

**PURCHASE ORDER TERMS AND CONDITIONS
(SERVICES OTHER THAN PUBLIC WORKS)**

The San Luis Obispo County Community College District ("District") utilizes Purchase Orders for all purchases of services, except construction services (collectively "Services"). Phone orders and/or oral agreements are not valid and may be subject to non-payment.

1. **DISTRICT:** The San Luis Obispo County Community College District.
2. **CONTRACTOR:** "Contractor" or "Consultant" shall mean the seller or supplier of the Services identified in the Purchase Order and all individuals, officers, directors, employees, agents, contractors, subcontractors or subconsultants of such seller or supplier. In providing Services hereunder, the Contractor shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which Contractor is authorized to act on behalf of the District, if at all, in its independent contractor capacity. Contractor shall be responsible to the District and third parties for the consequences of Contractor's actions or conduct which exceeds the express limited scope of Contractor's authority to act on behalf of the District set forth herein.
3. **STANDARD OF CARE.** The Contractor shall provide the Services authorized herein: (i) using their professional skill and judgment; (ii) acting with due care and in accordance with applicable standards of care under California law for those providing similar services for work similar in size, scope and complexity; and (iii) pursuant to the terms of this Agreement.
4. **SUBCONTRACTORS.** Contractor will not be prohibited from employing additional workers or Subcontractors necessary for the completion of this Agreement. However, these individuals must be fully qualified to complete their assigned tasks and shall not be employees of the District. The Work of each Subcontractor shall be set forth in a written Subcontract agreement incorporating by reference this Purchase Order and Terms and Conditions; Subcontractor agreements shall be made available to the District for review upon request of the District. The Contractor is responsible to the District for the acts, omissions and other conduct of Subcontractors. Each Subcontractor shall maintain Workers Compensation/Employers Liability Insurance and Commercial General Liability Insurance as required by these Terms and Conditions.
5. **NON-ASSIGNMENT.** The Contractor shall not assign or transfer by operation of law or otherwise any rights or obligations of the Contractor without the prior written consent of the District, which may be granted, conditioned or denied in the sole and exclusive discretion of the District.
6. **CONTRACTOR ACCEPTANCE OF PURCHASE ORDER & PURCHASE ORDER TERMS AND CONDITIONS.** Contractor must accept this Purchase Order and the Purchase Order Terms and Conditions in writing. The foregoing notwithstanding, if for any reason Contractor does not accept the Purchase Order and Purchase Order Terms and Conditions in writing, any conduct of Contractor reflecting acknowledgement of this Purchase Order and the Purchase Order Terms and Conditions, including without limitation, Contractor's commencement of performance of Contractor's obligations under the Purchase Order or Contractor's acceptance of payment shall be deemed Contractor's acceptance of the Purchase Order and Purchase Order Terms and Conditions. Whether Contractor's acceptance of the Purchase Order and Purchase Order Terms and Conditions is by writing or by conduct, any additional or different terms or conditions proposed by Contractor or incorporated into Contractor's acceptance of the Purchase Order and Purchase Order Terms and Conditions are deemed material alterations to these Purchase Order Terms and Conditions, and such additional or different terms are expressly rejected unless such terms are incorporated by direct reference in the Purchase Order.
7. **PRICE AND PAYMENT**
 - 7.1. **Contract Price.** Contractor shall furnish and provide the Services, including all necessary equipment and facilities to render Contractor Services pursuant to this Purchase Order, for the contract price specified in the Purchase Order. The Contract Price includes the fee of the Contractor and any Subcontractor to the, personnel expenses of the Contractor and Subconsultants, inclusive of all benefits and burdens, travel for personnel of the Contractor and Subcontractors to and from the Site, travel within the Counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Monterey, Kern and King, insurance and other overhead costs associated with or arising out of performance and completion of Basic Services for the Project.
 - 7.1.1. **Reimbursable Expenses.** Unless authorized in advance in writing by the District, there shall be no expenses, costs or other charges arising out of or related to providing Services or authorized Additional Services under this Agreement ("Reimbursable Expenses") which are reimbursable to the Contractor. If any Reimbursable Expense is approved in advance by the District, the Contractor's reimbursement shall be limited to the actual costs, without mark-ups or multiples.

- 7.1.2. **Additional Services.** If the District shall authorize or direct Contractor to perform or provide Additional Services described generally in this Agreement, Contractor shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule attached hereto as Exhibit "A" ("the Rate Schedule") and incorporated herein by this reference.
- 7.1.3. **Changes to the Work.** The District may, by written order, make Changes to the Work, issue additional instructions and to add to or delete from the Work. No Change may be made without the prior written approval and direction of the District. Adjustments of the Contract Price or the Contract Time on account of a Change authorized hereunder will only be made by written Change Order duly executed by the Contractor and the District Representative. Changes approved by the District shall be reduced to Change Order in the form and content prepared by or on behalf of the District.
- 7.2. **District Payments.**
 - 7.2.1. **Contractor Billings to District.** During the Term of this Agreement, the Contractor will submit monthly billings for payment of the Contract Price. The Contractor's billings shall: (i) identify each member of the Contractor's personnel who performed any Basic Services or authorized Additional Services in the preceding month; (ii) a detailed description of the services, tasks or other activities for each time entry; (iii) time entries shall be in increments of no more than one-quarter hour; and (iv) limited by the amount(s) allocated to each Phase of the Contractor's Basic Services for the Project, or portions thereof.
 - 7.2.2. **District Payments to Contractor.** Within thirty (30) days of receipt of Contractor's billing invoices, District will make payment to Contractor of undisputed amounts of the Contract Price due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due Contractor hereunder because of any penalty, assessment liquidated damages or other amounts withheld by the District from payment to the Architect or the Contractor. The District may, however, withhold or deduct from amounts otherwise due Contractor hereunder if Contractor shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Contractor has fully cured its failure(s) of performance, less costs, damages or losses sustained by the District as a result of such failure(s) of performance of material obligations hereunder. If at any time the District does not pay to Contractor all sums invoiced, District shall within thirty (30) days of the Contractor's submission of its billing invoice, provide Contractor with written documentation describing the basis for the District's withhold or deduction of the Contract Price and shall pay the balance of Contractor's invoice not subject to withholding or deduction.
 - 7.2.3. **District Right to Offset.** Any payment due or to become due from the District to the Contractor under the Purchase Order is subject to deduction by the District for any set-off, counterclaim or payment due from the Contractor to the District under the Purchase Order or any other transaction between the Contractor and the District.
8. **TIME.** Time is of the essence. Immediately upon District and Contractor's execution of this Agreement, Contractor shall commence performance of its Services and shall complete Services on or before _____ or _____ () days from the date of issuance of this Purchase Order.
9. **CONTRACTOR COMPLIANCE WITH LAWS**
 - 9.1. **Licenses and Permits.** The Contractor and all of its employees or agents shall secure and maintain in force such licenses and permits required by law in connection the Purchase Order and the Services subject to the Purchase Order. Pricing for Services is not subject to adjustment for any licenses or permits Contractor is required to obtain to fully perform Contractor's obligations under the Purchase Order.
 - 9.2. **Non-Discriminatory Employment Practices.** Contractor shall not engage in any discriminatory employment practices and shall comply with all laws pertaining to and prohibiting discriminatory employment practices.
 - 9.3. **Prevailing Wage Rates; DIR Contractor Registration.** If the subject matter of the Purchase Order is deemed a "public work" or a "public contract" under the California Labor Code, Contractor shall comply with: (i) all applicable prevailing wage rate requirements without adjustment of the pricing set forth in the Purchase Order for the Services; and (ii) Contractor

shall be a Department of Industrial Relations ("DIR") registered contractor prior to the date of issuance of the Purchase Order. If Contractor is required to be a DIR Contractor, no payment will be made until the District has verified that Contractor is a DIR Registered Contractor.

9.4. District Policies: Employees, agents or representatives of Contractor shall comply with District policies while on District Property.

10. **TERMINATION**

10.1. Termination for District Convenience. The District reserves the right to terminate the Purchase Order, in whole or in part, for its own convenience by written notice to Contractor. In such event, the District's payment liability is limited to payment for the Services delivered prior to the District's issuance of the termination notice.

10.2. Termination for Contractor Default. If Contractor fails to fully and timely perform Contractor obligations under the Purchase Order or otherwise defaults in the performance of Contractor obligations hereunder, the District may terminate the Purchase Order in whole or in part by written notice of default to the Contractor. In such event, Contractor shall be liable to the District for all costs, expenses, damages and other losses arising out of or related to Contractor's default, including without limitation the costs to re-procure the Services subject to the Purchase Order.

11. **INSURANCE AND INDEMNITY**

11.1. Contractor Insurance. At all times while providing or performing Services under this Agreement, the Contractor shall obtain and maintain the policies of insurance described in this Section 11.1. The minimum coverage amounts of each policy of insurance to be obtained and maintained by the Contractor while providing or performing Services in connection in or about the District shall be as set forth in Section 11.1.5, below. Policies of insurance required of the Contractor will be accepted by the District only if the insurer(s) are: (i) A.M. Best rated A- or better; (ii) A.M. Best Financial Size Category VII or higher; and (iii) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California.

11.1.1. Workers Compensation and Employers Liability Insurance. Contractor shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. Contractor shall also purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy.

11.1.2. Commercial General Liability and Property Insurance. Contractor shall purchase and maintain Commercial General Liability and Property Insurance as will protect Contractor from the types of claims set forth below which may arise out of or result from Contractor's Services under this Agreement and for which Contractor may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than Contractor's employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work of the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to Contractor's obligations under this Agreement. District shall be endorsed as an additional insured to Contractor's commercial general liability insurance policy.

11.1.3. Subcontractors' Insurance. Each Subcontractor providing or performing a portion of the Services or obligations of the Contractor under this Agreement shall obtain and maintain policies of insurance for Workers Compensation, Employers Liability, and Commercial General Liability/Property Damage. Each policy of insurance to be obtained by each of the Contractor's Subcontractors shall conform to the standards or requirements set forth in Section 3.7.

11.1.4. Policy Endorsements; Evidence of Insurance. The Contractor shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of

insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be modified or canceled without at least thirty (30) days advance written notice to the District.

11.1.5. Contractor's Insurance Minimum Coverage Amounts. The Contractor and its Subcontractors shall, at all times during the Work, maintain Workers Compensation and Employers Liability as required by law, and Commercial General Liability Insurance with a minimum coverage amount of \$1,000,000 per occurrence. The Contractor's Commercial General Liability Insurance shall name the District as an Additional Insured. All policies of insurance shall include provisions that the policy of insurance will not be materially modified, cancelled or allowed to expire without at least thirty (30) days advance notice to the District. Prior to commencing the Work, the Contractor shall deliver Certificates of Insurance of itself and its Subcontractors evidencing the required insurance coverages.

11.2. Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the Indemnified Parties, Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are the District and its Board of Trustees, officers, employees, agents and representatives. The Contractor's obligations hereunder include indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands, liabilities, actions or causes of action whether for damages or other relief, including, without limitation attorneys' fees and costs which arise, in whole or in part, from the negligent, grossly negligent, reckless or willful acts, omissions or other conduct of the Contractor or its employees, agents and representatives. Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage, loss or destruction of property; and (iii) other losses, liabilities, damages or costs. The Contractor's obligations hereunder shall survive notwithstanding Contractor's completion of Contractor obligations under the Purchase Order or the termination of the Purchase Order.

12. **MISCELLANEOUS**

12.1. Certification Regarding Debarment, Suspension or Ineligibility for Public Contracts. The Contractor acknowledges that District is prohibited from contracting with parties that are suspended, debarred, ineligible, or excluded from securing public contracts or whose principals are suspended, debarred, ineligible, or excluded from securing public contracts. Contractor certifies that neither it nor any of its owners, officers partners, directors or other principals is currently suspended, debarred, ineligible, or any excluded from securing public contracts.

12.2. Severability. If any provision of the Purchase Order or Purchase Order Terms and Conditions is determined by a court of competent jurisdiction to be illegal, such provision is deemed severed, but all other provisions shall continue in full force and enforceable.

12.3. Contractor Books, Records; Audit. Contractor shall maintain books, records, documents and other materials relating to this Purchase Order for at least three (3) years after full payment by the District. The District shall have the right to audit Contractor's books, records, documents and other materials relating to this Purchase for a period of three (3) years after the District's full payment to the Contractor. Contractor shall permit the District and its employees, agents or representatives' access to Contractor's books, records, documents and other materials relating to the Purchase Order for purposes of conducting such audit.

12.4. Confidential Information. Contractor shall not use or disclose any information or data deemed by the District to be confidential or proprietary, except in performing Contractor's obligations under the Purchase Order.

12.5. Governing Law. The Purchase Order and Purchase Order Terms and Conditions are: (i) governed by California law; and (ii) interpreted as a whole and not strictly for or against the District or Contractor.

12.6. Claims.

12.6.1. Claims Within Small Claims Court Limit. Notwithstanding section 13.7.2, below, all claims, disputes, disagreements or other matters in controversy between District and Contractor, excepting therefrom claims for indemnity, of \$10,000 or that fall within the current limitation for Small Claims Court shall be resolved informally or filed in the San Luis Obispo County Small Claims Court in San Luis Obispo, California

12.6.2. Mandatory Mediation. All claims, disputes and other matters in controversy, excepting therefrom claims for indemnity, between the Contractor and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding

mediation conducted under the auspices of the Judicial Arbitration and Mediation Services ("JAMS"). The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Contractor commencing arbitration proceedings pursuant to Paragraph 12.6.3 below.

- 12.6.3. Arbitration. All claims, disputes or other matters in controversy between Contractor and District arising out of or pertaining to the Project or this Agreement which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted before a retired judge under the auspices of JAMS. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the Contractor only if it is supported by law and substantial evidence. Any arbitration award that does not include findings of fact and conclusions of law shall be invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4, vacate the arbitration award if, after review of thereof, the Court determines either that the arbitration award is not supported by substantial evidence or that it is based on an error of law. If any claim or dispute is asserted by the Architect or a Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, Contractor and District agree that any arbitration proceedings initiated between Contractor and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or Contractor.
- 12.6.4. Contractor Compliance with Government Code §900, et seq. The foregoing dispute resolution procedures notwithstanding, neither the provisions of this Agreement issued hereunder, shall be deemed to waive, limit or modify any requirements under Government Code §900, et seq. relating to the Contractor's submission of claims to the District. The Contractor's strict compliance with all applicable provisions of Government Code §900, et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the Contractor's initiation of any other dispute resolution procedure or proceeding.
- 12.6.5. Limitation on Damages. If the District breaches or defaults in its performance of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly and proximately caused by said breach or default of the District and shall exclude any and all special or consequential damages. By executing this Agreement, the Contractor expressly acknowledges the foregoing limitation to the recovery only of general damages from the District if the District is in breach or default of its obligations under the Contract Documents. The Contractor expressly waives any right to and foregoes the recovery of any special or consequential damages from the District including, without limitation, damages for: (i) lost or impaired bonding capacity; and/or, (ii) lost profits arising out of or in connection with any past, present, or future work, except for the work/Services which is the subject of this Agreement.
- 12.6.6. Disputes; Continued Performance. Notwithstanding any dispute between the District and Contractor arising out of related to the Purchase Order, Contractor shall continue performance in accordance with the Purchase Order and Purchase Order Terms and Conditions pending subsequent resolution of such disputes.
- 12.7. Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or Contractor hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.
- 12.8. Entire Agreement; No Modification Without Written Instrument: The Purchase Order and the Purchase Order Terms and Conditions constitute the entire agreement and understanding of the Contractor and District relating to the subject matter hereof, superseding and replacing all prior negotiations, understandings or agreements. Except for District directed Additional Services pursuant to Paragraph no. 7.1.2 or Changes pursuant to Paragraph no. 7.1.3, no modification to the Purchase Order or Purchase Order Terms and Conditions shall be effective or enforceable unless such modification is in a written instrument duly executed by the District President, Vice President of Administrative Services, or designee within their delegated authority, as defined by District policy. The parties expressly recognize that other District personnel are without authorization to direct Contractor to perform or provide Additional Services and/or change work or waive contract requirements. The Contractor shall not be

entitled to any compensation whatsoever for the performance of such unauthorized Additional Services and/or change work.

[END OF SECTION]