



MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive, Concord, California 94519
CONTRACT INCORPORATING AGREEMENT FOR FURNITURE
PURCHASES FOR SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

This Piggyback Agreement (“Piggyback Agreement”), dated for convenience September 12, 2024, by and between the **Mount Diablo Unified School District** (“District”) and **Hertz Furniture Systems, LLC**. (“Contractor” or “Vendor”) pursuant to the San Bernardino City Unified School District (“SBCUSD”) issued Request for Proposal (“RFP”) #22-17. District and Vendor may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, District desires to purchase furniture in a cost-effective manner;

WHEREAS, California Public Contract Code § 20118 allow public agencies to “piggyback” for equipment, materials, supplies, vehicles, and personal property (“the governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases from a vendor. ...”);

WHEREAS, SBCUSD is a local education agency pursuant to the California Education Code;

WHEREAS, on or about October 21, 2022, SBCUSD issued Request for Proposal (“RFP”) # 22-17 for outdoor, office, and classroom furniture;

WHEREAS, in November 2022, Hertz Furniture Systems, LLC submitted a proposal;

WHEREAS, on or about December 13, 2022, following a competitive process, SBCUSD awarded the contract for RFP # 22-17 to Hertz Furniture Systems, LLC (“SBCUSD Agreement RFP # 22-17”);

WHEREAS, the District determined that it is in its best interests to purchase furniture via piggyback contract; and

WHEREAS, Hertz Furniture wishes to provide the District with furniture pursuant to the SBCUSD Agreement RFP # 22-17.

NOW, THEREFORE, 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. SBCUSD Contract:

- 1.1. This Piggyback Agreement fully incorporates by this reference SBCUSD Agreement RFP # 22-17 attached hereto as **Appendix 1**, and all of its amendments and terms and conditions.
- 1.2. To the extent any term or condition of this Piggyback Agreement is inconsistent with the SBCUSD Agreement RFP # 22-17, this Piggyback Agreement controls.

2. Products and Price: Vendor agrees to furnish/delivery all products identified or specified herein under the SBCUSD Agreement RFP # 22-17 at fair prices, as set forth on the attached **Appendix 2**. **Contractor acknowledges and certifies that the quote prices will be equal to or less than the prices for the identical items under the SBCUSD Agreement RFP # 22-17.**

3. Term and Termination: The contract term shall commence on or about September 12, 2024, and shall terminate on January 16, 2028, unless terminated earlier.

- 3.1. Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Vendor only for services/products satisfactorily rendered to the date of termination.

4. Compensation: The total not-to-exceed compensation shall be for no more than three years and four months (expiring January 16, 2028) years for the provision of the products in Appendix 2. The not to exceed amount is the maximum amount of compensation due Vendor, and not a guarantee of total payment to Vendor, as Vendor is paid in arrears for products actually delivered. Vendor shall invoice the District for any products and services and District shall pay Vendor within forty five (45) days of receipt of an undisputed invoice from Vendor.

5. Availability of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation: This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated or stated in any approved amendment. If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the period for which funds are appropriated. Vendor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

6. Disallowance: If Vendor claims or receives payment from the District for a service that is later disallowed by the United States Government, State of California or any other grantors, Vendor shall promptly refund the disallowed amount to the District upon the District's request. At its option, the District may offset the amount disallowed from any payment due or that may become due to the Vendor under this Agreement. By executing this Agreement, Vendor certifies that Vendor is not suspended, debarred or otherwise excluded from participation in federal, state or local governmental programs. Vendor acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

7. Submitting False Claims; Monetary Penalties: Pursuant to Government Code §§ 12650 *et seq.*, any person, including a contractor, subcontractor or Vendor, who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim.
8. Proprietary Information Of District; Student Information: Vendor understands and agrees that, in connection with this Agreement, the Vendor may have access to proprietary and confidential information, which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the District, its Board, employees or students. Vendor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Vendor to civil liability. Consequently, Vendor certifies that all information disclosed by the District to the Vendor or in which such information is collected or received by Vendor on District's behalf shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Vendor shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care. Confidentiality provisions shall survive termination of this Agreement.
9. Indemnification: Vendor shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement by Vendor and/or Vendor's agents, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of Education Code § 45125.1 and/or disclosure of confidential information which might be obtained by Vendor or Vendor's agents in the performance of this Agreement. Notwithstanding the foregoing, Vendor shall have no obligation under this Section with respect to any claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Vendor or Vendor's agents.
10. Insurance: Vendor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Vendor, his or her agents, representatives, employees subcontractors or sub-processors. Specifics regarding the amount and type of insurance are set-forth in the attached **Appendix 3 ("Insurance Requirements")**.
11. Force Majeure: The parties agree that neither shall be liable to the other under this Agreement as a result of any delay, failure or interruption in services or obligations directly caused by an act of God or public enemy; acts of civil or military authorities; catastrophes such as an earthquake, epidemic, pandemic, viral or communicable disease outbreak; quarantines; disruption of supply chains, transportation systems, or national emergency, that is beyond the reasonable control of the Party and which renders impossible the performance of contractual obligations, either totally or in part (a "Force Majeure Event"), excluding in all cases claims of financial hardship, and such nonperformance will be excused and will not be deemed a default hereunder or a ground for termination of the Agreement, provided that as soon as reasonably possible the affected Party (1) provides the other party with notice of such Force Majeure Event, (2) provides detailed documentation establishing that such Force Majeure Event was beyond the Party's reasonable control and not due to any fault or negligence on its part, and (3) works diligently to restore services as soon as reasonably possible. In no event shall any

work stoppage, strike or labor dispute at a District or Vendor site, or by District or Vendor personnel, constitute a Force Majeure Event under this Agreement.

12. **Notice:** Any notice required or permitted to be given under this Contract shall be deemed to have been given, served and received if given in writing and personally delivered or either 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:

<p><u>DISTRICT</u> Mt. Diablo Unified School District Attn: Purchasing Department 1936 Carlotta Drive Concord, CA 94519 (925) 682-8000 Elizabeth McClanahan, Director McClanahanE@mdusd.org</p>	<p><u>CONTRACTOR</u> Hertz Furniture Systems, LLC Attn: Mutty Leiser, VP Merchandising and Bids & Contracts 170 Williams Drive, Suite 201 Ramsey, NJ 07446 (800) 526-4677 Email: mleiser@hertzfurniture.com</p>
---	--

13. **Entire Agreement:** This Contract and the attachments hereto and the documents specifically incorporated into the Contract by reference, constitute the entire Contract between the District and Vendor. No other promises, contracts, or statements between the Parties shall be binding unless made in writing and signed by all Parties hereto.
14. **Attorney's Fees:** Each party shall bear its own costs and attorneys' fees incurred or connected with the drafting and signing of this Contract and the events leading up to this Contract.
15. **Applicable Laws:** Vendor shall keep itself fully informed of applicable federal, state and local laws, regulations, orders, and District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Agreement, and shall at all times comply with such laws, regulations, orders, District Board Policies, and Administrative Regulations as they may be amended from time to time, including but not limited to:
- 15.1. Vendor has the responsibility to know, and comply with, all requirements of California law pertaining to Conflicts of Financial Interest in contracting with public agencies. Vendor certifies that it has read, understood and will comply with conflict of interest laws and regulations, set forth in Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270 / Conflict of Interest.
 - 15.2. The District is committed to providing equal opportunity for all individuals in education. Vendor understands and agrees that in providing products/services to the District, it is Vendor's obligation to comply with Board Policy 0410 / Nondiscrimination in District Programs and Activities.
 - 15.3. Vendor acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, must be similarly accessible to the general public regardless of disabilities.
 - 15.4. Vendor's employees, agents or volunteers who will have no contact or will have limited contact and will not interact with District students outside of the supervision and control of student's parents or District staff, are not required to meet criminal background check and subsequent arrest notification requirements under California Education Code § 45125.1. Vendor certifies that Vendor and its employees shall not have limited or frequent or prolonged contact with

District students and will not interact with District students outside of the supervision and control of student's parents or District staff in the performance of the Agreement.

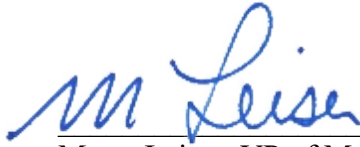
16. Waiver: The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
17. California Law: This Contract and the rights and obligations of the Parties hereunder shall be construed and interpreted in accordance with the laws of the State of California. Any action or proceeding to enforce this Contract shall be commenced and maintained in Contra Costa County, California. Notwithstanding any provision to the contrary, this venue and jurisdiction provision shall control over any contradictory provision in the SBCUSD Contract.
18. Independent Contractor: Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or its agents and employees. Any terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as the means by which such a result is obtained. The District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.
19. **LIABILITY OF DISTRICT: DISTRICT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED TO CONTRACTOR UNDER THIS AGREEMENT. DISTRICT SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT.**
20. The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Contract.
21. The Parties acknowledge that this Contract is only binding once it is approved by the District's Governing Board
22. This Contract may be executed in several counterparts and shall be deemed legally effective at such time as counterparts thereof duly executed on behalf of all Parties have been furnished and delivered to the attorneys for all Parties to this Contract. Signature of copies and facsimile versions of this Contract shall have the same force and effect as signature of the original.

IN WITNESS WHEREOF the District and Vendor have executed this Agreement, which was approved by the Board of Education on September 11, 2024.

HERTZ FURNITURE SYSTEMS, LLC

MT. DIABLO UNIFIED SCHOOL DISTRICT

APPROVED:



Mutty Leiser, VP of Merchandising and
Bids & Contracts

9/9/2024

Date

APPROVED:



Adrian Vargas, Chief Business Officer

9/10/2024

Date

APPENDIX 1

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT AGREEMENT WITH HERTZ FURNITURE SYSTEMS, LLC FOR OUTDOOR, OFFICE, AND CLASSROOM FURNITURE

RFP# 22-17

Attached and incorporated by reference.

Pages 7.1 - 7.4

Agreement

THIS AGREEMENT, dated this **17th day of January, 2023** in the County of San Bernardino, State of California, by and between the SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT hereinafter referred to as the "DISTRICT" and **Hertz Furniture Systems, LLC**, hereinafter referred to as the "VENDOR" or "VENDOR NAME"

WITNESSETH:

That the District and Vendor, for the consideration stated herein, agree as follows:

1. **CONTRACT**

The complete contract includes all bid documents, including the Notice Inviting Bid, Bid No. 22-17, all addenda, Vendor's bid submitted in response to Bid No. 22-17, any resultant purchase order(s), General Bid Instructions and Conditions, Specifications, Attachments, this Agreement, and all modifications and amendments thereto, by this reference are incorporated herein. The contract documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. **COMPENSATION**

The DISTRICT shall pay the VENDOR, in accordance with the Vendor's Bid Discounts off Manufacturer List or Cost Plus per purchase – per the attached Catalog Discount.

3. **CONTRACT TERM**

The term of the contract is January 17, 2023 and shall continue through January 16, 2024, with the option to extend for four (4) additional one (1) year period in accordance with provisions contained in the Education Code section 17596 (K-12). The maximum term of the Agreement is five (5) years.

4. **NOTICES**

The Agreement number on the upper left side of this page and the purchase order number should always be referenced in any correspondence or invoices submitted pertaining to this Agreement to the District. The invoice shall describe in detail the items purchased and must include the purchase order number.

All notices and documents required pursuant to the terms hereof shall be in writing and may be delivered in person or by certified or registered mail, postage paid, as follows:

Vendor

Hertz Furniture Systems, LLC
Muttu Leiser
170 Williams Drive, Suite 201
Ramsey, NJ 07446
(800)526-4677

District

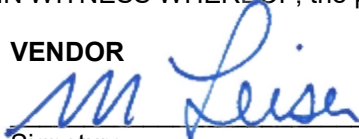
San Bernardino City USD
Lenore McCall, Manager
Purchasing Department
777 North F Street
San Bernardino, CA 92410
(909) 381-1133

5. ENTIRE AGREEMENT

The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the project under this contract exists between the parties. This agreement can be modified only by written amendment, signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

VENDOR


Signature: _____

Mutty Leiser
Print Name _____

Title: **VP Merchandising, Bids & Contracts**

Date: **1/18/2023**

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

Laura Cardenas
Director, Purchasing Department

Date: _____

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
777 N F Street
San Bernardino, CA 92410

Outdoor, Office and Classroom Furniture
BID NO. 22-17
AMENDMENT NO. 1

THE AGREEMENT entered into on the 17th day of January 2023, by and between the SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT, hereinafter referred to as the "DISTRICT" with its principal place of business at 777 North F Street, San Bernardino, California, 92410, and HERTZ FURNITURE SYSTEMS, LLC hereinafter referred to as the "SUCCESSFUL BIDDER" with a principal place of business at 170 Williams Drive, Suite 201 Ramsey, NJ 07446 is amended as follows:

RECITALS

WHEREAS, the DISTRICT wishes to extend the agreement for Outdoor, Office and Classroom Furniture;

WHEREAS, the SUCCESSFUL BIDDER itself is, or those hired by the SUCCESSFUL BIDDER are, specially trained, experienced and competent to render the special services required by the DISTRICT, and such services are needed on an as needed basis;

NOW, THEREFORE, the DISTRICT and the SUCCESSFUL BIDDER mutually agree to amend this Agreement as follows:

I. TERM


This Amendment No.1 extends the Agreement for a period of one (1) year, effective January 17th, 2024 through January 16th, 2025.

All other terms and conditions remain the same.

IN WITNESS WHEREOF, the parties have executed this Amendment as set forth below.

HERTZ FURNITURE SYSTEMS, LLC

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT



MUTTY LEISER
VP of Merchandising and Bids & Contracts,
Hertz Furniture Systems, LLC

LAURA CARDENAS
Director, Purchasing Department

Date: 12/6/2023

Date: _____

Fingerprint and criminal Background Check Certification

In accordance with Department of Justice (DOJ) fingerprint and criminal background investigation requirements of Education Code Section 45125.1 et seq.

With respect to the Agreement dated 1/17/2024 - 1/16/2025 between the San Bernardino City Unified School District "DISTRICT" and the individual, company, or contractor named Hertz Furniture Systems, LLC "VENDOR," for provision of Delivery and Installation of Outdoor, Office and Classroom Furniture services.

Please check all appropriate boxes and sign below:

REQUIREMENTS MET:

- A) The VENDOR hereby certifies to the DISTRICT's governing board that it has completed the criminal background check requirements of Education Code (EC) Section 45125.1 and that none of its employees that may come into contact with DISTRICT students have been convicted of a violent felony listed in Penal Code Section 667.5(c) or a serious felony listed in Penal Code Section 1192(c).

List below, or attach, all employee names that have successfully completed the fingerprinting and criminal background check clearance in accordance with the law.

Anthony Mendez Michael Gaspar Rosselin Flores Jose Madriz

SERVICES MAY BEGIN AFTER A PURCHASE ORDER (PO) IS ISSUED TO THE VENDOR

--OR--

REQUEST FOR WAIVER:

IF YOU ARE REQUESTING A WAIVER, BE ADVISED THAT NO SERVICES ARE TO BE PROVIDED UNTIL THE DISTRICT APPROVES SUCH WAIVER AND A PURCHASE ORDER IS ISSUED.

- B) The VENDOR requests a waiver of the Department of Justice (DOJ) fingerprint and criminal background investigation for the following reason(s) permitted by Education Code Section 45125.1 et seq.

- The VENDOR and its employees will have NO CONTACT with pupils. (No school-site services will be provided.)
- The VENDOR and its employees will have LIMITED CONTACT with pupils. (Attach information about length of time on school grounds, proximity of work area to pupil areas; whether VENDOR/its employees will be working by themselves or with others, and any other factors that substantiate limited contact.) [EC 45125.2(c)]
- The VENDOR and its employees WILL HAVE OTHER THAN LIMITED CONTACT with pupils but will assure that ONE(1) OR MORE of the following methods are utilized to ensure pupil safety. [EC 45125.2(A)]

--Check all methods to be used:

- 1) installation of a physical barrier at the worksite to limit contact with pupils
- 2) Continual supervision and monitoring of all employee of the VENDOR by an employee of the VENDOR who has not been convicted of a serious or violent felony as ascertained by the DOJ. Provide below the names of the employee(s) who will provide supervision and indicate method of security clearance and date security clearance obtained.

- 3) Surveillance of employees of the VENDOR by school personnel.

- The services provided by the VENDOR are for an 'EMERGENCY OR EXCEPTIONAL SITUATION, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable" [EC 45125.1(B)]

By signing below, under penalty of perjury, I certify that the information contained on this certification form and attached employee list(s) is accurate. I understand that it is the VENDOR's sole responsibility to maintain, update and provide the District with current "Fingerprint and Criminal Background Check Certification," along with the employee list, throughout the duration of VENDOR provided services.

bbd730ca-2c30-4de3-a4a2-df76931669e9

Digitally signed by Mutty Leiser
DN: cn = Mutty Leiser, o = Hertz Furniture Systems, LLC, email = mutty.leiser@hertzfs.com, c = US

Mutty Leiser

VP Merchandising, Bid: 12/6/2023

Authorized VENDOR Signature

Printed Name

Title

Date

DISTRICT APPROVAL SHOWN BELOW IS REQUIRED

Office use only

WAIVER REQUEST:	APPROVED-- <input type="checkbox"/>	DENIED--- <input type="checkbox"/>
By: _____	Date _____	
Assistant Superintendent, Human Resources Division OR Other Authorized District Agent		

**APPENDIX 2
Pricing Schedule**

Contract No. RFP 22-17-Hertz-LM

Price Sheet

Discounts off Manufacturer List

Line Item	Description	PER	Manufacturer	Percentage
1	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Academia	66.3%
2	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	CEF	25.6%
3	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Diversified Spaces	52.5%
4	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Eurotech	53.9%
5	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Global Furniture	51.0%
6	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Global Furniture OTG	55.0%
7	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Marco Group	26.2%
8	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	MYTCOAT - Industry Standard	4.6%
9	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	NPS	48.6%
10	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	Palmer Hamilton	37.5%

Contract No. RFP 22-17-Hertz-LM

Line Item	Description	PER	Manufacturer	Percentage
11	Provide the Manufacturer and Percentage off List Price in the next two columns	EA	ultraPLAY	1.0%

Other Cost

Line Item	Description	PER	Delivery	Unit Cost
1	*Labor and installation fees	EA	Delivery	\$67.50
2	*Shipping cost over 100 miles from distribution warehouse	EA	Delivery	\$0.00
3	*Other cost	EA	Delivery	\$0.00

1. **INVOICES.** Invoices must include all of the following: invoice date, Purchase Order #, dates of service, detailed description of service, payment rate, total payment due, remit to address, Consultant name, and contact information.
 - a. **Costs:** Must correlate payment to Contractor with provision of products detailed in Appendix 1. The breakdown should list separately and in detail the rates pay, charges and expenses. Indirect fees/charges, fringe benefits, administrative cost, overhead costs and reference to insurance costs are prohibited.

APPENDIX 3 INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his or her agents, representatives, employees or sub-providers.

1. MINIMUM SCOPE OF INSURANCE:

- a. Commercial General Liability (“CGL”): Insurance with limits not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate. Insurance shall be written on an “occurrence” basis and be at least as broad as Insurance Services Office (ISO) Form CG 00 01, covering products and completed operations, property damage, bodily injury, personal & advertising injury, independent contractors, and broad from contractual liability.
- b. Sexual Abuse & Molestation Liability (“SAM”): Insurance with limits not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate. This coverage may be waived, in the District’s sole discretion, if the Contractor has certified that it will have no physical contact or will have limited contact and will not interact with District Students outside of the immediate supervision and control of the student’s parents or SFUSD staff in the performance of this Agreement.
- c. Automobile Liability (“AL”): Insurance with limits not less than one million dollars (\$1,000,000.00) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. The Parties understand and agree that the District shall rely upon the representations that the Contractor shall make in any such waiver.
- d. Workers’ Compensation (“WC”): As required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than one million dollars (\$1,000,000.00) per accident for bodily injury or disease.
- e. Professional Liability (Errors and Omissions Insurance): As appropriate to the Contractor’s profession, with limits no less than one million dollars (\$1,000,000.00) per claim, and two million dollars (\$2,000,000.00) aggregate.
- f. Technology Errors and Omissions Liability: Technology errors and omissions liability coverage with limits of One Million Dollars (\$1,000,000.00) per occurrence/claim. The policy shall, at a minimum, provide coverage for the following risks:
 - i. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personally identifiable information, such as, without limitation, name, address, social security number, protected health information, security codes, access codes, passwords, or personal identification numbers (PINs) stored or transmitted in electronic form, and shall include coverage for privacy notification costs, credit monitoring and regulatory fines & fees arising from such theft, dissemination and/or use of confidential information.
 - ii. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.
 - iii. Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District’s or a third party’s computer, computer system, network, or similar computer-related property and the data, software, and programs

thereon.

- iv. Liability arising from the failure of the technology services/product(s) provided pursuant to this Agreement.
- g. Network and Cyber Security Liability: Network and cyber security liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence/claim and an annual aggregate of Two Million Dollars (\$2,000,000.00) covering liability arising from occurrences/claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, and failure to render professional services. Such insurance shall also provide coverage for liability assumed under a contract.

2. REQUIRED ENDORSEMENTS

- a. Additional Insured Status: Mt. Diablo Unified School District (the “District”), its Board, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- b. Primary and Noncontributory: With the exception of Workers’ Compensation and Professional Liability insurance, for any claims related to this contract, the Contractor’s insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
- c. Notice of Cancellation: The following requirement is only applicable for contracts in which the total compensation to the contractor is one million dollars (\$1,000,000.00) or more. No policy required to be maintained by Contractor shall be canceled, non-renewed, or materially altered without thirty (30) days prior written notice to the District, except where cancellation is due to the nonpayment of premium(s) in which event, ten (10) days prior written notice to the District shall suffice.
- d. Waiver of Subrogation
 - i. The waiver of subrogation applies to CGL, SAM, AL, and WC.
 - ii. Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

3. ADDITIONAL INSURANCE REQUIREMENTS

- a. Claims Made Policies: If any of the required policies provide claims-made coverage:
 - i. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the

Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

- b. Verification of Coverage: Prior to the commencement of services pursuant to this Agreement, Contractor shall furnish to the District, Certificates of Insurance and all applicable endorsements evidencing the insurance coverage and limits required herein. The District reserves the right to require complete copies of any required policy(ies) required hereunder at any time. Acceptance of the Certificates of Insurance by the District does not relieve Contractor of the insurance requirements, nor decrease the liability of Contractor under this Agreement. It is the Contractor’s responsibility to ensure compliance with these insurance requirements. Any actual or alleged failure on the part of the District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.
- c. Certificate(s) of Insurance shall include the following: Certificate Holder: **Mt. Diablo Unified School District, 19366 Carlotta Drive, Concord, CA 94519**. Please email insurance documents with corresponding contract to: **Elizabeth McClanahan, Director of Purchasing & Warehouse, McClanahanE@mdusd.org**.
- d. Umbrella or Excess Policy: Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (“SIRs”), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor’s primary and excess liability policies are exhausted.
- e. Acceptability of Insurers: Unless otherwise reviewed and accepted by the District, all required insurance must be placed with insurers with a current A.M. Best rating of not less than A- VII and admitted to do business in California, or approved by the Surplus Lines Association.
- f. Broader Coverage: If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.
- g. Severability of Interest: A severability of interest provision must apply for the additional insureds, ensuring that Contractor’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies’ limits.
- h. Self-Insured Retentions: Self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- i. Subcontractor Insurance: Should the Contractor use any subcontractor(s) to perform services under this Agreement, Contractor shall be responsible for ensuring that such subcontractor(s) procure and maintain insurance and limits appropriate to the nature and scope of services provided. Contractor shall collect Certificates of Insurance evidencing coverage(s) and limits of insurance, and with the exception of Workers’ Compensation and Professional Liability policies, the Contractor and the District shall be included as additional insureds for all ongoing and completed operations of the subcontractor(s).

- j. District's Right to Modify Insurance Requirements: District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

END OF DOCUMENT