Supplier shall, using accounting and control systems that comply with Applicable Laws and prevailing custom and practice, provide for the financial management of its performance under the Contract Documents. As part of the foregoing obligation, Supplier shall keep, and shall require its Sub-Suppliers to keep, full and detailed books, records, information, materials and data, of every kind and character, as such are created in the normal course of business, and in the form or format created or used in the normal course of business, that pertain to any matters, rights, duties or obligations directly relating to the furnishing of the Goods or the performance of the Purchase Agreement, including, without limitation, agreements, bills of lading, shipping sheets, inventories, purchase orders, leases, contracts, commitments, arrangements, notes, estimates, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda; accounting records; cost reports (including complete documentation covering negotiated settlements); back charges; general ledgers; documentation of cash and trade discounts earned; insurance rebates and dividends, and other documents relating in any way to Claims or other charges or time extensions asserted by Supplier or any of the Sub-Suppliers. Supplier shall preserve such records for a period of no less than four (4) years after expiration of the Term of the Purchase Agreement.

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3.4.2. Access, Inspection, Copying. Supplier shall allow, and shall be responsible for requiring its first-Tier Sub-Suppliers to allow, District, and its authorized representative(s), auditors, attorneys and accountants, upon two (2) Working Days' notice, full access to inspect and copy all books and records that Supplier is required to maintain pursuant to Paragraph 3.4.1, above, at a location within the State of California.

3.4.3. Confidentiality. It is understood that any such books and records that contain Proprietary Information and that are marked by Supplier or its Sub-Supplier as follows: "CAUTION: This Document Contains Proprietary Information Subject to Disclosure Conditions Contained in Paragraph 3.4 of the Purchase Agreement to the Purchase Agreement dated _____, 20__ [date of Purchase Agreement must be inserted] executed by _____ [Name of Supplier must be inserted]", shall be treated as confidential. District assumes no obligation of confidentiality with respect to any Proprietary Information that is not so marked. Disclosure of such marked, Proprietary Information shall not be made to any employee or representative of District or their auditors, attorneys and accountants without a need to know for purposes of exercising or fulfilling District's rights and obligations under the Contract Documents or Applicable Laws, nor shall Proprietary Information be disclosed to any third party except as required by Applicable Laws. In the event that such marked, Proprietary Information is required to be disclosed pursuant to any Applicable Law or pursuant to any order of any court of competent jurisdiction, District will: (1) immediately notify Supplier of such request or demand; and (2) as soon as possible, but at least ten (10) Days prior to making any such disclosure of such Proprietary Information, provide Supplier with a written, detailed description of the matter pertaining to the demand for disclosure, thereby allowing the opportunity to defend against such disclosure. The confidentiality of Proprietary Information that is received and marked as provided herein must be preserved as provided in this Paragraph until such time as such Proprietary Information is returned or destroyed in accordance with this Paragraph or if not returned or destroyed such confidentiality shall be preserved in perpetuity for so long as such Proprietary Information exists in the possession and control of District.

3.4.4. Return and Destruction. District assumes no obligation with respect to preservation, return or destruction of books and records provided to it by Supplier other than those books and records that constitute Proprietary Information that has been marked in the manner provided for in Paragraph 3.4.3, above. Supplier shall have the right at any time within one (1) year after expiration of the Term of the Purchase Agreement to request that originals and all copies such marked, Proprietary Information be returned to Supplier. Provided that District, in the exercise of its sole and absolute discretion, determines that it no longer has a need for such Proprietary Information, it shall be returned to Supplier. Otherwise, District shall return it to Supplier within a reasonable time after District determines, in its sole and absolute discretion that such need no longer exists. If return of such Proprietary Information is not so requested by Supplier within one (1) year after the expiration of the Term of the Purchase Agreement, it may be destroyed by District.

3.4.5. Pricing Data. Except and unless ordered to do so by a court or arbitrator for good cause and as part of a pending legal or arbitration proceeding, under no circumstances shall Supplier or its Sub-Suppliers be required or obligated to disclose the pricing, costing, or other financial information regarding raw materials or off-the-shelf components.

3.4.6. Specific Enforcement by District. Supplier agrees that the obligation of Supplier and of the Sub-Suppliers to provide access to its books and records as required by this Paragraph 3.4 shall be specifically enforceable, by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court and without the necessity of oral testimony, to compel Supplier to permit access, inspection, audit and/or reproduction of such books and records.

ARTICLE 4 COMPENSATION

4.1. PURCHASE PRICE

4.1.1. Purchase Price Amount. Supplier's compensation for performance in accordance with the Contract Documents is the Purchase Price, which is comprised of the unit price for the Goods as set forth in the Supplier's Bid on the Bid Form for Discount Off-List Price attached hereto as Exhibit "C", plus Applicable Sales Taxes shown as a separate line item on quotes and invoices.

4.1.2. All-Inclusive Price. Without limitation to the foregoing, the Purchase Price for the Goods delivered by UPS Ground includes compensation for all costs of shipment, delivery and set-up of the Goods to the Destination at the

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college specified on the Order, and as such are deemed free of any "destination in" charges to District, and all similar charges (including, without limitation, charges for delivery, shipping, drayage, express, storage, parcel post, packing, cartage, insurance, license fees, permits, and bonds). The costs of shipment, delivery and set-up of the Goods delivered by LTL carrier and expedited delivery will be prepaid by the Supplier and added as a separate line item on invoices.

4.1.3. Exclusive Compensation. The Purchase Price constitutes the Supplier's sole, exclusive and full compensation, excluding sales taxes, for the performance by Supplier of its obligations under the Contract Documents and is deemed to cover all Losses to the Supplier arising out of or related to the performance of such obligations, the acts of the elements or any unforeseen difficulties or obstructions upon the Supplier's performance, all risks (including, without limitation, cost and market price escalation, from any cause whatsoever) connected with the manufacture, shipment, delivery and storage of the Goods and any and all expenses incurred due to Delay.

4.1.4. Applicable Sales Taxes. Applicable Sales Taxes shall be computed on the basis of the sales tax percentage imposed by Applicable Laws on the sale of Goods multiplied times the unit price in Exhibit "C" attached hereto. Unless otherwise required by Applicable Laws, Applicable Sales Taxes as a part of the Purchase Price for Goods covered by an Order shall be computed as of the date of Receipt of Order applicable to such Order and shown as a separate line item on quotes and invoices.

4.2. MINIMUM CONTRACT VALUE

Save and except as otherwise provided in Article 14, District guarantees to Supplier that during the Term of this Purchase Agreement, the District will purchase Goods under this Purchase Agreement in the Guaranteed Minimum Contract Value of five hundred dollars (\$500.00).

District's guarantee as set forth in this Section 4.2 does not constitute a representation, guarantee or promise that Goods will be purchased under this Purchase Agreement that exceed the Guaranteed Minimum Contract Value. Goods purchased, even if they are later returned or rejected, that constitute Defective Goods shall be included in the calculation of the Purchase Prices of Goods purchased for purposes of determining whether the District's obligation set forth in this Section 4.2 has been met.

4.3. MAXIMUM CONTRACT AUTHORITY

District shall not purchase nor be entitled to purchase from Supplier, and Supplier shall not provide or be required to sell, Goods in quantities that exceed the Maximum Contract Value of two million dollars (\$2,000,000.00).

Supplier is obligated to furnish for the purchase price, if, as and when order(s) is/are placed by District in accordance with this Purchase Agreement, Goods from each bid classification in quantities up to but not exceeding the maximum authority stated in the Bid Documents. Except as otherwise provided in Paragraph 4.2, above, District makes no promise or representation that it will purchase Goods in any particular quantity under this Purchase Agreement, including, without limitation, quantities approximating or equaling the Maximum Authority set forth in the Bid Documents. Goods purchased that are later returned or rejected or that constitute defective work shall be included in the calculation of the dollar value of Goods purchased for purposes of determining whether the Maximum Authority has been reached.

4.4. ORDERING AND CANCELLATION

4.4.1. Content of Order. Supplier's obligations with respect to Goods covered by an Order shall commence upon Receipt of an Order setting forth the following: (1) a reference to this Purchase Agreement; (2) a description of the Goods ordered; (3) a statement of the quantity of the Goods ordered; (3) the Delivery Date; (4) the name and address of the District placing the Order; and (5) the Destination.

4.4.2. Order Authorizations. The District's Chief Facilities Executive, or a Purchasing Agent, authorized by the Chief Facilities Executive in writing (collectively "Purchasing Agent"), is the sole person or entity authorized on behalf of the District to issue Orders for purchases of Goods under this Purchase Agreement. The Purchasing Agent's authority is limited to issuing Orders for purchases of Goods, including, without limitation, issuing Supplementary Ordering Instructions and such other authority as is expressly conferred upon the Purchasing Agent under the terms of the Contract Documents. All other rights and obligations of the District relating to purchases of Goods, including, without

limitation, payment of compensation to Supplier and ordering of Changes to Work, are rights and obligations that are to be exercised or performed by the District only and not by the Purchasing Agent. Orders for Goods under the Purchase Agreement shall only be permitted if made, and shall not be honored by Supplier unless requested, pursuant to an Order issued by the Purchasing Agent to the Supplier. Purchases by the District or Designated Districts and Agencies of Goods under this Purchase Agreement by any other means is prohibited.

4.4.3. Separate Destinations. A separate Order shall be issued for each Lot of Goods ordered by District for delivery to a different Destination.

4.4.4. Supplier Proposals. With respect to any Order placed by District, the District will not be bound by any provisions contained in any of Supplier's proposals, purchase orders, acknowledgements, counter-offers, invoices, acceptances or other documents prepared by Supplier (whether or not attached, referenced or incorporated in the terms of the Order) that contain terms or conditions that in any way differ from or are an addition to the terms and conditions of the Order and this Purchase Agreement and District's failure to object to such different or additional provisions will not be deemed an acceptance of such different or additional terms and conditions nor a waiver of the terms and conditions set forth in the Order and this Purchase Agreement.

4.4.5. Cancellation without Charge. The District shall have the right to cancel an Order, without incurring any responsibility or liability to Supplier, in the following circumstances: (1) District shall have the right to cancel any Order, or portion of an Order, of Goods, at no cost to the District and without any charge or cancellation fee of any kind, provided that the District gives written notice to the Supplier of such cancellation within one (1) Working Day of Receipt of Order by the Supplier; and (2) District shall have the right, at no cost to the District and without any charge or cancellation fee of any kind, in the event of a termination of an Order due to Supplier default pursuant to Article 14 of the Purchase Agreement, to cancel the Order directly affected by such default as well as any other outstanding Order that involves the purchase of Goods that, because of their relationship to the Goods covered by the terminated Order, are rendered substantially less useful or valuable to the District as a result of the such termination.

4.5. OTHER DESIGNATED DISTRICTS AND AGENCIES

ACCEPT 4.5 ☒

REJECT 4.5 ☐

If Supplier or Vendor agrees, Districts or Agencies that qualify under Public Contract Code Section 20652 for purchases of Goods under this Purchase Agreement (Designated Districts and Agencies"), shall have the same rights as the Los Angeles Community College District to request performance of Work during the Term of this Purchase Agreement, without the necessity of further competitive bidding or other competition; provided, however, that any such requests must be made through the Purchasing Agent, who is the sole person or entity authorized to issue Orders under the terms of this Purchase Agreement. The Vendor agrees to perform the Work and Changes to the Work as ordered and requested by the Designated Districts and Agencies on and under the same terms and conditions as are available to District under the Contract Documents; provided however, that: (1) each such Order and request shall be deemed financially separate; (2) the Designated District or Agency making such Order or request shall be solely and separately responsible to Supplier for its financial and other commitments under the Contract Documents; and (3) no fiduciary responsibility, contractual obligation nor performance liability shall exist between the District and any of the Designated Districts or Agencies or between or among any of the Designated Districts and Agencies. Orders by Designated Districts and Agencies shall be complied with by the Supplier in accordance with the Supplier's obligations under this Purchase Agreement and the other Contract Documents. In addition, Supplier agrees to comply with such other customary contracting requirements of any Designated Districts and Agencies (including, without limitation, execution of any affidavits, certifications, bond requirements or other required documentation) that are consistent with the contracting rules, regulations or practices adopted and approved by the governing board or council for such Designated District or Agency.

4.6. TRADE IN PROGRAMS

Pursuant to Education Code Section 81454 the governing board of any community college district may dispose of personal property belonging to the District for the purpose of replacement by providing in the notice calling for bids for furnishing new materials, articles, or supplies that each bidder shall agree in his bid to purchase the property being replaced and to remove it from the school grounds and shall state in his bid the amount which he will deduct from the

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price bid for furnishing new materials, articles, or supplies as the purchase price for the personal property being purchased from the District.

4.6.1. Discounts. Although discounts offered for trade-in will not be considered in the Award of the Purchase Agreement, District shall be entitled to receive trade-in discounts from the Purchase Price that are then offered by supplier. In the event that more than one discount is offered, District will be entitled to the most favorable discount offered.

4.6.2. Offer. Provided the Supplier offers a trade-in program the Supplier, at the time of the Bid, shall include the trade-in program details available to the District. The District may, at its discretion, choose to exercise the trade-in option offered by the Supplier.

ARTICLE 5 SUPPLIER

5.1. SUPPLIER STATUS

5.1.1. Duty. With respect to any Order placed by District, Supplier shall apply its best and highest skill and attention to performing its obligations under the Contract Documents in an expeditious and economical manner, consistent with the best interests of District.

5.1.2. Independent Contractor. Supplier is, and shall at all times be deemed to be, an independent contractor and is wholly responsible for the manner in which it performs the obligations required of it by the terms of the Contract Documents. Supplier wholly and without reservation assumes the responsibility for the acts of its agents and employees in the performance of the Purchase Agreement and all Orders. Supplier, its agents and employees, shall not be entitled to any rights or privileges of District's employees and nothing contained in the Contract Documents and no course of conduct shall be construed as creating the relationship of employer and employee, or principal and agent, between District and any agent or employee of Supplier or any of the Sub-Suppliers.

5.1.3. Licenses. Supplier shall maintain, and shall require all Sub-Suppliers, of any Tier, who furnish Goods or any portion thereof to maintain, such licenses, if any, as may be required by Applicable Laws for the duration of time that Supplier is performing under the Contract Documents, including the period of any warranty provided covering all or any portion of the Goods.

5.1.4. Responsibility for Sub-Suppliers. The failure on the part of any Sub-Supplier, of any Tier, to perform any duty, responsibility or obligation, contractual or otherwise, to Supplier or to any other Sub-Supplier, of any Tier, shall under no circumstances be construed as relieving or excusing Supplier from its responsibility and liability for the full performance of all of the obligations assumed by Supplier under the Contract Documents. References in the Contract Documents to obligations assumed by "first-Tier Sub-Suppliers" shall not be interpreted as an express or implied limitation upon the provisions of this Paragraph 5.1.4.

5.1.5. Responsibility Not Relieved by Approvals. Supplier shall not be relieved of its obligations to perform in accordance with the Contract Documents either by the activities or duties of District, Design Consultants, the College Project Directors, Program Manager, District Consultants or Separate Contractors so long as such activities are not negligent, illegal, or willful misconduct, or by tests, inspections or approvals required or performed by persons other than Supplier.

5.2. REVIEW OF DOCUMENTS AND SITE

5.2.1. Review of Bidding Documents. Supplier acknowledges and agrees that its submission of its Bid and execution of the Purchase Agreement constitutes a representation that it has had the opportunity, prior to submitting its Bid, to thoroughly and carefully review and compare the Bidding Documents to its satisfaction. Based upon such careful review, Supplier agrees that it shall not be entitled to, and hereby conclusively waives, any right to additional compensation or extension to any Delivery Date due to additional or unforeseen Losses or Delays relating to information in Bidding Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Laws, if prior to submission of its Bid such information was either: (1) discovered by Supplier or any Sub-Supplier and Supplier failed to seek clarification prior to submitting its Bid; or (2) reasonably discoverable by Supplier or

any Sub-Supplier in the exercise of care and diligence in the capacity as an experienced supplier, dealer, supplier, manufacturer or distributor of the types of products, materials, goods to be provided by Supplier under the Contract Documents. Without limitation to any other provisions of the Contract Documents, Supplier shall take steps to ensure that the provisions of this Paragraph 5.2.1 are incorporated into in all contracts entered into by Supplier with its first-Tier Sub-Suppliers.

5.2.2. Review of Contract Documents. Upon receiving an Order, Supplier is responsible to promptly, thoroughly and carefully review and compare the Contract Documents (including, without limitation, the Order) to its satisfaction. Based upon such careful review, Supplier agrees that it shall not be entitled to, and hereby conclusively waives, any right to additional compensation or extension to any Delivery Date due to additional or unforeseen Losses or Delays relating to information therein constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Laws, if Supplier fails to seek clarification thereof in its Acknowledgment of Shipping Date and if such information was either: (1) discovered by Supplier or any Sub-Supplier in the course of such review; or (2) reasonably discoverable by Supplier or any Sub-Supplier in the exercise of care and diligence in the capacity as an experienced supplier, dealer, supplier, manufacturer or distributor of the types of products, materials, goods to be provided by Supplier under the Contract Documents. Failure by Supplier to send its Acknowledgement of Shipping Date within ten (10) Days after Receipt of Order shall be conclusively deemed to be a representation by Supplier that no such clarification is required and shall constitute a waiver of Supplier's right to additional compensation or extension of the Delivery Date. Without limitation to any other provisions of the Contract Documents, Supplier shall take steps to ensure that the provisions of this Paragraph 5.2.2 are incorporated into in all contracts entered into by Supplier with its first-Tier Sub-Suppliers.

5.2.3. Review of Conditions at Site. Supplier shall be deemed charged with knowledge of all facts, circumstances and other information that was available or provided to Bidders at any Pre-Bid Conference (whether optional or mandatory). Supplier shall, upon receipt of an Order, visit and inspect the Site and Existing Improvements where the Goods are to be delivered in order to fully acquaint itself with the conditions affecting access to the Site and delivery of the Goods, including, without limitation, the following: (1) the stage of completion and condition of the Existing Improvements and other construction at the Site where the Goods covered by the Order will be delivered; (2) the availability of facilities for access, delivery, transportation and staging at such Site; and (3) any other physical and environmental restrictions affecting Supplier's furnishing of the Goods at such Site. Supplier shall correlate its observations with the requirements of the Contract Documents and promptly report any discrepancies to District.

5.3. PACKING, SHIPPING, TRANSPORTATION

5.3.1. Transportation. Unless otherwise stated in the Contract Documents, all shipments, deliveries and set-up of the Goods to or at the Destination specified in the Order are deemed free of any "destination in" charges to District, and all such charges (including, without limitation, charges for delivery, shipping, drayage, express, storage, parcel post, packing, cartage, insurance, license fees, permits, and bonds) are included in the Purchase Price.

5.3.2. Acknowledgement of Shipping Date. No earlier than five (5) Days after Supplier's receipt of an Order, Supplier shall provide to District an Acknowledgement of Shipping Date. The Supplier shall contact the District representative to coordinate the desired delivery date and then shall deliver the Goods according to confirmed delivery date.

5.4. DELIVERY, INSTALLATION, ACCEPTANCE, REJECTION AND RETURN

5.4.1. Costs. Unless otherwise expressly provided for in the Contract Documents, Supplier shall provide and pay for labor, materials, tools, equipment, machinery and transportation necessary for proper preparation and performance.

5.4.2. Notice of Delivery. Supplier shall provide written Notice of Delivery to District not fewer than seven (7) Days prior to actual delivery, as to the time for delivery of Goods at the Site. District shall have the right, at no additional charge to District, to specify or change the Destination drop off point within a Site at any time.

5.4.3. Delivery. Supplier shall deliver Goods to the location on the Site identified in the Order or as otherwise directed in accordance with Paragraph 5.4.2, above. Supplier is obligated, at no additional charge to District, to make

deliveries on any Working Day between the hours of 8 am to 3 pm. Deliveries shall not be made on Saturday, Sundays or Holidays without prior written approval by District. Supplier shall consult with District to identify in advance of each delivery a route to be used for delivery. District shall have the right to require that Supplier comply with its requirements for restriction of deliveries to specified locations or only within defined time frames. Goods shall be furnished in ample quantities and at such times as required by the Order, unless otherwise directed in writing by District. If Supplier delivers in excess of the quantities required by the Contract Documents, District shall not be required to accept or make any payment for the excess quantities and assumes no obligation to notify Supplier thereof or to protect, preserve or return any portion of such excess quantities to Supplier.

5.4.4. Title. Without limitation to District's right to reject Goods as provided for elsewhere in the Contract Documents, title to the Goods, risk of loss and attendant risk and liability for their protection and safety, shall remain with Supplier until the earlier of payment by District or acceptance of the Goods in accordance with Paragraph 5.4.9, below; provided, however, that District shall assume no risk or loss with respect to, and shall have no obligation to accept any Goods that do not conform to the Contract Documents, that are delivered prior to or after the Delivery Date, or that are in excess of quantities required by the Contract Documents. No portions of the Goods shall be accepted or purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by a seller or supplier. Supplier warrants good title to all portions of the Goods and agrees to deliver the Goods to District free from any claims, liens, or charges. Supplier further agrees that neither it nor any person, firm, or corporation furnishing any of the Goods shall have any right of lien upon the Site, or any Existing Improvement or appurtenance thereon.

5.4.5. Preliminary Inspection. District shall have the right, exercised in its sole discretion, to conduct a preliminary inspection of the Goods upon delivery for the purpose of confirming delivery and quantities delivered. Such preliminary inspections shall not constitute acceptance of, taking charge over or a waiver of right to reject the Goods, or any portion thereof.

5.4.6. Quality Assurance. Supplier and its Sub-Suppliers will: (1) provide and maintain a quality assurance system covering all Goods to be provided by Supplier under the Purchase Agreement and will tender only those items of Goods that have been inspected by Supplier and found to conform to the Contract Documents; (2) keep records evidencing these inspections and make these records available to District upon request by any of them; and (3) permit District upon request by either of them to review procedures, practices, processes and related documents.

5.4.7. Conduct of Personnel. District shall have the right to require that Supplier: (1) at all times maintain good discipline and order among its employees and the Sub-Suppliers at the Site; and (2) remove from a Site any person in the employ of Supplier or any of the Sub-Suppliers whom District may deem, in their separate and sole discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable and not again employ such person on any except with written approval of District. District shall provide to Supplier a notice in writing of its decision to bar any employee of Supplier or a Sub-Supplier from a Site, including the reason therefor.

5.4.8. Inspection for Completed Delivery. Supplier shall notify District in writing when it considers that it has achieved Completed Delivery of a Lot of Goods designated in an Order. District shall conduct an inspection of the Goods, including, without limitation, a review of any documents that Supplier is obligated to furnish as a condition of Completed Delivery under the Contract Documents.

5.4.9. Notice of Completed Delivery. Following Completed Delivery of a Lot of Goods described in an Order, District will issue a Notice of Completed Delivery to Supplier. Such Notice of Completed Delivery shall be issued within a reasonable time, not fewer than seven (7) Days after inspection of the Goods by District or by such others as requested by District. Such Notice of Completed Delivery shall be considered acceptance of the Goods by District. No other acts or course of conduct on the part of District, College Project Director, District Consultants, Separate Contractors or others acting on behalf of District shall be considered acceptance of the Goods, or any portion thereof. If it is determined after the inspection of the Goods that Supplier has not achieved Completed Delivery of any portion of the Goods, then District shall issue to Supplier within a reasonable period of time a written statement of the reasons for the rejection. Notwithstanding any payment by District, no portion of the Goods shall be considered as accepted unless and until the Notice of Completed Delivery is issued in the manner provided for in this Paragraph 5.4.9.

5.4.10. Acceptance. Acceptance of the Goods (including issuance of Notice of Completed Delivery) shall not (1) waive any rights District may have under the Contract Documents or Applicable Laws with respect to any failure of the Goods to conform to the requirements of the Contract Documents; (2) be considered as a waiver by District of any right to recover for any Loss caused, in whole or in part, on account of Defective Goods, whether or not such Defective Goods was known or suspected prior to District's acceptance of or payment for the Goods; and (3) District shall have the right, but not the obligation, to revoke any acceptance of the Goods, or any portion thereof, based on its determination that the Goods, or any portion thereof, do not comply with the Contract Documents.

5.4.11. Right to Cure. Supplier's right to cure a breach of the Contract Documents due to performance of Goods that does not conform to the Contract Documents shall be limited to its rights to cure set forth in Article 14, below.

5.4.12. No Limitation of Rights. The rights and remedies of District set forth in this Paragraph 5.4 are in addition to, and not a limitation on, District's other rights and remedies under Applicable Laws.

5.4.13. Coordination. Supplier shall cooperate in scheduling the delivery of the Goods to avoid conflict, delay in or interference with the work of Separate Contractors or the construction or operations of District's own forces.

5.5. SUPPLIER'S WARRANTY

5.5.1. General Warranty. Supplier shall, and hereby does, warrant and guarantee, with respect to the Goods and each portion thereof, that: (1) the Goods are new; (2) the Goods shall be free of liens, claims and security interests of third parties; (3) the Goods shall be free of defects and deficiencies in workmanship and/or materials under conditions of normal use and care for a period of not less than one (1) year following Completed Delivery and such longer period(s) of time as may be provided for in the Contract Documents, including, without limitation, the extended warranty provisions of the Bid and Contract Documents; (4) the Goods conform with the requirements of the Contract Documents and Applicable Laws; (5) the Goods are suitable and fit for their intended use; and (6) the Goods shall not be altered or misbranded within the meaning of any Applicable Laws. If required by District, Supplier shall furnish satisfactory evidence as to the kind and quality of Goods and their compliance with the requirements of this warranty. Neither the foregoing warranty nor any other warranty or guarantee contained elsewhere in the Contract Documents shall be interpreted as covering negligent installation or placement of the Goods by District or its Separate Contractors, alterations to the Goods made by District or its Separate Contractors, or misuse or abuse of the Goods by District or its Separate Contractors following Completed Delivery. Any Goods found to be defective within the first ninety (90) days of service shall, at the District's option, be returned for a full refund or exchange at no cost to the District. Goods found to be defective after the first ninety (90) days of service may be either repaired or replaced at the District's option. The warranty must include all costs of repair, including transportation costs, during the warranty period.

5.5.2. Repair, Replacement. Without limitation upon District's other rights or remedies under the Contract Documents or Applicable Laws, any and all Goods that are not in conformance with the foregoing general warranty or other warranties or guarantees shall be repaired or replaced, together with the replacement of any other District property or improvements (including, without limitation, products or work installed by Separate Contractors, District's own forces or others), which may be removed, displaced or damaged by such replacement activities. Supplier shall notify District in writing upon completion of such repair or replacement. In the event of failure by Supplier to commence and pursue with diligence said repair or replacement within ten (10) Days after being notified in writing by District, District is hereby authorized to proceed, with such repair or replacement as District deems necessary and expedient.

5.5.3. No Limitation. Nothing stated in this Paragraph 5.5 shall in any way limit the guaranties or warranties on any Goods for which a guarantee or warranty is required under any other provision of the Contract Documents or on any Goods for which a manufacturer gives any guarantee or warranty on terms that afford District greater rights than that provided for in this Paragraph 5.5. Supplier acknowledges and agrees that no exclusion of or limitation to warranties or guarantees contained in any proposal, product literature or other submittal, whether or not approved by District, College Project Director, Design Consultants, District Consultant or others, shall affect the warranties or guarantees provided pursuant to this Paragraph 5.5.

5.5.4. Delivery. Unless sooner requested by District, Supplier shall furnish to District, as a condition precedent to payment, all guaranties or warranties as are required by the terms of the Contract Documents. All such guaranties and warranties shall be in writing and in such form and accompanied by such certifications and instruction materials as

may be required by the Contract Documents. In the event that the Purchase Agreement is terminated pursuant to Article 14, below, all guaranties and warranties for Goods for which Supplier has achieved Completed Delivery or that are in the process of preparation or delivery and are specially requested and accepted by District for delivery following such termination shall be promptly delivered to District, which delivery shall be considered a condition precedent to payment for such Goods.

5.5.5. Acceptance of Nonconforming Work. Notwithstanding any other provisions of the Contract Documents to the contrary, District shall have the option, exercised in its sole and absolute discretion in the event that Supplier fails after notice to remedy Defective Goods, and in lieu of correcting the Defective Goods itself, to effect a reduction in the Purchase Price to reflect the reduced value of performance received by District. District's exercise of such option shall not be implied from any act or omission by District. If there are no remaining payments of the Purchase Price to be made to Supplier, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Purchase Price, Supplier shall promptly pay to District the amount of any such deficiency.

5.6. TAXES

5.6.1. General. The Purchase Price includes and the Supplier shall pay all local, state and federal taxes, including, without limitation, all sales, consumer, business license, operations, excise, transaction, use and similar taxes on or related to the Goods or portions thereof, and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to employees.

5.6.2. Tax Exempt Status. If purchase of the Goods is tax-exempt, then Supplier shall comply with Applicable Laws concerning tax-exempt transactions or projects.

5.6.3. Documentation of Tax Exempt Status. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, then District, upon request, will execute documents necessary to show: (1) that District is a political subdivision of the State for the purposes of such exemption; and (2) that the sale is for the exclusive use of District. No such exempted excise tax shall be included in any price (including, without limitation, the Bid) submitted by Supplier.

5.6.4. Records of Taxes. Supplier and the Sub-Suppliers shall keep sufficient records to verify the amount of sales and use taxes paid. Failure by Supplier to keep or submit such records, resulting in the inability of District to claim a refund for taxes for such materials, shall entitle District to recover from Supplier the amount of such tax refund.

5.7. APPLICABLE LAWS

5.7.1. Applicable Laws. Supplier shall comply with, and give notices required by, Applicable Laws applicable to Supplier's performance.

5.7.2. Notice of Violations. Supplier shall immediately notify District and in writing of any instruction received from District, College Project Director, a Design Consultant, a District Consultant, a Separate Contractor or any other person or entity that, if implemented, would cause a violation of any Applicable Law. If Supplier fails to provide such notice, then District shall be entitled to assume that such instruction is in compliance with Applicable Laws.

5.8. KEY PERSONNEL

Supplier, during the Contract Term, shall make available to the District Key Personnel for effective communication between the District and Supplier in regards to all Orders and problem resolution.

5.9. SUBMITTALS

5.9.1. Not Contract Documents. Shop Drawings, Product Data, Samples and other Submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Goods for which Submittals are required the way Supplier proposes to conform to the designs and other information in the Contract Documents. Review of

Submittals on behalf of District by the Design Consultants, District Consultants and College Project Director is subject to the limitations of Paragraph 5.9.5 and Paragraph 5.9.6, below.

5.9.2. Supplier Approval. Supplier shall review, stamp "approved" and submit all Submittals to the College Project Director. Supplier's approval and submission of Submittals constitutes a representation that Supplier has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and with other related Submittals. Submittals without evidence thereon of Supplier's approval shall be returned, without further consideration, for resubmission in accordance with these requirements. Supplier shall cooperate in the coordination of its Shop Drawings, Product Data, Samples and other Submittals with related documents submitted by Separate Contractors. Submittals made by Supplier which are not required by the Contract Documents may be returned without action.

5.9.3. Submission to College Project Director. All Shop Drawings, Product Data, Samples and other Submittals shall be submitted to the College Project Director. Submittals shall be prepared in accordance with the CADD Drafting Manual. Submittals shall be submitted allowing such time as may be specified in the Contract Documents to allow review without causing Delay to Supplier's performance. Except where the preparation of a Submittal is dependent upon the approval of a prior Submittal, all Submittals pertaining to the same class or portion of the Goods shall be submitted simultaneously. Supplier is responsible to pay, at Supplier's Own Expense, additional services fees and costs incurred by District to a Design Consultant, College Project Director or a District Consultant in order to expedite review of Submittals which are not submitted in a timely fashion. Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams or product samples, necessary to describe a system, product or item. Submittals shall show in detail the size, sections and dimensions of the Goods; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings for attaching the Goods. When required by the Contract Documents, supporting computations shall be submitted. All Submittals shall be accompanied by an accurately completed transmittal in the form required by District. The transmittal shall give a list of the numbers of the sheets submitted. All sheets shall be marked with the name of the Purchase Agreement and the name of Supplier shall be numbered consecutively. A separate transmittal form shall be used for each specific item or class of material or equipment for which a Submittal is required. Transmission of Submittals of various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. Any Submittal not accompanied by such transmittal form, or where all applicable items on the form are not completed, will be returned for re-submittal without review. Supplier shall deliver duplicates of Submittals to all other persons whose work or performance is dependent thereon.

5.9.4. Delivery of Goods. Supplier shall deliver no portion of the Goods requiring submittal and review of Shop Drawings, Product Data, Samples or other Submittals until the respective Submittal has been approved in the manner required by the Contract Documents. Such Goods shall be in accordance with approved Submittals.

5.9.5. Supplier Representations. By approving and submitting Shop Drawings, Product Data, Samples and other Submittals, Supplier represents that Supplier has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents.

5.9.6. Supplier Responsibility. Supplier is, notwithstanding any review or approval thereof by College Project Director, Design Consultants or District Consultants acting on behalf of District, solely responsible for the content of all Shop Drawings, Product Data, Samples and other Submittals. Without limitation to the foregoing, deviations in Submittals from requirements of the Contract Documents shall remain the sole responsibility of Supplier unless Supplier has specifically informed District in writing of such deviation at the time of submission of the Submittal and the College Project Director has approved thereof.

5.9.7. Notation of Revisions. Supplier shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other Submittals, to revisions other than those requested of Supplier on previous Submittals.

5.9.8. Informational Submittals. Informational submittals upon which responsive action is not expected may be so identified in the Contract Documents.

5.9.9. Additional Compensation. Subject to Supplier's rights and obligations under Article 9, below, revisions indicated on Shop Drawings, Product Data, Samples or other Submittals shall not be considered as a basis for additional compensation or extension to any Delivery Date.

5.10. CLEANING UP

5.10.1. Supplier Responsibility. Supplier at all times shall keep the Site free from debris such as waste, rubbish and excess materials and equipment caused by Supplier's activities or the activities of its Sub-Suppliers. Supplier shall not leave debris under, on or about the Site but shall promptly remove same to a location located off-Site. Refuse generated by Supplier shall be reclaimed and recycled as required by the terms of the Contract Documents. Supplier shall not deposit refuse in the trash containers located on the Site for use by District, College or their employees, staff or students or provided by Separate Contractors for use in connection with the performance of other work on the Site.

5.10.2. Cleanup by District. If Supplier fails to clean up as provided in the Contract Documents, the District may arrange to do so, and the cost thereof shall be charged to Supplier or, at District's option, may be withheld from payments due to Supplier.

5.11. ACCESS BY DISTRICT

5.11.1. By District. District, Program Manager, College Project Director, Design Consultants and District Consultants, and their representatives, and such other persons as authorized by District or the College Project Director, shall at all times have access to inspect the Goods, either in preparation or in progress and whether located on-Site or off-Site at plants, manufacturing facilities or warehouse facilities. Supplier shall provide safe and proper facilities for such access so that such inspections may be performed safely.

5.11.2. By Separate Contractors, District's Forces. Supplier shall cooperate with District, the District's forces and Separate Contractors and not interfere with other work being done by them or on their behalf on a Site.

5.11.3. DELIVERY ROUTES. Supplier shall arrange for delivery of goods over routes designated by the college project director or other District representatives.

5.12. ROYALTIES AND PATENTS

Supplier shall pay all royalties and license fees associated with the furnishing the Goods. Supplier shall upon written request by District defend suits or claims for infringement of copyright, trademark, patent rights or trade secret violation and shall indemnify and hold District, Program Manager, College Project Director, Design Consultants, Separate Contractors, District Consultants and the other Indemnitees harmless from Loss on account thereof; provided, however, that such obligation by Supplier to defend and indemnify shall not apply if such infringement is the result of or caused by the modification or alteration of the Goods from their condition at the point of Completed Delivery by District, College Project Director, or their contractors, consultants, employees, agents, or volunteers. If Supplier has reason to believe that the furnishing of the Goods is an infringement of a patent, Supplier shall promptly notify the College Project Director. Without limitation to any of District's other rights or remedies, should the Goods, or any portion thereof, become or be likely to become the subject of a claim of infringement or violation of a copyright, trademark, patent rights or trade secret, Supplier may, at Supplier's Own Expense, either procure for District the right to continue using the Goods or replace the portion of the Goods with a substitute product, material or item that District determines, in the exercise of its sole discretion, is equal to the Goods required and that is non-infringing.

5.13. INDEMNIFICATION

5.13.1. General Indemnity. To the fullest extent permitted by law, Supplier agrees upon written demand by District to indemnify, defend and hold harmless, District, Board of Trustees, District's Colleges, and each of their members, officers, employees, agents, and insurers ("Indemnitee(s)"), through legal counsel reasonably acceptable to District, from any and all Losses, regardless of whether caused in part by the acts or omissions of such Indemnitee, arising out of or relating to any of the following: (1) any act or omission of Supplier or any Sub-Supplier, of any Tier; (2) the activities of Supplier or any Sub-Supplier, of any Tier, related to performance of the obligations under the Contract

Documents or related to the preparation for performance of under the Contract Documents; (3) the payment or nonpayment of any Sub-Supplier, of any Tier, for the Goods; (4) the existence of any Hazardous Substances on a Site as a result of Supplier's or a Sub-Supplier's, of any Tier, failure to comply with the requirements of the Contract Documents; or (5) the infringement or violation by Supplier or a Sub-Supplier of any Tier, of any patent, copyright, trademark or trade secret as provided in Paragraph 5.12, above; provided, however, that nothing contained herein shall be construed as obligating Supplier to indemnify an Indemnitee for Losses resulting from that Indemnitee's sole negligence, that Indemnitee's active negligence or that Indemnitee's willful misconduct, where such sole negligence, active negligence or willful misconduct has been determined by agreement of Supplier and that Indemnitee or has been adjudged by the findings of a court of competent jurisdiction. In instances where an Indemnitee's active negligence or willful misconduct counts for only a percentage of the Loss involved, the obligation of Supplier will be for that portion of the Loss not due to that Indemnitee's active negligence or willful misconduct.

5.13.2. Insurance, Employment Benefits. The indemnification, defense and hold harmless obligations of Supplier under this Paragraph 5.13, as well as any such obligations stated elsewhere in the Contract Documents: (1) shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Supplier or any Sub-Supplier is required to carry under the terms of the Contract Documents or that is provided by District; (2) are independent of and in addition to the Indemnitees' rights under the insurance to be provided by Supplier or any Sub-Supplier; and (3) shall not be limited, in the event of a claim against an Indemnitee by an employee of Supplier, a Sub-Supplier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, by a limitation on amount or type of damages, compensation or benefits payable by or for Supplier or Sub-Supplier under any worker's compensation act, disability benefit act or other employee benefit program.

5.13.3. Implied Indemnity Rights. Notwithstanding anything stated in this Paragraph 5.13 or elsewhere in the Contract Documents to the contrary, an Indemnitee's right to seek equitable indemnity and contribution from Supplier is in no way diminished or precluded by any agreement by Supplier to provide express contractual indemnity to such Indemnitee. Supplier's obligations under this Paragraph 5.13 shall be deemed to completely eliminate and preclude any right by Supplier to seek contractual or equitable indemnity or contribution from any Indemnitee for any Loss covered by Supplier's express indemnification obligations under this Paragraph 5.13.

5.13.4. Obligation to Defend. Supplier's obligation to defend under this Paragraph 5.13 includes, without limitation, the obligation to immediately reimburse an Indemnitee for any attorney's fees, court costs (statutory and non-statutory), arbitration and mediation expenses, professional, expert and consultant fees, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses associated with defense of such Indemnitee as and when incurred by any Indemnitee in defense of a claim by any third person or entity as a result of Supplier's failure or refusal to comply with its immediate defense obligation to such Indemnitee. Nothing stated in this Paragraph 5.13 or elsewhere in the Contract Documents shall be interpreted as providing or implying that the obligation of Supplier to defend an Indemnitee against an alleged Loss that is within the scope of Supplier's indemnification obligation under Paragraph 5.15 or under any other provision of the Contract Documents is to any extent released, excused, limited or relieved by a finding, determination, award or judgment by a court or arbitrator that the alleged Loss was due to circumstances not within the scope of such indemnification obligation.

5.13.5. Sub-Supplier Indemnity Agreements. Supplier agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Paragraph 5.13 from each and every Sub-Supplier, of every Tier. In the event Supplier fails to do so, Supplier agrees to be fully responsible to provide such defense and indemnification according to the terms of this Paragraph 5.13.

ARTICLE 6 ADMINISTRATION

6.1. DESIGN CONSULTANTS, DISTRICT CONSULTANTS

Notwithstanding anything else set forth in the Contract Documents, Design Consultants and District Consultants do not have authority to: (1) obligate or commit District to any payment of money; (2) obligate District to any additional compensation or extensions of any Delivery Date; (3) relieve Supplier of any of its obligations under the Contract Documents; (4) approve or order any Goods; (5) accept any Goods; or (6) stop the performance of Supplier or terminate an Order or the Purchase Agreement. District may, in its sole discretion, substitute another person or entity, or add

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persons or entities, to perform the functions of the Design Consultant or to exercise some or all of the authority of the Design Consultant provided for in the Contract Documents. All rights and authority conferred upon the Design Consultant and District Consultants constitute rights that District may, in its discretion, directly exercise on its own behalf.

6.2. COLLEGE PROJECT DIRECTOR

The College Project Director has the authority to act and communicate on behalf of District in respect to all matters involving performance by Supplier; provided, however, and notwithstanding anything else set forth in the Contract Documents, that the College Project Director does not have authority, whether by its approval, decisions, certification or other actions, to: (1) obligate or commit District to any payment of money; (2) obligate District to any additional compensation or extension to any Delivery Date; (3) relieve Supplier of any of its obligations or liabilities under the Contract Documents (including, without limitation, obligations and liabilities relating to Defective Goods, whether or not such Goods have been specifically approved by College Project Director); (4) make decisions on Claims; or (5) act or communicate on behalf of any College other than the College on whose behalf the College Project Director has been retained. District may, in its sole discretion, substitute another person or entity, or add persons or entities, to perform the functions of the College Project Director or to exercise some or all of the authority of the College Project Director provided for in the Contract Documents. All rights and authority conferred upon the College Project Director constitute rights that District may, in its discretion, directly exercise on its own behalf.

6.3. ADMINISTRATION

6.3.1. Observations. District, Design Consultants, Separate Contractors, Program Manager, College Project Director and District Consultants may observe the performance by Supplier or its Sub-Suppliers. Such observations shall not constitute inspection or acceptance of the Goods and shall be separate from any inspections which may be provided by others.

6.3.2. Communications Facilitating Administration. Supplier shall communicate with District and its College Project Director, Program Manager, Design Consultants, District Consultants and Separate Contractors through District. Supplier shall not rely on oral communications.

6.3.3. Review of Invoices. District will review and certify all Invoices for Payment to Supplier.

6.3.4. Rejection of the Goods. District will have authority to reject any portion of the Goods which does not conform to the Contract Documents and to require additional inspection or testing of the Goods in accordance with Article 11, below, whether or not such Goods are fabricated, installed or completed. Neither the authority to act under this Paragraph 6.3.4 nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility to Supplier, the Sub-Suppliers, their agents or employees, or other persons performing under the Contract Documents.

6.3.5. Submittal Review by College Project Director. The College Project Director acting on behalf of District will receive from Supplier and transmit to the Design Consultant and/or appropriate Design Consultant those recommended for review. The College Project Director's actions will be taken with such promptness as to cause no unreasonable Delay. Any review or approval by the College Project Director is solely for the purpose of determining if a Submittal has been assembled to include those documents required by the Contract Documents to be included in such Submittal and does not constitute a review or approval of the design or other technical information contained therein.

6.3.6. Submittal Review by Design Consultants, District Consultants. Review, approval or other action upon Supplier's Submittals such as Shop Drawings, Product Data, Samples and other Submittals, is for the limited purpose of checking for conformance with information given in the Contract Documents. Such action will be taken with such promptness as to cause no unreasonable Delay, while allowing sufficient time in the adequate review. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Supplier as required by the Contract Documents. Such review of Supplier's Submittals shall not relieve Supplier of the obligations under Paragraph 5.9, above, and any such approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.3.7. Completed Delivery. District will conduct inspections of the Goods to determine the dates of Completed Delivery and will receive written warranties and related documents required by the Contract Documents and assembled by Supplier.

ARTICLE 7 SUB-SUPPLIERS

7.1. SUB-SUPPLIER RELATIONS

Supplier shall make available to all sub-suppliers of any tier the contract documents. Regardless of contract documents availability to sub-suppliers the supplier shall be responsible for sub-suppliers', of any tier, adherence to the contract documents.

7.1.1. By appropriate written agreement Supplier shall require the Sub-Suppliers to be bound to and by terms of the Contract Documents and to assume all the obligations and responsibilities which Supplier, by the Contract Documents, assumes toward District. Each such agreement shall preserve and protect the rights of District, and others acting for or on behalf of District, under the Contract Documents with respect to the Goods to be furnished so that delegation thereof will not prejudice such rights, and shall allow the Sub-Suppliers, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress that Supplier, by the Contract Documents, has against District. Without limitation to the foregoing, each such agreement shall, without limitation, require the Sub-Supplier:

- .1** to perform its obligations in accordance with the terms of the Contract Documents;
- .2** to assume all the obligations and responsibilities which Supplier assumes toward e District by the Contract Documents;
- .3** to preserve and protect the rights of District under the Contract Documents with respect to the obligations to be performed by the Sub-Supplier so that subcontracting thereof will not prejudice such rights;
- .4** to waive all rights (including, without limitation, rights of subrogation) that the Sub-Supplier or its insurers may have against District and others required by the Contract Documents to be named as additional insureds, except for such rights that the Sub-Supplier may have to the proceeds of such insurance held by District or such other additional insureds;
- .5** to afford District the same rights and remedies afforded to them under the Contract Documents with respect to access to and the right to audit and copy at District's cost books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, memoranda and other records and documents relating to the Sub-Supplier's performance and requiring the Sub-Supplier to preserve such records and other items that relate to an Order for a period of at least four (4) years after Completed Delivery of the Goods comprising the Order;
- .6** to recognize the rights of District under Section 7.2, below (Contingent Assignment of Contracts), including, without limitation, District's right to elect to accept assignment of the Sub-Supplier's contract and to retain the Sub-Supplier pursuant to the terms of its contract to complete the unperformed obligations under its contract and, if requested by District, to execute a written agreement on terms acceptable to District confirming that the Sub-Supplier is bound to District under the terms of its contract;
- .7** to submit applications for payment, extensions of time and claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow Supplier time to comply with its obligations under the Contract Documents;
- .8** to purchase and maintain insurance in accordance with the requirements of the Contract Documents;

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- .9 to defend and indemnify the Indemnitees on the same terms as provided in Section 5.13, above;
- .10 to comply with the nondiscrimination (Article 15) provisions below;
- .11 to provide for a right of termination for convenience by Supplier that limits the Sub-Supplier's right to compensation to an allocable share of the contract sum; and
- .12 to provide that time is of the essence to each of the Sub-Supplier's obligations.

7.1.2. Copies. Supplier shall, promptly after their execution, furnish to District true, complete, and executed copies of all contracts with the Sub-Suppliers and amendments and modifications thereto. Payments shall not be made for Goods for which District has not received such documents.

7.1.3. No Brokering. Supplier shall not permit any portion of the Goods to be contracted to a firm acting as broker, factor or other entity not actually itself furnishing a substantial portion of the Goods.

7.2. CONTINGENT ASSIGNMENT OF SUB-SUPPLIER CONTRACTS

Each agreement between Supplier and its Sub-Suppliers pertaining to an Order is assigned by Supplier to District or its designee, provided that such assignment is effective only after termination of the Order by District and only for those agreements which District or its designee accepts by notifying the Sub-Supplier in writing. Such assignment, if accepted, shall be limited to Supplier's rights as pertain to such Order only. District's and its designee's sole obligation in the event it accepts such assignment shall be to pay in accordance with the terms of such agreement for Goods furnished after District's or its designee's acceptance of such assignment.

7.3. COMMUNICATIONS BY DISTRICT

District and the College Project Director shall have the right to communicate with the Sub-Suppliers with respect to matters that are related to Supplier's performance of its obligations under the Contract Documents. Supplier shall be provided with a copy of all such written communications. Such communications shall not create, or be interpreted as creating, any contractual relationship between District and any Sub-Supplier.

7.4. NO THIRD-PARTY RIGHTS

Nothing contained in the Contract Documents shall create any contractual relationship between any Sub-Supplier and District, except when, and only to the extent that District elects to accept the assignment of a contract between Supplier and such Sub-Supplier pursuant to Paragraph 7.4, above.

7.5. DOCUMENT AVAILABILITY

Supplier shall make available to each proposed Sub-Supplier with whom it enters into a contract for furnishing of any portion of the Goods, prior to the execution of the contract, copies of the Contract Documents to which the Sub-Supplier will be bound so as to ensure that all matters disclosed thereby are taken into consideration and included in the terms of such contracts and shall identify to such Sub-Supplier the terms and conditions of the proposed contract which may be at variance with the Contract Documents.

7.6. NO LIABILITY OF DISTRICT

Nothing set forth in this Article 7, and no action taken by District or behalf of District with respect to review or approval of the Sub-Suppliers or their contracts shall impose any liability or responsibility upon District nor relieve Supplier of its responsibilities under the Contract Documents or Applicable Laws.

ARTICLE 8
DISTRICT'S OWN FORCES AND SEPARATE CONTRACTORS

8.1. DISTRICT'S RIGHT TO PERFORM WITH OWN FORCES AND TO AWARD SEPARATE CONTRACTS

Supplier shall ascertain to its own satisfaction the existence and nature of any other contracts that have been or may be awarded by District that may affect or impact Supplier's performance. Supplier shall look solely to such Separate Contractors, and District shall not be responsible, for any Losses suffered by Supplier or the Sub-Suppliers, of any Tier, resulting directly or indirectly from the conduct of work by the Separate Contractors.

8.2. MUTUAL RESPONSIBILITY

8.2.1. Coordination. Nothing contained in the Contract Documents shall be interpreted as granting Supplier exclusive use or occupancy of a Site. Supplier shall not take any action that would deny District's own forces and the Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Supplier shall not Delay the work of the Separate Contractors or District's forces and shall coordinate Supplier's operations with the activities of District's forces and the Separate Contractors as required for the prompt and expeditious performance of Supplier's obligations under the Contract Documents.

8.2.2. Delay. Supplier shall coordinate its deliveries of the Goods with the construction and operations of District's forces and the Separate Contractors so as to eliminate interference and shall do so without Delay to the performance of Supplier or the construction or operations of such others. Costs caused by improperly timed activities or defective construction shall be borne by the party responsible therefor.

8.2.3. Damage. Supplier shall promptly remedy damage caused by Supplier or its Sub-Suppliers to completed construction or partially completed construction or to property of District or Separate Contractors.

8.2.4. Disputes. Supplier shall notify District in writing within three (3) Days if it believes it has experienced or is experiencing any Delay or Loss due to the activities of District's forces or Separate Contractors or in the event of any dispute with District's forces or Separate Contractors.

8.3. DISTRICT'S RIGHT TO CLEANUP

If a dispute arises among Supplier, Separate Contractors and/or District as to the responsibility for maintaining the Site and surrounding area free from waste materials and rubbish, District may clean up and allocate the cost among those responsible as the District determines to be just.

ARTICLE 9
TIME

9.1. COMMENCEMENT AND COMPLETION

9.1.1. Completion. Supplier shall proceed expeditiously with the furnishing of Goods requested in an Order and shall achieve Completed Delivery on the Delivery Date set forth in the Order. The Delivery Date shall be subject to adjustment for extensions of time duly permitted, authorized and noticed pursuant to Paragraph 9.2, below. Inspection for the purpose of confirming Completed Delivery and issuing a Notice of Completed Delivery shall be conducted by the College Project Director or a District Consultant and notice of such determination shall be issued as provided in Paragraph 5.4.9, above.

9.1.2. Adjustments. Subject to the limitations set forth in this Article 9 and elsewhere in the Contract Documents, the Delivery Date shall only be extended for Excusable Delay.

9.1.3. Early Completion. Nothing stated in the Purchase Agreement or elsewhere in the Contract Documents shall be interpreted as creating any contractual right, express or implied, on the part of Supplier to deliver any Lot of Goods earlier than the Delivery Date set forth in the Order issued by District with respect to such Lot.

9.2. DELAYS AND EXTENSIONS OF TIME

9.2.1. Adjustments Extending Delivery Date. Provided that Supplier has complied with the provisions of this Paragraph 9.2 (including, without limitation, the requirements of this Paragraph 9.2 pertaining to timely delivery of a Request for Extension), if Supplier is delayed in its achieving Completed Delivery of a Lot on the Delivery Date by an Excusable Delay, then the Delivery Date for such Lot shall be extended for such reasonable time as the College Project Director may determine. The Delivery Date will not be adjusted for Unexcused Delays

9.2.2. Request for Extension. Within fourteen (14) Days after the Discovery Date of the circumstances giving rise to an Excusable Delay, Supplier shall submit to District a Request for Extension. Each Request for Extension shall include a detailed explanation of the circumstances of such Delay, the Lot(s) and Delivery Date(s) that are affected and the precise number of Days of extension to such Delivery Date(s) being requested. A Request for Extension that seeks an extension for more than one Delay shall be supported by a separate explanation and request for extension for each separate Delay. District shall thereafter investigate the facts concerning the cause and extent of such Delay, and depending upon whether such Request for Extension is justified, will notify Supplier of its approval or disapproval of all or a portion of Supplier's request. Extensions of time approved by District shall apply only to that portion of the Goods affected by the Delay, and shall not apply to other portions of the Goods not so affected.

9.2.3. Formal Notice of Essence. Supplier recognizes and acknowledges that timely submission of formal Request for Extension, whether or not the circumstances of such Delay are known to District or discoverable by District through other means, is not a mere formality but is of crucial importance to the ability of District to promptly identify, prioritize, evaluate and mitigate the potential effects of Delay. Any form of informal notice, whether verbal or written (including, without limitation, statements at meetings or entries on reports, daily logs or meeting minutes), that does not strictly comply with the formal requirements of Paragraph 9.2.2, above, shall therefore be deemed insufficient.

9.2.4. Time of Essence. Time is of the essence to the Completed Delivery of the Goods. District shall have the right to refuse to accept and pay for a tender of Goods delivered after the Delivery Date.

9.2.5. District Options. The District and the Supplier acknowledge and agree that if the Supplier fails to achieve Completed Delivery of a Lot of Goods on the Delivery Date specified in the Order that the District will suffer substantial Losses which are both extremely difficult and impracticable to ascertain. In recognition thereof, it is agreed that if the Supplier fails to achieve Completed Delivery on the Delivery Date (as adjusted for extensions permitted by the Paragraph 9.2, above) designated in an Order for Completed Delivery of a Lot of Goods, that the District shall have the right, exercised in its sole discretion, to accept tender by Supplier in accordance with Paragraph 9.2.6, below, of Leased Goods. District shall have the right to exercise the foregoing rights with respect to all or any portion of the Goods or with respect to all or any portion of a period of time for which a delivery of Goods is delayed beyond the Delivery Date.

9.2.6. Leased Goods. The District shall have the right, in the exercise of its sole discretion, to accept tender by Supplier of temporary replacement Leased Goods for the whole or any portion of period of time for which the District. Leased Goods are provided, placed and removed at the Supplier's Own Expense. Tender of Leased Goods by the Supplier means delivery, at the Destination designated by the District in its Order, of Leased Goods that are equivalent in all material respects to the Goods identified in the applicable Order and that are wholly suitable for use by the District as a replacement for the Goods. Supplier is solely responsible for the delivery, placement and removal of Leased Goods and for any repairs to Existing Improvements caused by the move in, placement or removal of the Leased Goods. Supplier remains solely responsible for any Loss caused to Leased Goods while they are in use by the District, other than a Loss that Supplier demonstrates was caused by abuse or neglect on the part of the District, District Suppliers or Separate Contractors.

9.2.7. Other Remedies. District shall have the right to refuse to accept and pay for a tender of Goods delivered after the Delivery Date and to refuse tender of Leased Goods. The District's exercise of its rights to refuse to accept and pay for any Goods shall not limit any right or remedy of the District in the event of any other default by the Supplier (including, without limitation, failure to provide timely Notice of Shipment or Notice of Delivery) other than a failure to meet a Delivery Date.

9.2.8. Supplier Noncompliance, Waiver. Any failure by Supplier to strictly comply with the requirements of Paragraph 9.2.2, above, relative to Request for Extension under circumstances in which a Request for Extension is

required, shall, notwithstanding actual knowledge of such circumstances by District, College Project Director, or others acting on behalf of District, constitute a waiver by Supplier of the right to an adjustment to the Delivery Date on account of such circumstances.

9.2.9. Concurrent Delays. If an Unexcused Delay occurs concurrently with an Excusable Delay, the maximum extension of the affected Delivery Date shall be the number of Days, if any, by which such Excusable Delay exceeds the number of Days of such Unexcused Delay.

9.2.10. Exercise of District Rights. Notwithstanding any other provision of the Contract Documents to the contrary, any Delay to Supplier's performance that is the result of District's proper exercise of its rights or remedies under the Contract Documents or Applicable Laws in response to a failure of Supplier to perform its obligations under the Contract Documents shall be deemed an Unexcused Delay and shall not, under any circumstances, entitle Supplier to an adjustment to a Delivery Date.

9.3. DELAY TO SUPPLIER

Supplier's sole and exclusive right in the event of an Excusable Delay consists of an extension of time to the applicable Delivery Date. The Supplier agrees to accept such extension of time as its sole and exclusive right and remedy for Delay, regardless of cause (including, without limitation, any act or omission by the District constituting negligence or breach of contract) in lieu of any and all other rights to recovery of Losses for Delay.

ARTICLE 10 PAYMENTS

10.1. Payment. Payment on behalf of District of sums to the Supplier that are undisputed by the District placing the Order shall be made not later than thirty (30) Days after receipt of a properly prepared and submitted invoice requesting payment and issuance of payment in accordance with the requirements of the Contract Documents.

10.2. Decisions to Withhold Payments. District shall have the right to withhold payment, in its sole discretion, including but not limited to, incomplete shipments or deliveries, defective equipment or material or other causes deemed by the District constituting an incomplete shipment, delivery or non-conformance with the Contract Documents. Sums properly withheld pursuant to Paragraph 10.2, may be used by District without a prior judicial determination of District's actual rights with respect to recovery of any Loss on which such withholding is based. Supplier agrees and hereby designates District as its agent for such purposes, and agrees that such payments shall be considered as payments made under the Purchase Agreement by District to Supplier. District shall submit to Supplier an accounting of such funds disbursed on behalf of Supplier

10.2.1. Grounds for Withholding. District may decide not to certify payment and may withhold a Certificate for Payment, in whole or in part, as provided herein and elsewhere in the Contract Documents. If District is unable to certify payment in the amount of the Application for Payment, District will promptly issue a Certificate for Payment for the amount for which is determined to be earned and undisputed. District may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary, in District's opinion, to protect District from Loss or threatened Loss because of any of the following:

- .1 Defective Goods.** Defective Goods not remedied.
- .2 Violation of Applicable Laws.** Failure of Supplier or the Sub-Suppliers to comply with Applicable Laws.
- .3 Penalty.** Any claim or penalty asserted against District by virtue of Supplier's failure to comply with Applicable Laws.
- .4 Failure to Meet Delivery Date.** Any Loss which may accrue as a result of Supplier failing to meet a Delivery Date.

.5 Setoff. Any reason specified elsewhere in the Contract Documents as grounds for a withholding, offset or setoff or that would legally entitle District to a setoff or recoupment.

.6 Consultant Services. Additional professional, consultant or inspection services required due to Supplier's failure to comply with the Contract Documents.

.7 Damage. Loss caused by Supplier or the Sub-Suppliers to District, the Separate Contractors or any other person or entity under contract with District.

.8 Cleanup. Cleanup performed by District and chargeable to Supplier pursuant to Paragraph 5.10.2.

.9 Required Documents. Failure of Supplier to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, schedules, Submittals, inventories, information on the Sub-Suppliers, certifications and other required reports or documentation.

.10 Other Breach. A breach by Supplier of any obligation or provision of the Contract.

10.3. REPORTS AND REVIEWS

10.3.1. Quarterly Sales Reports. The Supplier shall provide, at the District's request, to the District's Program Manager quarterly statements, which shall include: an aggregate sales report of (1) the total quantities and dollar sales of Goods covered by all Applications for Payments submitted under the Purchase Agreement; (2) the quantities and dollar sales of Goods in Clause (1) further segregated by Product Type; (3) the quantities and dollar sales of Goods in Clause (2) further segregated by Destination.

10.3.2. Performance Reviews. Supplier shall, if requested by the District, participate in business meetings to review Supplier's performance and to establish a best practices approach to customer satisfaction that satisfies the requirements of the Contract Documents and the needs of the District and its users. Supplier shall designate appropriate representatives of its executive and managerial staff to participate in such meetings. Such meeting shall be held via remote online conference mutually agreed to by both parties or location within Los Angeles County as may be designated by LACCD.

10.4. CONTINUOUS PERFORMANCE

No dispute or disagreement with respect to the amount of any payment claimed due by Supplier shall relieve or excuse Supplier from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of its obligations under the Contract Documents.

10.5 ACCEPTANCE OF PAYMENT

Acceptance of Final Payment by Supplier or a Sub-Supplier shall constitute a waiver of all rights by that payee against District for recovery of any Loss, excepting only those Claims that have been submitted by Supplier in the manner required by Article 14, below, prior to or at the time of Supplier's submission of its Application for Payment.

ARTICLE 11 INSPECTIONS, HAZARDOUS SUBSTANCES AND SAFETY

11.1 INSPECTIONS

11.1.1. Supplier Responsibility. Inspections or observations by or on behalf of District or others shall not in any way relieve Supplier from its responsibility for full compliance with all of the terms and conditions of the Contract Documents, nor be construed to lessen, to any degree, Supplier's responsibility for furnishing Goods which conform to the Contract Documents.

11.1.2. Access to the Goods. District and such others as designated by District shall have free access to any or all parts of the Goods, whether located on or off the Site, at any time and at any stage in the preparation, fabrication or installation of the Goods being manufactured, fabricated or assembled.

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11.1.3. No Duty of District. No authority of District or others authorized to inspect the Goods at the request of District that is conferred by the Contract Documents, nor any decision made in good faith either to exercise or not exercise such authority, nor any recommendation by District or such others shall give rise to a duty or responsibility to Supplier or the Sub-Suppliers, of any Tier.

11.2. HAZARDOUS SUBSTANCES

Supplier warrants Goods are free of any Hazardous Substances.

11.3. SAFETY OF PERSONS AND PROPERTY

11.3.1. Protection, Safety. Supplier shall take all necessary precautions for safety of, and shall provide all necessary protection to prevent Loss due to the activities of Supplier or the Sub-Suppliers, of every Tier:

- .1 persons in and around a Site, as well as their personal property and vehicles;
- .2 the Goods under care, custody or control of Supplier or a Sub-Supplier, of any Tier, including, without limitation, providing temperature control, covering and enclosures necessary to prevent Loss due to adverse weather conditions;
- .3 other property at a Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, curbs, roadways, structures (including, without limitation, protection from settlement or loss of lateral support) and utilities not designated for removal, relocation or replacement in the course of performance by Supplier; and
- .4 construction or operations by District, District forces or the Separate Contractors.

11.3.2. Compliance with Safety Orders. Supplier shall correct any violations of safety laws, rules, orders, standards or regulations occurring or threatened by conditions on a Site that are caused or created by the activities of Supplier or its Sub-Suppliers. Upon the issuance of a citation or notice of violation by any Government Authority resulting from the activities of Supplier or its Sub-Suppliers, including, without limitation, the Division of Occupational Safety and Health, such violation shall be corrected promptly at Supplier's Own Expense.

11.3.3. Responsibility for Loss. Supplier shall promptly remedy Loss (other than Loss insured under property insurance required by the Contract Documents) to property referred to in Subparagraph 11.3.1.1 through Subparagraph 11.3.1.4 caused in whole or in part by the activities of Supplier, the Sub-Suppliers, of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Supplier is responsible under Subparagraph 11.3.1.1 through Subparagraph 11.3.1.4, except Loss attributable solely to negligent acts or omissions of District, College Project Director, Design Consultants, District Consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of Supplier or the Sub-Suppliers, of any Tier, or the failure by Supplier to comply with the Contract Documents. The foregoing obligations of Supplier are in addition to Supplier's obligations under Paragraph 5.13, above.

ARTICLE 12 INSURANCE

12.1 SUPPLIER INSURANCE

12.1.1. General Provisions. Supplier shall obtain and maintain, and shall require the Sub-Suppliers delivering Goods to a Site to obtain and maintain, the insurance coverages specified below:

- .1 Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000.
- .2 Statutory Workers' Compensation and Employer's Liability insurance with statutory limits as required by law, including Maritime coverage, if appropriate, and Employer's Liability limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit.

.3 Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy CG 0001 ("Occurrence Form"), with the following minimum limits (including excess or umbrella liability insurance if required to achieve limits) of \$1,000,000 per occurrence and \$2,000,000 in the general aggregate.

.4 Other Insurance as may be required by District to protect Supplier, the Sub-Suppliers and/or District, Colleges and other Indemnitees from hazards related to the delivery or storage of the Goods or Supplier's performance under the Contract Documents.

12.1.2. Additional Requirements for Supplier-Provided Coverage. The following requirements and provisions shall apply to insurance provided by Supplier and/or its Sub-Suppliers pursuant to Paragraph 12.1.1, above:

.1 Such insurance may be provided through a combination of primary and excess policies, including the umbrella form of policy. All required insurance shall be maintained without interruption from the date of execution of the Purchase Agreement until the expiration of the Term unless otherwise specified elsewhere in the Contract Documents.

.2 Each such policy, except the workers' compensation policy, shall include or shall be endorsed to include the Indemnitees, and each of their respective officers, agents, shareholders and employees as additional insureds.

.3 Each policy shall state, or be endorsed to state, that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds.

.4 Insurance required by Paragraph 12.1.1, above, shall be written by a company or companies lawfully authorized to do business in the State of California and having a current A.M. Best's rating of no less than B + unless otherwise approved in writing by District. Notwithstanding the foregoing, workers' compensation insurance may be provided by the State Compensation Insurance Fund.

.5 The insurance required by Paragraph 12.1.1, above, shall be written on forms acceptable to District.

.6 Supplier shall provide to District prior to execution of the Purchase Agreement by Supplier, and at any time thereafter within three (3) Days of a request by District, and upon any renewal, change or replacement of coverage, the following: certificates of insurance and any additional insured endorsements evidencing coverage required to be provided by Supplier or its Sub-Suppliers. Upon request, a Certificate of Insurance as confirmation of such policies and endorsements shall be provided to District.

.7 All insurance coverage required of or provided by Supplier or its Sub-Suppliers are intended to apply to the full extent of the policies. Nothing contained in this Paragraph 12.1 or elsewhere in the Contract Documents relating to District or its operations is intended to limit the application of such insurance coverage.

.8 Supplier acknowledges and agrees that any actual or alleged failure on the part of District to inform Supplier of non-compliance with any insurance requirement in no way imposes any additional obligations on District nor does it waive any rights hereunder in this or any other regard.

.9 Any type of insurance or any increase of limits of liability not described in this Paragraph 12.1, which Supplier requires for its own protection or on account of any statute, shall be Supplier's responsibility and at Supplier's Own Expense.

.10 During the period following issuance of the Notice of Completed Delivery and prior to expiration of all warranty periods under the Contract Documents, Supplier shall maintain in full force and effect all insurance as specified in Paragraph 12.1.1, above.

.11 District shall have no responsibility for arranging coverage or for payment of premiums for any insurance coverage required of any Supplier or Sub-Supplier under Paragraph 12.1.1, above.

12.1.3. MISCELLANEOUS PROVISIONS.

.1 Withholding of Payments. In addition to any other rights of withholding that District may have under the Contract Documents, District has the right to withhold any payments otherwise due to Supplier in the event of a failure by Supplier or any Sub-Supplier to comply with the requirements of this Paragraph 12.1. Such withholding by District shall not be deemed to be a default under the Purchase Agreement or under the terms of any Order.

.2 Notice. All policies of insurance that Supplier or the Sub-Suppliers are required to secure and maintain shall be endorsed to provide that their insurance company shall notify District and the named insured at least ten (10) Days in advance of any cancellation due to nonpayment of premium and thirty (30) Days in advance of any modification or cancellation for any reason other than nonpayment of premium.

.3 Remedies. Without limitation upon any of District's other rights or remedies, any failure by Supplier or any Sub-Supplier to comply with any provision of this Paragraph 12.1 shall be deemed a material breach of the Purchase Agreement, thereby entitling District, at its option and without limitation to District's other rights or remedies under the Contract Documents or Applicable Laws, upon notice to Supplier and in accordance with Article 14, below, to: (1) suspend performance by Supplier, without any additional compensation or extension of the Delivery Date, until there is full compliance, or (2) terminate the Purchase Agreement or any Order for cause.

.4 Claims Cooperation. Supplier and the Sub-Suppliers shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of their operations conducted in connection with the furnishing of the Goods and shall cooperate with District in respect to the adjustment, settlement, mediation, arbitration or litigation of all said claims, including, without limitation, providing, appearances in mediation, arbitration or court proceedings and/or participating in settlement meetings, as may be required.

.5 Waiver of Rights of Recovery and Subrogation. Supplier hereby waives all rights of recovery for any Loss with respect to which insurance, other than workers' compensation insurance, is required to be provided by Supplier (including, without limitation, any Loss that is not covered because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason) against the Indemnitees and any other supplier, contractor or consultant performing work or rendering services that relate to, affect or are affected by Supplier's obligations under the Contract Documents including without limitation, the officers, directors, agents, shareholders and employees of each of them. Supplier shall require that its Sub-Suppliers of every Tier require that all insurance policies provided, with the exception of workers' compensation, that relate to Supplier's obligations under the Contract Documents include clauses providing that each insurer waives all of its rights of recovery against the same parties referenced immediately above in this Subparagraph 12.1.3.5. Additionally, Supplier shall cause its insurers on all policies required to be obtained by Supplier, including, without limitation, workers' compensation insurance, to provide for a waiver of the insurer's rights of subrogation that is coextensive with the waiver of right of recovery by Supplier set forth in this Subparagraph 12.1.3.5 or that consent to Supplier's waiving its rights of recovery as set forth herein. The waivers of right of recovery and right of subrogation provided for in this Subparagraph 12.1.3.5 shall be deemed effective as to any individual or entity even if such individual or entity: (1) would otherwise have a duty of indemnification, contractual or otherwise; (2) did not pay the insurance premium directly or indirectly; or (3) has or does not have an insurable interest in the property damaged.

12.2. DISTRICT'S LIABILITY INSURANCE

District shall be responsible for purchasing and maintaining District's usual liability insurance. Optionally, District may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract Documents. Supplier shall not be responsible for purchasing and maintaining District's liability insurance unless specifically required by the Contract Documents.

**ARTICLE 13
MISCELLANEOUS PROVISIONS**

13.1 GOVERNING LAW

The interpretation and enforcement of the Purchase Agreement and other Contract Documents and of the performance by the parties hereunder shall be governed by the internal laws of the State of California.

13.2 TIME OF ESSENCE

All time limits stated in the Contract Documents relative to Supplier's performance of its obligations under the Contract Documents are of the essence.

13.3 ASSIGNMENT

Supplier shall not transfer, convey or assign any right or obligation under or interest in the Contract Documents or any Order and any attempt to do so will be deemed void from its inception. District shall have the right to assign its rights under any Order or under the Purchase Agreement upon written notice to Supplier.

13.4 WRITTEN NOTICE

Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall be deemed to have been duly served if served in the following manner:

13.4.1 Notice to District. If notice is given to District, it shall be by personal delivery thereof or by depositing same in United States mail, enclosed in a sealed envelope addressed to District at its address shown in the Bidding Documents.

13.4.2 Notice to Supplier. If notice is given to Supplier, by personal delivery thereof to Supplier, or by depositing same in United States mails, enclosed in a sealed envelope addressed to Supplier at its last known address for its regular place of business and sent by registered or certified mail with postage prepaid.

13.5 RIGHTS AND REMEDIES

13.5.1 District duties and obligations imposed by the Contract Documents and District rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by Applicable Law.

13.5.2 Provisions of the Contract Documents may be waived by District only in writing signed by the Executive Director stating expressly that it is intended as a waiver of the specified provision(s) of the Contract Documents.

13.5.3 A waiver by either party of any breach of any term, covenant, or condition contained in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained therein whether of the same or a different character.

13.6 NO NUISANCE

Supplier shall not maintain, commit or permit the maintenance or commission of any nuisance at the Site in connection with the performance of its obligations under the Contract Documents.

13.7 EXTENT OF AGREEMENT

The Contract Documents represent the entire agreement between District and Supplier and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended only by written instrument signed by both District and Supplier and formally approved or ratified by the Board of Trustees in accordance with the requirements of the Contract Documents and Applicable Laws.

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13.8 NO THIRD-PARTY RIGHTS

Nothing contained in the Contract Documents is intended to make any person or entity who is not a signatory to the Purchase Agreement a third-party beneficiary of any right created by the Contract Documents or by operation of Applicable Laws.

13.9 SEVERABILITY

Should any part, term, portion or provision of the Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with any Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

13.10 PROVISIONS REQUIRED BY APPLICABLE LAWS

Each and every provision of law and clause required by Applicable Laws to be inserted in the Purchase Agreement or other Contract Documents shall be deemed to be inserted in the Purchase Agreement and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party these Purchase Agreement shall forthwith be amended by the parties to the Purchase Agreement to make such insertion or correction.

13.11 CONFLICTS OF INTERESTS

Supplier agrees not to accept any employment or representation which will, is or likely to, make Supplier "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by the College or District on any matter in connection with which Supplier has been retained.

13.12 SURVIVAL

All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by Supplier of an obligation that extends beyond the Term of the Purchase Agreement, or beyond termination of the Purchase Agreement or completion of performance by Supplier of an Order or other performance under the Contract Documents, including, without limitation, Supplier's obligations of, or relating to, indemnification, insurance, confidentiality, ownership of documents, review, audit and retention of books and records, warranties and guaranties, and dispute resolution shall be deemed to survive expiration of the Term, termination of the Purchase Agreement and/or completion of performance by Supplier.

13.13 FEDERAL GRANTS

In the event of a federal grant or other federal financing participation in the funding of the purchases of the Goods, Supplier shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under the Purchase Agreement or other Contract Documents. Supplier shall comply with all applicable federal agency requirements including, without limitation, those pertaining to work hours, overtime compensation, non-discrimination, and contingent fees.

13.14 PROHIBITED INTERESTS AND GRATUITIES

No official or employee of District who is authorized in such capacity and on behalf of District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or any subcontract in connection with the purchase of the Goods, shall become directly or indirectly interested financially in the Purchase Agreement, any Order or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with the Purchase Agreement shall become directly or indirectly interested financially in the Purchase Agreement, any Order or in any part thereof. Supplier shall receive no compensation and shall repay District for any compensation received by Supplier hereunder, should Supplier or any of the Sub-Suppliers aid, abet or knowingly participate in a violation of this Paragraph 13.14. Supplier warrants that no gratuities (in the form of entertainment, trips

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or otherwise) were offered or given by Supplier, or any agent or representative of Supplier, to any officer or employee of District with a view toward securing the Purchase Agreement, any Order or securing favorable treatment with respect to any determinations concerning performance under the Purchase Agreement or any Order. For breach or violation of this warranty and without limitation to District's other rights or remedies Applicable Laws, District shall have the right to terminate for cause the Purchase Agreement or any Order, either in whole or in part.

13.15 ASSIGNMENT OF ANTI-TRUST ACTIONS

Supplier offers and agrees to assign to District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Purchase Agreement. This assignment shall be made and become effective at the without further acknowledgement by the parties.

13.16 CONFIDENTIALITY

Supplier shall treat all information and data furnished to it by a College, the Program Manager, the College Project Director, District, a Design Consultant, a District Consultant or a Separate Contractor, or otherwise obtained or prepared by Supplier concerning the subject matter of the Purchase Agreement or any Order, as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Supplier's performance of the Purchase Agreement or an Order or in connection with filings or applications submitted to Governmental Authorities. Supplier's obligation of confidentiality hereunder shall not apply: (1) to information which is in the public domain through no action or inaction of Supplier; or (2) to Proprietary Information that was in the possession of Supplier prior to its preparing its Bid entirely independent of its rights, duties or obligations under the terms of the Contract Documents, or (3) if, but only to the extent that, any other provision of the Contract Documents expressly states that Supplier's obligation of confidentiality shall not apply. Supplier shall not engage in or permit any public references or statements to the Purchase Agreement, Orders, the Colleges, District or to Supplier's obligations or performance, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld in the sole discretion of District. Supplier shall instruct all of Supplier's employees and the Sub-Suppliers of this obligation and shall be responsible for their full compliance with this Paragraph 13.16.

13.17 JOINT AND SEVERAL RESPONSIBILITY

If the Purchase Agreement is the result of a joint bid by more than one bidder, supplier, dealer or manufacturer, it shall be deemed one indivisible contract. Each such joint bidder, supplier, dealer or manufacturer will be deemed jointly and severally responsible and liable for the performance of the entire Purchase Agreement and any Order thereunder. District assumes no obligation for the division of purchases of Goods among joint bidders, suppliers, dealers or manufacturers.

13.18 NON-EXCLUSIVITY

The Purchase Agreement is non-exclusive and shall not in any way preclude District from entering into a similar agreement and/or arrangements with other suppliers or from acquiring similar, equal or like products, goods or services from other entities or sources.

13.19 ADEQUATE ASSURANCE OF PERFORMANCE

If at any time District in good faith and based on reasonable business concerns, has material concerns with respect to Supplier's or a Sub-Supplier's ability or intent to fully perform, then Supplier agrees to provide District with reasonable written assurance, fully satisfactory to District in District's reasonable discretion, of Supplier's ability to fully perform. Such assurance shall be provided within the time and in the manner specified by District. Upon District's good faith determination that Supplier cannot or will not perform, then District may deem the Purchase Agreement breached by Supplier, thereby entitling District to exercise its rights under Paragraph 14.1, below. Supplier shall notify District in writing if it believes that circumstances have arisen that are reasonably likely cause Supplier or Sub-Supplier to be unable to perform any material obligation of the Contract Documents.

ARTICLE 14
REMEDIES FOR DEFAULT, TERMINATION, SUSPENSION

14.1 REMEDIES FOR SUPPLIER DEFAULT

14.1.1 Notice of Default. District shall have the right to exercise any or all of the remedies set forth in this Paragraph 14.1 in the event of any of the following: (1) Supplier is adjudged bankrupt; (2) Supplier makes a general assignment for the benefit of its creditors; (3) a receiver is appointed on account of Supplier's insolvency; or (4) Supplier fails or refuses to perform any obligation set forth in the Purchase Agreement, an Order or the other Contract Documents and fails to cure such default in the manner required hereafter.

14.1.2 Opportunity to Cure. Supplier shall cure any default in performance of its obligations under the Contract Documents within three (3) Working Days after service of written notice of such default to Supplier asserting the occurrence of such default; provided, however, that if the breach cannot reasonably be cured within such time then Supplier shall commence to cure the breach within three (3) Working Days after service of such written notice and shall diligently and continuously prosecute such cure to completion within a reasonable time, not longer than thirty (30) Days after receipt of such written notice.

14.1.3 District's Rights and Remedies. In the event that Supplier fails to cure any of the defaults enumerated in Paragraph 14.1.1, above, within the applicable time periods set forth in Paragraph 14.1.2, above, then, while reserving all rights for Losses caused by such default, the following remedies, may be pursued:

.1 Perform and Withhold. Whether or not there is a termination of the Purchase Agreement or any Order, District may engage others to furnish any portion of the Goods that have not been furnished by Supplier or that are Defective Goods and withhold the cost thereof from future payments to Supplier, reserving to itself all rights to recover all Losses related thereto.

.2 Suspension of Purchase Agreement. District may suspend performance under the Purchase Agreement or any portion thereof.

.3 Suspension of Order. Whether or not there is a termination of the Purchase Agreement or any Order, District may suspend all or any portion of Supplier's performance under an Order, for as long a period of time as appropriate, without thereby assuming any obligation to pay to Supplier any additional compensation or extend the Delivery Date of any Order affected thereby.

.4 Cancellation of Orders. Whether or not there is a termination of the Purchase Agreement, and without thereby incurring any liability or responsibility to Supplier and without releasing Supplier from its obligation to complete performance of any other Order that is not terminated, District may terminate for cause all or a part of any outstanding Order directly affected by such default, as well as any other outstanding Order that involves the purchase of Goods that, because of their relationship to the Goods covered by the terminated Order, are rendered substantially less useful or valuable to District as a result of such termination.

.5 Terminate Further Ordering. Whether or not there is a termination of the Purchase Agreement or any Order, District may order that Supplier accept no further Orders from District.

.6 Terminate Purchase Agreement. District may terminate for cause the Purchase Agreement or any portion thereof.

.7 Rights Cumulative. All of District's foregoing rights and remedies under the Contract Documents are cumulative, and shall be in addition to any other rights and remedies available under the Contract Documents or Applicable Laws.

.8 Materiality of Default. Designation in the Contract Documents of a certain breach or default as "material" or as affording e District the right to terminate shall not be construed as implying that other breaches or defaults not so designated are not material nor shall such designations be construed as limiting District's rights or remedies for default (including, without limitation, termination) to only material breaches.

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.9 Recovery of Losses. No termination or other action taken by District, either before or after a termination of an Order or the Purchase Agreement, in response to a default by Supplier shall prejudice or limit District's right to proceed against Supplier to recover all Losses suffered by District as a result of such default by Supplier.

14.1.4 Payment to Supplier. In the event of a termination of the Purchase Agreement or of an Order due to Supplier default, Supplier shall be entitled to receive such portion of the compensation as calculated in accordance with Paragraph 14.3.3, below, that remains, if any, after deduction for any Losses paid, incurred or threatened and reasonably likely to occur as a result of Supplier's default. In the case of a termination of the Purchase Agreement by District, upon such termination all further payments by District shall cease and may be withheld and no further amount shall be payable to Supplier until all Claims relating to the Purchase Agreement and all Orders placed by District have been resolved or finally adjudged by a court or by binding arbitration conducted in accordance with the Contract Documents. In the case of a termination of an Order, upon such termination all further payments by District shall cease and may be withheld and no further amount shall be payable to Supplier until all Claims relating to said Order have been resolved or finally adjudged by a court or by binding arbitration conducted in accordance with the Contract Documents.

14.1.5 Damages to District. If District's Losses paid, incurred or threatened and reasonably likely to occur as a result of Supplier's default exceed the amount withheld, Supplier shall be liable to District for the difference and shall promptly remit same to District upon demand by District.

14.1.6 Supplier Obligations. Upon receipt by Supplier of a notice of termination for default, in whole or in part, of the Purchase Agreement or an Order, Supplier shall, unless the notice states otherwise, perform each of the following obligations:

.1 immediately discontinue performance to the extent specified in the notice of termination and continue all other performance;

.2 take all actions necessary, or that District may direct, for the protection and preservation of the Goods covered by Orders that have not been cancelled and that are in production or transit;

.3 with respect to any Order that is terminated, provide to District directing such termination no later than three (3) Working Days after receipt of the notice of termination the following: (1) a complete list of all subcontracts, purchase orders and contracts with Sub-Suppliers who are involved in the performance of such Order, including any amendments and modifications thereto; (2) a summary of status of payments and balance owing under such subcontracts, purchase orders or contracts; (3) the status of performance and claims by such Sub-Suppliers; and (4) such other information as District may determine necessary in order to enable District to decide whether to accept assignment of the unperformed portions of such subcontracts, purchase orders or contracts pursuant to Paragraph 7.2, above;

.4 with respect to any and all Orders that are terminated, promptly: (1) assign to District on whose behalf such Order was placed, or its designee, those subcontracts, purchase orders or contracts, or portions thereof, between Supplier and its Sub-Suppliers that District elects pursuant to Paragraph 7.2, above, to accept by assignment; and (2) cancel, on the most favorable terms reasonably possible, any such subcontracts, purchase orders or contracts, or portions thereof, that District does not elect to accept by assignment;

.5 not terminate any insurance required by the Contract Documents; and

.6 deliver to District all Design Documents and Contract Documents that relate to Orders that are being terminated and that have been accumulated by Supplier in performing its obligations under the Contract Documents, excepting therefrom only those documents as may pertain to an Order that has not been terminated.

14.1.7 Cross Default, Set Off. Supplier agrees that: (1) a default by Supplier of its obligations to District under an Order that is not cured by Supplier in the manner provided for by Paragraph 14.1.2, above, shall constitute a breach of the Purchase Agreement; (2) a material default by Supplier of any other agreement or contract between Supplier and District shall constitute a default by Supplier of its obligations under the Purchase Agreement thereby entitling District to exercise, without prior adjudication of District's rights and without limitation to District's other rights or remedies, the right of set-off against amounts owing by District to Supplier under any Order placed by District; and (3) a material default by Supplier of its obligations to District under the Purchase Agreement or in connection with any Order shall constitute a

breach of each and every other agreement or contract that Supplier may then have with District thereby entitling District to exercise, without prior adjudication of its rights and without limitation to District's other rights or remedies, the right of set-off against amounts owing by District to Supplier under such other agreement or contract.

14.2 SUSPENSION BY DISTRICT FOR CONVENIENCE

District may, at any time and from time to time, without cause, order Supplier, in writing, to suspend, delay or interrupt performance by Supplier, in whole or in part, of any Order. If a suspension order issued by District pursuant to this Paragraph 14.2 is canceled in writing or expires pursuant to its terms, Supplier shall resume and continue with performance. An suspension order issued by District pursuant to this Paragraph 14.2 shall not be required in order to stop the performance by Supplier where permitted or required under any other provision of the Contract Documents. Under no circumstances shall the issuance of such a suspension order give rise to any right of Supplier to additional compensation or adjustment to the Purchase Price.

14.3 TERMINATION OF PURCHASE AGREEMENT FOR CONVENIENCE

14.3.1 Termination for Convenience. Without limitation upon any of District's other rights or remedies under the Contract Documents or Applicable Laws (including, without limitation the right of cancellation of an Order) and without limiting the right of District to cancel an Order, District shall have the option, at its sole discretion and without cause, to terminate the Purchase Agreement, in whole or in part, by giving fourteen (14) Days' written notice to Supplier.

14.3.2 Supplier Obligations. Upon receipt of notice of termination by District of the Purchase Agreement for convenience pursuant to Paragraph 14.3.1, above, Supplier shall, unless such notice directs otherwise, do the following:

- .1 immediately discontinue performance to the extent specified in the notice of termination;
- .2 take actions necessary, or that District may direct, for the protection and preservation of the Goods delivered or in transit;
- .3 accept no further Orders for Goods, except as otherwise directed by District;
- .4 with respect to any Order that is terminated, provide to District directing such termination no later than three (3) Working Days after receipt of the notice of termination the following: (1) a complete list of all subcontracts, purchase orders and contracts with Sub-Suppliers who are involved in the performance of any Order, including any amendments and modifications thereto; (2) a summary of status of payments and balance owing under such subcontracts, purchase orders or contracts; (3) the status of performance and claims by such Sub-Suppliers; and (4) such other information as District may determine necessary in order to enable District to decide whether to accept assignment of the unperformed portions of such subcontracts, purchase orders or contracts pursuant to Paragraph 7.2, above;
- .5 with respect to any and all Orders that are terminated, promptly: (1) assign to District on whose behalf such Order was placed, or its designee, those subcontracts, purchase orders or contracts, or portions thereof, between Supplier and its Sub-Suppliers that District elects pursuant to Paragraph 7.2, above, to accept by assignment; and (2) cancel, on the most favorable terms reasonably possible, any such subcontracts, purchase orders or contracts, or portions thereof, that District does not elect to accept by assignment;
- .6 not terminate any insurance required by the Contract Documents;
- .7 thereafter continue such performance as may be directed by District that is necessary to preserve and protect the Goods already delivered or in the process of production pursuant to an outstanding Order issued by District; and
- .8 deliver to District all Design Documents and Contract Documents that relate to the Orders that are being terminated that have been accumulated by Supplier in performing its obligations under the Contract Documents, excepting therefrom those documents as may pertain to any portion of an Order that is not terminated.

14.3.3 Supplier Compensation. Following such termination of this Purchase Agreement without cause and within thirty (30) Days after receipt of a complete and timely billing from Supplier seeking payment of sums authorized

Purchase Agreement

by this Paragraph 14.3.3, Supplier shall be entitled to receive as compensation for an Order that is terminated for the convenience of District the following compensation:

- .1 the Purchase Price for the Order, or portion of an Order, which has not been cancelled;
- .2 less, sums withheld by District pursuant to Paragraph 10.2.1, above, or other provisions of the Contract Documents; and
- .3 less, sums previously paid to Supplier by District.

14.3.4 Exclusive Compensation. In the event of a termination by District of the Purchase Agreement or any Order for convenience, Supplier agrees to accept such sums as allowed under Paragraph 14.3.3, above, as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, without limitation, any right or claim for loss of prospective profits or unabsorbed overhead associated resulting from District's failing to purchase Goods under the Purchase Agreement that meet or exceed the Guaranteed Minimum Contract Amount.

14.3.5 Sub-Suppliers. Supplier shall include provisions in all of its subcontracts, purchase orders and other contracts with its first-Tier Sub-Suppliers permitting termination for convenience by Supplier on terms that are consistent with, and that afford no greater rights of recovery against Supplier for termination than are afforded to Supplier under, this Paragraph 14.3.

14.4 TERMINATION BY SUPPLIER

14.4.1 Supplier's Remedies.

.1 **Termination of Purchase Agreement.** Supplier shall have no right to terminate the Purchase Agreement, including without limitation, on account of any default or material default by District. Supplier's sole and exclusive right in the event of a default by District shall be its right to terminate an Order in accordance with Subparagraph 14.4.1.2, below.

.2 **Termination of Orders.** Provided that Supplier has first given written notice in accordance with Paragraph 14.4.2, below, Supplier may terminate an Order, for cause only, if Supplier's performance of the Order under the Contract Documents is suspended by Supplier for a continuous period of sixty (60) Days due to a failure by District to comply with its obligations under the Contract Documents relating to payment of undisputed amounts due upon an Order. Such right to terminate an Order shall be limited to terminating only that particular Order for which payment has not been made by District.

14.4.2 Notice of Intention to Terminate. Upon the occurrence of grounds to terminate an Order, Supplier may upon seven (7) Days' written notice to District terminate the Order. Following such termination, Supplier may recover from District such sums as permitted under Paragraph 14.3, above; provided, however, that such compensation shall be limited to the compensation due for the Goods for which Completed Delivery has been achieved under the terms of such terminated Order.

14.4.3 Continuous Performance. Provided that Supplier is paid sums due upon an Order that are undisputed by District, Supplier shall not: (1) stop, delay or interrupt continuous performance of its obligations by reason of any dispute or disagreement with District, including, without limitation, any disputes or disagreements over payments of money that are disputed in good faith by District; nor (2) stop, delay or interrupt performance under any Order placed by District.

14.4.4 Exclusive Right of Termination. Supplier's right to terminate is limited to the grounds set forth in this Paragraph 14.4.

14.5 CONTINUING OBLIGATIONS

All obligations of Supplier under the Contract Documents that would survive completion of performance by Supplier under the Contract Documents, including, but not limited to, all warranties, guarantees and indemnities, will apply to the

portions of the Goods that are delivered, stored or in transit at the time of a termination by District or Supplier and that District takes possession of upon or after such termination.

ARTICLE 15 NON-DISCRIMINATION

Non-discrimination is governed by the Non-Discrimination Declaration in the Bid Documents and submitted by the Supplier in response to the Bid. Supplier agrees to comply all District policies including but not limited to the Supplier shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of Applicable Laws.

ARTICLE 16 MANDATORY DISPUTE RESOLUTION PROCEDURES

The parties agree that in the event a dispute or claim arises in the performance of this Agreement, that the claimant shall provide written notice of such claim and the parties shall first attempt to meet in good faith and negotiate such dispute. If the dispute cannot be resolved by such negotiations, then, prior to commencing litigation the parties shall submit the dispute to non-binding mediation. The parties shall mutually agree upon the selection of the mediator of any and all disputed claims. If the dispute remains unresolved after non-binding mediation, either party may initiate litigation.

ARTICLE 17 ACCESSIBILITY REQUIREMENTS

17.1 Accessibility Requirements. Vendor hereby warrants that the products and services to be provided under this Agreement will comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794d) and its implementing regulations set forth at Title 36, Code of Federal Regulations, parts 1193 and 1194. Vendor agrees to test and validate its product, and any related website or online content it produces, with sufficient regularity in order to ensure the product and associated content meet conformance with all applicable Revised 508 Standards and Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standards (see <https://www.w3.org/TR/WCAG21/>), in accordance with the required testing methods. The vendor shall maintain and retain full documentation of the measures taken to ensure compliance with the applicable requirements stated above, including records of any testing or demonstrations conducted. Vendor shall provide the District with copies of all Accessibility Conformance Reports (ACR) and Supplemental Accessibility Conformity Reports (SACR) that are produced related to the product or service. Further, Vendor agrees to promptly respond to and fully resolve any complaint regarding accessibility of its products or services which is brought to its attention. All resolutions provided by the vendor in response to complaints regarding information and communications technology (ICT) accessibility of its product(s) shall meet conformance with established WCAG 2.1 Level AA requirements. Vendor further agrees to indemnify and hold harmless the Los Angeles Community College District, including any of its nine colleges using the vendor's products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds termination of this Agreement. Throughout the life of the agreement, the District reserves the right to independently perform any necessary testing on vendor's product or service to verify conformance or any representation of conformance made by the vendor with this section.

**ARTICLE 18
ENUMERATION OF CONTRACT DOCUMENTS**

18.1 LIST OF CONTRACT DOCUMENTS

The Contract Documents, except for Orders, issued after execution of this Purchase Agreement, include, without limitation, the following:

18.1.1 Purchase Agreement. The Purchase Agreement is this executed Purchase Agreement between District and Supplier for the Custodial Equipment and Supplies, including the following Exhibits attached hereto and incorporated herein by this reference:

- .1 **Exhibit "A"** Minimum Performance & Service Requirements
- .2 **Exhibit "B"** Delivery Locations
- .3 **Exhibit "C"** Bid Form
- .4 **Exhibit "D"** Bid Sheet
- .5 **Exhibit "E"** Bidder's Questionnaire
- .6 **Exhibit "F"** Authorized 3rd Party Service Provider
- .7 **Exhibit "G"** Acknowledgement of Addenda
- .8 **Exhibit "H"** Vendor Bid
- .9 **Exhibit "I"** RFB and Addenda

Addenda. The Addenda, if any, are as follows:


Number	Title	DATE	Pages
01	Addendum No. 01 FE-23-04-RFB	04/11/2023	2

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 18.

WHEREFORE, this Purchase Agreement is entered into as of the day and year first written above.

**LOS ANGELES COMMUNITY
COLLEGE DISTRICT**

**HAAKER EQUIPMENT COMPANY D/B/A TOTAL
CLEAN EQUIP., a CA CORPORATION**

By: 
Rueben C. Smith, D.C.Sc. (May 18, 2023 12:28 PDT)
Rueben C. Smith, D.C.Sc.

By: 
Wilson Shyu (May 18, 2023 09:52 PDT)

Title: Vice Chancellor & Chief Facilities Executive

Name: Wilson Shyu

Title: General Manager

Date: 05/18/2023

Date: 05/16/2023

Initial:  Director of Bond Capital Construction

Purchase Agreement


e-Sign Purchase Agreement 40590 for Haaker Equipment Company


Final Audit Report

2023-05-16


Created:	2023-05-16
By:	Irene Cua-Garcia (irene.cua-garcia@build-laccd.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAARdShu9i_xMBqj7RQZnAhlu08EpYC7_L


"e-Sign Purchase Agreement 40590 for Haaker Equipment Company" History


 Document created by Irene Cua-Garcia (irene.cua-garcia@build-laccd.org)
2023-05-16 - 3:15:12 PM GMT- IP address: 65.197.243.30

 Document emailed to wilsons@haaker.com for signature
2023-05-16 - 3:17:02 PM GMT

 Email viewed by wilsons@haaker.com
2023-05-16 - 3:19:53 PM GMT- IP address: 172.226.3.180

 Signer wilsons@haaker.com entered name at signing as Wilson Shyu
2023-05-16 - 4:52:40 PM GMT- IP address: 173.197.67.98

 Document e-signed by Wilson Shyu (wilsons@haaker.com)
Signature Date: 2023-05-16 - 4:52:42 PM GMT - Time Source: server- IP address: 173.197.67.98

 Agreement completed.
2023-05-16 - 4:52:42 PM GMT

Signature: 
Ian Erhardt (May 17, 2023 10:13 PDT)

Email: erhardt@laccd.edu










e-Sign Purchase Agreement 40590 for Haaker Equipment Company

Final Audit Report

2023-05-18

Created:	2023-05-16
By:	Irene Cua-Garcia (irene.cua-garcia@build-laccd.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_TmFLUSblp42SPRG_ww3B-9p3rf8wXel

"e-Sign Purchase Agreement 40590 for Haaker Equipment Company" History

-  Document created by Irene Cua-Garcia (irene.cua-garcia@build-laccd.org)
2023-05-16 - 6:29:13 PM GMT - IP address: 65.197.243.30
-  Document emailed to Ian Erhardt (erhardt@laccd.edu) for signature
2023-05-16 - 6:30:35 PM GMT
-  Email viewed by Ian Erhardt (erhardt@laccd.edu)
2023-05-17 - 5:12:52 PM GMT - IP address: 65.197.243.30
-  Document e-signed by Ian Erhardt (erhardt@laccd.edu)
Signature Date: 2023-05-17 - 5:13:02 PM GMT - Time Source: server- IP address: 65.197.243.30
-  Document emailed to smithrc@email.laccd.edu for signature
2023-05-17 - 5:13:03 PM GMT
-  Email viewed by smithrc@email.laccd.edu
2023-05-17 - 5:31:23 PM GMT - IP address: 204.102.252.6
-  Signer smithrc@email.laccd.edu entered name at signing as Rueben C. Smith, D.C.Sc.
2023-05-18 - 7:28:15 PM GMT - IP address: 65.197.243.30
-  Document e-signed by Rueben C. Smith, D.C.Sc. (smithrc@email.laccd.edu)
Signature Date: 2023-05-18 - 7:28:17 PM GMT - Time Source: server- IP address: 65.197.243.30
-  Agreement completed.
2023-05-18 - 7:28:17 PM GMT