

Gilroy Unified School District Purchase Order Terms and Conditions
Supplies, Materials and Equipment

1. **Entire Contract:** This Contract, when accepted by VENDOR either in writing or by the shipment of any item or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters specified herein, and no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein shall apply. The term VENDOR includes contractors and consultants.
 - 1.1. Except as otherwise provided in subsection 1.2 below, the entire Contract consists of a) District's solicitation/request for bids or proposals, together with plans and specifications, if any, b) Vendors bid or proposal, if any, c) the Purchase Order, and d) these terms and conditions. Except for any section or subsection marked "WAIVED", each provision of the terms and conditions applies to the Contract.
 - 1.2. Any terms, conditions, or limitations proposed by Vendor shall not form a part of this Contract, unless accepted in writing by District. In no event, shall e-mail, voice-mail or electronic communication of any type be construed as a writing for purposes of obligating the District.
2. **Governing Law; Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without regard to its conflict of laws principles. Venue for any action or proceeding for dispute resolution under this Contract shall be with the Superior Court within the County of Santa Clara, State of California.
3. **Amendments:** This Contract may be modified or amended upon mutual agreement, in writing, between District and Vendor subject to any required District approval.
4. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
5. **Delivery:** Vendor shall deliver the goods and perform any services in accordance with the schedule in Contract with the number of days meaning calendar days, unless otherwise stated. No partial deliveries shall be accepted. All transportation and delivery charges must be prepaid in full to destination, and the prepaid freight bill must be submitted to District with invoice, FOB Destination. Goods shall not be accepted if shipped C.O.D.
6. **Acceptance/Payment:** Unless otherwise agreed to in writing by District, a) acceptance shall not be deemed complete unless in writing and until all the goods or services have actually been received, inspected, and tested to the satisfaction of District, and b) payment shall be made in arrears after satisfactory acceptance. District reserves the right to reject any good or service which does not comply with the specifications and/or terms of this Contract.
7. **Payment Terms:**
 - 7.1. **Standard:** Net 60 days unless otherwise agreed in a separate writing signed by the Parties.
 - 7.2. **Invoices:** Vendor shall submit itemized invoices to District, Attn. _____ at the address shown on this Contract. Each invoice must show District's Purchase Order number, item number description of supplies or services, sizes, units of measure, quantity, unit price and extended totals, and shall cover only goods delivered or services performed; and shall include supporting documentation including but not limited to, paid receipts and invoices to validate each charge invoiced. Incomplete or unsatisfactory invoices shall be returned unpaid.
8. **Warranty:** Vendor expressly warrants that the goods/services covered by this Contract are a) free of liens or encumbrances, b) all goods, materials, and equipment supplied will be new, conform to District specifications, are of first class material and workmanship and are free from defects, and c) that all services will be of good quality, performed to the standard of care customary of Vendor's trade or profession. Unless otherwise specified and agreed by the Parties, the Warranty shall be effective for one (1) year after the date of District's final payment. Neither District's inspection nor failure to inspect shall relieve Vendor of any obligation hereunder, if in District's opinion, any article, material or work fails to conform to specifications or is otherwise defective, Vendor shall promptly replace same at Vendor's expense. No acceptance or payment by District shall constitute a waiver of the forgoing, and nothing herein shall exclude or limit any warranties implied by law.
9. **Assignment or Sub-Contracting:** Vendor may not assign any right or interest under this Contract, nor delegate or subcontract any obligation hereunder without the prior written consent of District. Any attempt to do so will be null and void.
10. **Independent Vendor:** Vendor is acting as an independent Vendor, not an agent or employee of District.
11. **Non-Discrimination:** Vendor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment due to race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or other prohibited basis. All non-discrimination rules or regulations required by law are included in this Contract by this reference.
12. **Termination:** In addition to any other remedies or rights it may have by law, District may in its sole and absolute discretion, terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. In such cases, Vendor shall be entitled to payment only for goods, materials or services performed that District has accepted.
13. **Waiver:** No provision of this Contract shall be deemed waived and no breach shall be deemed excused, unless such waiver or excuse is in writing or and signed by the party making the waiver or excusing the breach. No such waiver shall constitute a waiver of another provision or an excuse of another breach.
14. **Vendor Remedies:** If District defaults hereunder, Vendor may file a claim with District, in accordance with applicable provisions of law.
15. **Performance:** Vendor shall perform all work under this Contract in accordance with any applicable standard of care, and taking necessary steps and precautions to perform the work to District's satisfaction. Services performed are subject to, and must conform to District's standard specifications. Vendor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Vendor under this Contract. Vendor shall perform all work diligently, carefully, and in a good and workman-like manner; and shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary. Vendor shall be fully responsible for all work performed by subcontractors and shall refrain from utilizing unlicensed or uninsured subcontractors.
16. **Force Majeure:** If the performance of any act required of District or Vendor is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event District or Vendor claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of that fact within ten (10) calendar days after the beginning of any such claimed delay.
17. **Compliance with Laws:** Vendor represents and warrants that services to be provided under this Contract shall fully comply, at Vendor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws") applicable to the services at the time services are provided to and accepted by District.

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

19. **Indemnification and Insurance:**

To the fullest extent permitted by law, Vendor will defend, indemnify and hold harmless District, its Board members, officers, employees and agents (the "indemnified parties") from all claims and demands of all persons to the extent arising out of, pertaining to, or relating to (i) the performance work, or actual or alleged non-performance, or the furnishing of materials; including but not limited to, claims by the Vendor or Vendor's employees for damages to persons or property except for the sole negligence or willful misconduct of an indemnified party seeking indemnification; and/or (ii) Vendor's negligence, recklessness, or willful misconduct whether by act or omission to act, in failure to meet an applicable professional standard for performance, if any, or for actual or alleged non-performance of the work under this Contract. Vendor shall defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of Vendor's performance or non-performance of the work hereunder, and shall not tender such claims to District or any indemnified party, for defense or indemnity.

In connection with any items or materials provided by Vendor under this Contract and subject to copyrights or other intellectual property rights, Vendor warrants and represents that either it holds all such rights or is otherwise legally authorized to provide such items or materials to District. Vendor shall, without regard to any limitation of liability clause, defend (with attorneys acceptable to District) and hold harmless District from and against any loss, expense and liability arising from or in connection with any violation or alleged violation of any third party's intellectual property rights.

Labor Code: Vendor certifies that it is aware of the provisions of Section 3700 of California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this agreement. Vendor and subcontractors will keep workers' compensation insurance for their employees in effect during all work covered by this agreement.

Insurance Provisions:

A. All Vendors shall have adequate general comprehensive or commercial liability insurance appropriate to the business or sales activity but not less than \$500,000 per occurrence or, if issued on a claims made basis, then applicable to the time of service or sale hereunder, and \$1,000,000 aggregate.

B. If Vendor comes onto District property to perform any portion of the work or services, Vendor shall, before beginning services, provide certificates of insurance satisfactory to the District evidencing general liability coverage of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring 30 days (10 days for non-payment of premium) notice of cancellation to the District.

B.1 The General Liability coverage is to state or be endorsed to state "such insurance shall be primary and any insurance, self-insurance or other coverage maintained by the District, its Board members, officers, agents or employees shall not contribute to it."

B.2 General Liability coverage shall give the District, its Board members, officers, employees, and agents additional insured status using ISO endorsement CG 2010, CG 2033, or equivalent.

C. All Insurance coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by the District. In the event the Vendor employs other Vendors (subcontractors) as part of the work covered by this agreement, it shall be the Vendor's responsibility to require and confirm that each sub-Vendor meets the minimum insurance requirements specified above.

D. If any of the required coverages expire during the term of this Contract, Vendor shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the District at least 10 days prior to the expiration date.

Prevailing Wage: For public works project greater than \$1,000, Vendor shall pay the general prevailing rate of per diem wages to all workers employed on contracted projects as established by the California Department of Industrial Relations.

20. **Miscellaneous Terms and Conditions:** Vendor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

20.1. **Headings:** The headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

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

20.3. **Attorney Fees:** The party prevailing in a claim, dispute, or legal proceeding to enforce or interpret this Agreement shall be entitled to recover, and the other party shall pay, reasonable attorney fees and expenses.

20.4. **Interpretation:** This Contract represents the entire and integrated Contract between District and Vendor and supersedes all prior negotiations, representations, or agreements, either written or oral, including any sales agreements or contracts to the extent the same are inconsistent with the terms hereof.

20.5. **Authority:** In executing and delivering the PO and this Contract, Vendor represents and warrants that this Contract has been duly authorized, executed and delivered and constitutes the legally binding obligation of Vendor, enforceable in accordance with its terms.

20.6. **Notice:** Notice shall be given by first class mail, facsimile, or other electronic/telecommunications transmission with a date and time receipt acknowledgement or via personal delivery. Notice shall be effective upon receipt. The Parties hereby covenant and agree that each party may rely on a telefax signature of the other with respect to matter pertaining to this Contract and the confirmation of delivery of fax shall be sufficient evidence of any notice required hereunder. Each Party also agrees to provide an electronic receipt confirming any notice given via email and such electronic confirmation of delivery shall be sufficient evidence of receipt of any notice required hereunder.