



MT. DIABLO UNIFIED SCHOOL DISTRICT

1936 Carlotta Drive, Concord, CA 94519

**INCORPORATING OMNIA COOPERATIVE CONTRACT WITH
DS BAXLEY**

This Agreement ("Agreement") is entered into on **May 14, 2025**, by and between the **Mt. Diablo Unified School District** ("District") and **DS Baxley** ("Vendor")(collectively referred to as the "Parties" and individually as a "Party") through a master agreement procured by OMNIA Partners Partners, a Delaware corporation fka, National Intergovernmental Purchasing Alliance Company; Communities Program Management, LLC, Contract #2020002143 as follows:

RECITALS

WHEREAS, the District wishes to purchase Flooring for classrooms and offices with related services including installation (the "Products") from Vendor in a cost-effective manner for the District's Robert Shearer Preschool ("Site");

WHEREAS, California Public Contract Code § 20118 *et seq.*, provides that a public Agency Board may authorize a purchase order with a two or more public agencies, if authorized by their legislative or other governing bodies, may for a cooperative exercise any power common to them by forming a National Cooperative Purchasing Alliance ("Cooperative"), even though one or more of the Cooperative members may be located outside the State of California;

WHEREAS, OMNIA Partners is a cooperative administrator, consisting of OMNIA Partners Partners, Public Sector, Inc., a Delaware corporation f/k/a National Intergovernmental Purchasing Alliance Company; Communities Program Management, LLC, a California limited liability company d/b/a U.S. Communities, and/or NCPA LLC, a Texas limited liability company d/b/a National Cooperative Purchasing Alliance (collectively, "OMNIA Partners"), in its capacity as the cooperative administrator; and

WHEREAS, District has joined OMNIA Partners by executing a Master Intergovernmental Cooperative Purchasing Agreement, which was Board approved on September 11, 2024, through Resolution #24/25-14;

WHEREAS, the District, as a member of OMNIA Partners may purchase items in cost-effective and efficient manner; and

WHEREAS, as a member of OMNIA Partners, through the approval of the Master Intergovernmental Purchasing Agreement, the District is able to piggyback off the competitively procured contract in accordance with California Public Contract Code § 20118.

WHEREAS, MeTEOR Education, LLC was awarded contract #2020002143 through OMNIA Partners to contract with Public Agencies;

WHEREAS, on or about November, 2019, OMNIA Partners, on behalf of all participating public agencies, published its Request for Proposal for Flooring Installation, and Related Services, RFP #19-18 (the “RFP”) in *San Bernardino County Sun* (California), *Arizona Business Gazette*, *The Salt Lake Tribune*, *The Herald News* (Illinois), *Oahu Publications, Inc.* (Hawaii), *Houston Chronicle* (Texas), *Las Vegas Sun* (Nevada), *New Jersey Sunday Herald*, *Richmond Time-Dispatch* (Virginia), *The Daily Journal of Commerce* (Washington), *Capital City Press* (Louisiana), *The State Media Company* (South Carolina), *Times Union* (New York), *USA Today*, *Oregon’s Daily Journal of Commerce*, the OMNIA Partners (f/k/a NCooperative) website, ...;

WHEREAS, DS Baxley(“Company”) submitted a proposal to the RFP offering a broad selection of flooring, and services with related equipment and supplies (“Company’s Proposal”);

WHEREAS, OMNIA Partners’s Board of Directors voted to award Company a contract (OMNIA Partners Contract Number #2020002143 under the RFP at its Regular Meeting on April 28, 2020, with an effective start date of April 15, 2020, and an expiration date of April 14, 2025, and which may be renewed for one (1) year, at the discretion of OMNIA Partner.. Company’s Proposal and the Board Resolutions issued by OMNIA Partners are attached as **Exhibit “A,”** which documents are incorporated herein in their entirety by this reference (“Cooperative Contract”), which was subsequently extended through April 14, 2027;

WHEREAS, the District, pursuant to California Government Code § 6500 *et seq.* of the, desires to utilize the Cooperative Contract for purchase of the Products;

WHEREAS, Company utilizes independent, authorized representatives, distributors, and dealers, such as Vendor, to coordinate the purchase of the Products; and

WHEREAS, Vendor wishes to provide the District with, and install, the Products in accordance with the terms of the Cooperative Contract.

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

TERMS AND CONDITIONS

1. This Agreement fully incorporates by this reference the following documents:

- 1.1. The Cooperative Contract and Amendments are attached hereto as **Exhibit A**, all other documents attached thereto or incorporated therein by reference, including, without limitation, the RFP, and any and all amendments or term extensions to the Cooperative Contract.

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- 1.2. Vendor's Scope of Work, dated May 2025, which is attached hereto as **Exhibit B**.
- 1.3. The following certifications/documents attached hereto: Prevailing Wage Certification, Workers' Compensation Certification, Criminal Background Investigation / Fingerprinting Certification, Asbestos & Other Hazardous Materials Certification, Lead-Product(s) Certification, Registered Subcontractors List and Off-Road Diesel-Fueled Fleet Certification, if applicable.
- 1.4. The performance bond, payment (labor and material) bond, and the certificate(s) and endorsement(s) of insurance required hereunder.
2. To the extent any term or condition of this Agreement is inconsistent with the Cooperative Contract, the Cooperative Contract shall control, except for the Scope of Work, delivery, payment, venue, jurisdiction, termination for convenience, prevailing wage, term, or other provisions required by California law, in which case this Agreement shall control over all other contradictory provisions in the Cooperative Contract.
3. Vendor agrees to sell and supply and deliver to and install all Products and perform and complete the Scope of Work at the Site as further described in **Exhibit B** attached hereto and pursuant to this Agreement. The Project is the Scope of Work completed at the Site.
4. **Term and Termination:** The contract term shall commence on or about May 14, 2025, and shall terminate on August 31, 2025, unless terminated earlier.
5. **Pricing Acknowledgment and Certification.** Vendor hereby acknowledges and certifies that the Products identified in **Exhibit B** are available under the Cooperative Contract and the prices under **Exhibit B** are equal to or less than those offered under the Cooperative Contract.
6. **Compensation.** The not-to-exceed purchase price for the Products, including installation, shall be one hundred twenty-seven thousand eight hundred four and seventy nine hundredths (\$127,804.79) (the "Contract Price"), as more specifically identified in **Exhibit B**. The Contract Price consists of the cost of all fully-installed Products at the Site, including, without limitation, shipping, taxes, and all Work according to **Exhibit B**.
7. **Payment.** On a monthly basis, Vendor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Vendor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.
8. **Schedule; Completion Date.** Vendor shall perform and complete the scope of Work according to a schedule to be mutually agreed to by the Parties. Work shall begin upon

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District's issuance of the Notice to Proceed and shall be completed by ***August 31, 2025*** ("Completion Date").

9. **Labor Code Requirements.** Vendor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with District or available online at <http://www.dir.ca.gov/>. In addition, Vendor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735 forbidding discrimination, and Section 1777.5 concerning the employment of apprentices by Vendor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.
 - 9.1. **Registration:** Vendor and its subcontractor(s) shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and in accordance with Labor Code section 1771.1.
 - 9.2. **Registered Subcontractor List:** Within 30 days of the award of contract or prior to commencing the Work under this Agreement, whichever occurs first, Vendor shall provide District all information required by Labor Code section 1773.3, as amended by Stats. 2017, Ch. 28, Sec. 21, for Vendor and all tiers of Subcontractors to enable District to provide notice to the Department of Industrial Relations (DIR) of the Agreement (PWC-100 form). Vendor shall submit and maintain an updated Registered Subcontractor List including all Subcontractors of any tier furnishing labor, material, or equipment to the Project.
 - 9.3. **Certified Payroll Records:** To the extent applicable, Vendor and its subcontractor(s) shall upload certified payroll records ("CPR") electronically using California Department of Industrial Relations' (DIR) eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's form (or current form) online directly to the DIR on no less than every 30 days while Work is being performed and within 30 days after the final day of Work performed on the Project, and within ten (10) days of any request by District or Labor Commissioner at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Vendor and/or each subcontractor in connection with the Work.
 - 9.4. **Labor Compliance:** To the extent applicable, Vendor shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.
10. **Claims.** In the event of any demand by Vendor for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by District under the Agreement, (B) payment by District of money or damages arising from work done by, or on

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behalf of, Vendor pursuant to the Agreement and payment of which is not otherwise expressly provided for or to which Vendor is not otherwise entitled to, or (C) an amount of payment disputed by District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, 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 Vendor's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Vendor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Vendor and its subcontractors shall continue to perform the Work under the Agreement and shall not cause a delay of the Work, including the disputed work, during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of District.

11. **Payment Bond and Performance Bonds.** If required, Vendor shall not commence the Work until it has provided to District, in a form acceptable to District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to District.
12. **Insurance.** Vendor shall not commence the Work until all insurance required under the Cooperative Contract has been obtained and certificates indicating the required coverage have been delivered in duplicate to District and approved by District. District and its Board of Education, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance.
13. **Termination for Convenience.** In addition to the termination rights of the Parties set forth in the Cooperative Contract, District shall have the right to terminate this Agreement for convenience and compensate Vendor only for services satisfactorily rendered to the date of termination. Written notice, addressed as set forth in the Cooperative Contract, by District shall be sufficient to stop further performance of services by Vendor. Notice shall be deemed given when received by Vendor or no later than three (3) days after the date of mailing, whichever is sooner. Notwithstanding any provision to the contrary, this Termination for Convenience provision shall control over any contradictory provision in the Cooperative Contract.
14. **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

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funds are appropriated. Vendor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.

19. 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:

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.
- 19.4. 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.

20. Independent Contractor: Vendor or any agent or employee of Vendor shall be deemed at all times to be an independent contractor and not an employee of the District. Vendor 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 Vendor 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 Vendor'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 Vendor 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 Vendor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement. Vendor shall refund any amounts necessary to effect such reduction.

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21. 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.

22. Miscellaneous Provisions.

- 22.1. The Parties acknowledge that each of them has fully discussed the contents of this Agreement with their chosen representatives and/or legal counsel and has had the benefit of legal counsel in negotiating and drafting the terms of this Agreement. Accordingly, this Agreement shall not be construed as having been drafted by one Party or the other.
- 22.2. This Agreement and the attachments hereto and the documents specifically incorporated into the Agreement by reference, constitute the entire Agreement between District and Vendor and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
- 22.3. This Agreement 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 Agreement 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 Cooperative Contract.
- 22.4. The Parties agree to execute all such other documents and to take all such other actions as may be reasonably necessary to effect and carry out the purposes of this Agreement.
- 22.5. This Agreement may be executed in several counterparts. Signature of copies and facsimile or electronic versions of this Agreement shall have the same force and effect as signature of the original.
- 22.6. The Parties acknowledge that this Contract is only binding once it is approved by the District's Governing Board.
- 22.7. 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.

[SIGNATURES ON FOLLOWING PAGE]

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ACCEPTED AND AGREED, and signed on the dates indicated below:

DS BAXLEY

APPROVED BY:

Steven Stacy

DATE:

5/14/25

MT DIABLO UNIFIED SCHOOL DISTRICT

APPROVED BY:

ADRIAN VARGAS, CHIEF BUSINESS OFFICER

DATE:

RECOMMENDED:

By:

**MELANIE KOSLOW, EXECUTIVE DIRECTOR OF
MAINTENANCE, OPERATIONS, & FACILITIES DEPT.**

DATE:

REVIEWED:

By:

**ELIZABETH McCLANAHAN, DIRECTOR OF
PURCHASING & WAREHOUSE DEPARTMENT**

DATE:

Public Contract Code section 9204

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

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(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity’s written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or

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board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

Public Contract Code sections 20104 – 20104.6

§ 20104.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) “Public work” means “public works contract” as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) “Claim” means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency’s written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

PURCHASE REQUEST # _____

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim 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 the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly

PURCHASE REQUEST #_____

rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

**PREVAILING WAGE CERTIFICATION AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: _____

Proper Name of Vendor: _____

Signature: _____

Print Name: _____

Print Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Date: _____

Proper Name of Vendor: _____

Signature: _____

Print Name: _____

Print Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Agreement.)

CRIMINAL BACKGROUND INVESTIGATION
/FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the District that I am a representative of the Vendor currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Vendor.

Vendor certifies that it has taken at least one of the following actions (check all that apply):

- ☐ Pursuant to Education Code section 45125.2(a), Vendor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Vendor's employees, subcontractors or suppliers and District pupils at all times; and/or
- ☐ Pursuant to Education Code section 45125.2(a), Vendor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Vendor who the California Department of Justice ("DOJ") has ascertained, or as described below, will ascertain, has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Vendor's and its subcontractors' or suppliers' employees is:

Name: _____

Title: _____

NOTE: If Vendor is a sole proprietor, and elects the above option, Vendor must have the above-named employee's fingerprints prepared and submitted by District for submission to the DOJ, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by DOJ has been made.

- ☐ Pursuant to Education Code section 45125.2(a), the District will take appropriate steps to protect the safety of any pupils that may come in contact with Vendor's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.2 shall not apply to Vendor under the Contract.
- ☐ The Work on the Contract is either (i) at an unoccupied school site and no employee of Vendor and/or subcontractor or supplier of any tier of the Contract shall come in contact with the District pupils or (ii) if Vendor's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Vendor under the Contract.

- The Vendor, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Vendor's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the DOJ has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Vendor performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Vendor's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

A complete and accurate list of Vendor 's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto as ATTACHMENT "A;" and/or

- The Vendor is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Vendor's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the DOJ may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Vendor's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

Vendor's responsibility for background clearance extends to all of its employees, Subcontractors or suppliers, and employees of Subcontractors or suppliers coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Vendor.

[CONTINUED ON NEXT PAGE]

ATTACHMENT “A”

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

Date: _____

Proper Name of Vendor: _____

Signature: _____

Print Name: _____

Title: _____

LEAD-PRODUCT(S) CERTIFICATION

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Department of Education (CDE), and the Consumer Equipment Safety Commission (CPSC) regulate lead-containing paint and lead products.

Because Vendor and its employees will be providing services for the District, and because Vendor's work may disturb lead-containing building materials, VENDOR IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

The CDE mandates that school districts utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. Furthermore, since it is assumed by the district that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that Vendor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (Including Title 8, California Code of Regulations, Section 1532.1). Any and all Work which may result in the disturbance of lead-containing building materials must be coordinated through the District.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. Vendor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of Vendor.

All contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors shall comply with the Renovation, Repair and Painting Rule, shall receive training from a U.S. EPA-accredited training provider, and shall be certified by the U.S. EPA. Vendor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

If failure to comply with these laws, rules, and regulations results in a site or worker contamination, Vendor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work.

It shall be the responsibility of Vendor to properly dispose of any and all waste products, including but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of Vendor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to

issue a current manifest number upon transporting any hazardous material from any school site within the District.

THE UNDERSIGNED HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT HE OR SHE HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY, AS WELL AS THE EXISTENCE OF APPLICABLE LAWS, RULES AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, SUCH MATERIALS WITH WHICH IT MUST COMPLY. THE UNDERSIGNED ALSO WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND VENDOR.

Date: _____

Name of Vendor: _____

Signature: _____

Print Name: _____

Print Title: _____

OFF-ROAD DIESEL-FUELED FLEET CERTIFICATION

Title 13 CCR sections 2449, 2449.1, and 2449.2, in compliance with Government Code sections 11346.2, subdivision (a)(3), and 11346.8, subdivision (c), applies to construction contractors who own or operate within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

Section 2449(i), in relevant part, provides:

- (1) For a project involving the use of vehicles subject to this regulation, the prime contractor must obtain copies of the valid Certificate of Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.
- (2) No prime contractor or public works awarding body, as applicable, shall enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and its listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.
- (3) The Certificates of Reported Compliance received by the prime contractor for a project must be retained for three (3) years after that project's completion. Upon request by California Air Resources Board ("CARB"), these records must be provided to CARB within five (5) business days of the request.
- (4) Situations in which prime contractors or public works awarding bodies, as applicable, are contracting for projects that are considered emergency operations, as defined in section 2449(c)(18), are exempt from the requirements in section 2449(i)(1)-(3), but must still retain records verifying vehicles subject to the regulation that are operating on the emergency operations project are actually being operated on the project for emergency operations only. These records must include a description of the emergency, the address or a description of the specific location of the emergency, the dates on which the emergency operations were performed, and an attestation by the fleet that the vehicles are operated on the project for emergency operations only.

Section 2449(j), in relevant part, also states:

- (1) Between March 1 and June 1 of each year, a prime contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in section 2449(n), from all fleets that have an ongoing contract with the prime contractor as of March 1 of that year. Prime contractors must not write contracts to evade this requirement.

- (2) Prime contractors shall only allow fleets with valid Certificates of Reported Compliance on the prime contractor's job sites.
- (3) If the prime contractor discovers that any fleet intending to operate vehicles subject to this regulation for the prime contractor does not have a valid Certificate of Reported Compliance, as defined in section 2449(n), or if the prime contractor observes any noncompliant vehicles subject to the regulation on the prime contractor's job site, then the prime contractor must report specified information regarding the fleet to CARB within five (5) business days of such discovery.
- (4) Upon request by CARB, the prime contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to this regulation operating at the job site or for the prime contractor.
- (5) The prime contractor shall prominently display signage for any project where vehicles subject to this regulation will operate for eight (8) calendar days or more. The signage must be posted by the eighth calendar day from which the first vehicle operates. The signage will be in lettering larger than size 14-point type and displayed in a conspicuous place where notices to employees are customarily posted at the job site or where there is employee foot traffic. If one of the above locations is also viewable by the public, it should be posted at that location. The signage must include specified information regarding idling regulations for In-Use Off-Road Diesel-Fueled Fleets with directions on how to report observed noncompliance of the provided regulations to CARB.

I am aware of the provisions of Title 13 CCR sections 2449, 2449.1, and 2449.2, which apply to every contractor who owns or operates off-road diesel fleet vehicles in California, and I will comply with such provisions, including providing Certificate(s) of Reported Compliance for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, with its bid.

Date: _____

Proper Name of Vendor: _____

Signature: _____

Print Name: _____

Title: _____

Vendor must attach valid Certificate(s) Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets provided by CARB for the fleet selected for the contract and their listed subcontractors, if applicable, to this form.

END OF DOCUMENT

EXHIBIT A

OMNIA Partners CONTRACT #2020002143 and Contract Updates 1 through 7

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXHIBIT FOLLOWS]

EXHIBIT B

SCOPE OF WORK

Attached and incorporated herein: 1) Robert Shearer Preschool