

PURCHASE AGREEMENT FOR MATERIALS, EQUIPMENT, AND SUPPLIES
SAN FRANCISCO UNIFIED SCHOOL DISTRICT

This Purchase Agreement ("Agreement") is made and entered into as of the _____ day of _____, 20__ by and between the **San Francisco Unified School District** ("District") and _____ ("Vendor"), (together, "Parties").

RECITALS

WHEREAS, the District wishes to purchase _____ ("Products") from Vendor in a cost-effective manner;

WHEREAS, Section 20111(a) of the California Public Contract Code authorizes the District to purchase equipment, materials, or supplies in an amount under the bid threshold (\$96,700 for 2021) without formal bidding; and

WHEREAS, Vendor wishes to contract to provide the District with the Products that it needs and is willing to provide the same pursuant to the District requirements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the parties agree as follows:

TERMS AND CONDITIONS

- 1. Products.** Vendor shall furnish and deliver the Products to the _____, located at _____ ("Site"), as further identified in **Exhibit A** attached hereto and incorporated herein by this reference in the quantities designated therein.
- 2. Term.** Vendor shall provide Products under this Agreement no later than _____, 20__, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
- 3. Compensation.** District agrees to pay Vendor an amount not-to-exceed _____ Dollars (\$_____) for the Products identified in **Exhibit A**.

All costs for delivery, drayage, freight, or the packing of said articles are to be borne by the Vendor. No charge for containers, packing, drayage or other purpose will be allowed over and above the prices written in the quote, unless otherwise specified. All shipping is F.O.B. Destination.

The District shall not be responsible for any taxes or surcharges with the exception of sales tax or use taxes where applicable.

- 4.1 Invoices.** Invoices shall be furnished with the delivery and include delivery site, product name, quantity, unit size, and unit price.
 - 4.2 Payment.** Payment shall be made within 30 days of (i) the date of acceptance of the Products; or (ii) receipt of an undisputed invoice, whichever is later.
- 4. Independent Contractor.** Vendor, in the performance of this Agreement, shall be and act as an independent contractor. Vendor understands and agrees that it and all of its

employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Vendor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Vendor's employees. In the performance of this Agreement as herein contemplated, Vendor is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the services, (ii) performing services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the services performed.

5. Performance of Agreement.

5.1. Standard of Care. Vendor represents that Vendor has the qualifications and ability to furnish and deliver the Products as specified, without the advice, control or supervision of District in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. The District shall hold the Vendor responsible for any damage which may be sustained because of failure or neglect of the Vendor to comply with the terms or conditions listed herein with the terms of the Agreement. The District may upon twenty-four (24)-hour written notice to the Vendor, cancel the Agreement in its entirety or cancel or rescind on all or any portion of any Agreement resulting from this price request for reason of unsatisfactory product or service or any reason determined to be detrimental to the health and welfare of students and school personnel and to hold the Vendor in default. Failure to furnish all items per the Agreement, in a timely manner, as specified, shall constitute unsatisfactory service.

5.2. Delivery Time. The District and Vendor shall identify a mutually agreeable delivery date and time to the Site.

5.3. Inspection of Products Furnished. All items furnished shall be subject to inspection and rejection by the District for spoilage, defects or non-compliance with the specifications. Defective items shall be made good by the Vendor, and unsuitable items may be rejected, notwithstanding that such defective items may have been previously overlooked by the District and accepted. If a Product is rejected at time of delivery, a credit is to be issued for the Product or Vendor shall immediately remedy such defect in a manner satisfactory to District.

5.4. Safety and Security. It shall be the responsibility of Vendor to ascertain from, and comply with, the District's rules and regulations pertaining to safety, security, and driving on District grounds, particularly when students are present.

5.5. Force Majeure. Vendor shall be excused for delays to the extent caused by acts for God, fire, flood, earthquake, other natural disaster, strike, lockout, riot, freight embargo, governmental statutes or regulations imposed after the fact, when satisfactory evidence thereof is presented to the District.

6. Warranty/Quality. Unless a longer warranty is called for or provided elsewhere, the Vendor, manufacturer, or their assigned agents shall guarantee the Product or service performed against defects or failures of materials for a minimum period of one (1) year from completion of all obligations described in **Exhibit A**. All workmanship and

merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

7. Audit. Vendor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Vendor transacted under this Agreement. Vendor shall retain these books, records, and systems of account during the Term of this Agreement and any renewals, and for five (5) years thereafter. Vendor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Products covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Vendor and shall conduct audit(s) during Vendor's normal business hours, unless Vendor otherwise consents. Proof of distributor's landing cost (distributor's invoice) will be required upon request, within a two day period, for audit purposes only. Invoices are checked regularly.

8. Termination.

8.1. For Convenience by District. District may, at any time, with or without reason, terminate this Agreement and compensate Vendor only for Products satisfactorily provided to the date of termination. Written notice by District shall be sufficient to stop further performance of this Agreement by Vendor. Notice shall be deemed given when received by the Vendor or no later than three (3) days after the day of mailing, whichever is sooner.

8.2. With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 8.2.1. unsatisfactory product or service; or
- 8.2.2. any reason determined to be detrimental to the health and welfare of students and District personnel; or
- 8.2.3. material violation of this Agreement by the Vendor; or
- 8.2.4. any act by Vendor exposing the District to liability to others for personal injury or property damage; or
- 8.2.5. Vendor is adjudged a bankrupt, Vendor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Vendor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required products from another vendor. If the expense, fees, and/or costs to the District exceed the cost of providing the Products pursuant to this Agreement, the Vendor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The

foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

9. Indemnification. To the furthest extent permitted by California law, Vendor shall indemnify and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Vendor. Vendor shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Vendor's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

10. Insurance.

10.1. Vendor shall procure and maintain at all times during the term of the Agreement the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ __,000,000 \$ __,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ __,000,000 \$ __,000,000
Workers' Compensation Insurance	Statutory Limits

10.1.1. Commercial General Liability and Automobile Liability Insurance. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Vendor, District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by District.)

10.1.2. Workers' Compensation Insurance. Workers' Compensation Insurance for all of its employees performing any portion of the services in accordance with provisions of section 3700 of the California Labor Code. If any class of employee or employees engaged in performing any portion of the services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. That policy shall provide employers' liability coverage per accident for bodily injury or disease.

10.2. Proof of Insurance. Vendor shall not commence performing any portion of the services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:

- 10.2.1. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 10.2.2. An endorsement for each policy stating that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.
- 10.2.3. An endorsement stating that District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 10.2.4. An endorsement stating that Vendor's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 10.2.5. An endorsement stating that there shall be a waiver of any subrogation against the District and its respective elected officials, officers, employees, agents, representatives, contractors, trustees, and volunteers.
- 10.2.6. All policies except Workers' Compensation shall be written on an occurrence form.
- 10.2.7. Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to District.

12. Assignment. The obligations of the Vendor pursuant to this Agreement shall not be assigned by the Vendor without the written consent of the District's Governing Board. Notice is hereby given that the District will not honor any assignment made by Vendor unless the required written consent has been given.

13. Claims. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Vendor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Vendor's right to bring a civil action against the District. Pending resolution of the dispute, Vendor and its subcontractors shall continue to perform the services under the Agreement and shall not cause a delay of the Services during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.

14. Compliance with Laws. Vendor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. All products must conform to the provisions set forth in the federal, state, county, and city laws for their production, handling, processing, marketing, and labeling. Vendor shall give all notices required by any law, ordinance, rule and regulation bearing on providing the Products as indicated or specified. If Vendor performs any service that

is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Vendor shall bear all costs arising therefrom.

15. Tobacco-Free Environment. All District sites have been designated as a tobacco-free environments. Smoking and the use of tobacco products is prohibited at all times on all areas of District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

16. No Rights in Third Parties. This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

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

18. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:

San Francisco Unified School District
ATTN: _____
555 Franklin Street
San Francisco, CA 94102
FAX: _____
EMAIL: _____

Vendor:

ATTN: _____
ADDRESS: _____

FAX: _____
EMAIL: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

19. Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

20. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in San Francisco County, California.

- 21. Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 22. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 23. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 24. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 25. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 26. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 27. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 28. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authority and empowered to enter into this Agreement.
- 29. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 30. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below.

Dated: _____, 20__

Dated: _____, 20__

San Francisco Unified School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Vendor:

Address: _____

Employer Identification and/or
Social Security Number

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____
 Limited Liability Company
 Other: _____

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Vendor to furnish the information requested in this section.

EXHIBIT A
SCOPE OF WORK

Contractor's entire Proposal is **not** made part of this Agreement.

[REMAINDER OF PAGE BLANK; EXHIBIT FOLLOWS]