



**DOWNEY UNIFIED SCHOOL DISTRICT**  
**PURCHASE OF WHITE XEROGRAPHIC**  
**PAPER**

**BID NO.: 22/23-11**

**BID OPENING:**

**April 6th, 2023, AT 11:00 A.M.**

Contact: Marcos Gutierrez  
Buyer, Purchasing Department  
Downey Unified School District  
11627 Brookshire Avenue  
Downey, CA 90241  
(562) 469-6535

## **NOTICE TO BIDDERS**

1. Notice is hereby given that the governing board ("Board") of the Downey Unified School District ("District") will receive sealed bids for the following products no later than the specified bid deadline:

### **WHITE XEROGRAPHIC PAPER**

### **BID NO. 22/23-11**

2. Bid documents will be available on or after Thursday, March 16th, 2023, for download at the following link: <https://web.dusd.net/purchasing/#bids> ("Contract Documents").
3. Sealed bids will be received until **11:00a.m., April 6th, 2023**, at the District's Purchasing Department located at: 11627 Brookshire Avenue, Downey, CA 90241. Sealed bids may be opened by the District at or after that time and will be publicly read aloud. Any bid that is submitted after this time shall be nonresponsive and returned to the bidder. Any claim by a bidder of error in its bid must be made in compliance with section 5100 et seq. of the Public Contract Code.
4. All bids shall be on the form provided by the District. Each bid must conform and be responsive to all pertinent Contract Documents.
5. The District shall award the contract, if it awards it at all, to the lowest responsive responsible bidder based on:
  - A. The base bid amount only.
6. The Board reserves the right to reject any and all bids and/or waive any irregularity in any bid received. If the District awards the contract, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (90) days after the date of the bid opening.

Published: March 16th, 2023

March 23rd, 2023

Newspaper: Downey Patriot Newspaper

END OF DOCUMENT

## **INSTRUCTIONS TO BIDDERS**

1. Bidders shall follow the instructions in this document, and shall submit all documents, forms, and information required for consideration of a bid.
2. Downey Unified School District ("District") will evaluate information submitted by the apparent low bidder and, if incomplete or unsatisfactory to District, the apparent low bid may be rejected at the sole discretion of District.
3. Bids are requested for the procurement of:

### **WHITE XEROGRAPHIC PAPER**

### **BID NO. 22/23-11**

### **BIDS DUE: 11.00 A.M., Thursday, April 6<sup>th</sup>, 2023**

("Products")

4. District will receive sealed bids from bidders as stipulated in the Notice to Bidders.
  - a. All bids must be sealed in an envelope, marked with the name and address of the Bidder, name of the Project, the Project Number and/or bid number, and time of bid opening.
  - b. Bids must be hand delivered or mailed to the District's Business Services Department on or before the date and time shown in the Notice to Bidders.
  - c. **It is the bidder's sole responsibility to ensure that its bid is received prior to the bid deadline.** In accordance with Government Code Section 53068, any bid received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.
  - d. Bids must contain all documents as required herein.
5. Bidders are advised that on the date that bids are opened, telephones will not be available at the District Offices for use by bidders or their representatives.
6. Bids will be opened at or after the time indicated for receipt of bids.
7. Bidders must submit bids on the documents titled Bid Form and Proposal, and must submit all other required District forms. Bids not submitted on the District's required forms shall be deemed nonresponsive and shall not be considered. Additional sheets required to fully respond to requested information are permissible.
8. **Bid prices are to include shipping**, F.O.B., assembly, inside delivery, and any required installation.
  - a. Destination will be designated within the boundaries of the District. Actual delivery dates should be coordinated with the District. All shipments shall be accompanied by a packing slip. Purchase order number shall appear on all

packing slips, invoices, and packages. Upon award of bid, the awarded bidder(s) shall keep sufficient stock of products and service material to ensure prompt delivery and service schedules. There shall be no minimum quantities required in order for the District to place orders as needed. **Bid all items F.O.B., District or any of its locations within the District boundaries.**

- b. Palletize all shipments on **non-returnable** pallets furnished by Bidder. The pallet shall be 48" length x 36" width x minimum 4.75" height, general purpose, partial 4-way entry, Stringer Class pallets with notch to accommodate fork line entry. The cost of palletizing shall be included in the unit cost. The District will not be responsible for any freight and re-stocking cost in result of refused shipment not meeting these requirements.
9. Bidders shall not modify the Bid Form and Proposal or qualify their bids. Bidders shall not submit to the District a re-formatted, re-typed, altered, modified, or otherwise recreated version of the Bid Form and Proposal or other District-provided document. No oral, telephonic, facsimile or electronic modification of any of the bid documents will be considered.
10. Bids shall be clearly written and without erasure or deletions. District reserves the right to reject any bid containing erasures, deletions, or illegible contents.
11. Bidders must supply all information required by each Bid Document. Bids must be full and complete. District reserves the right in its sole discretion to reject any bid as nonresponsive as a result of any error or omission in the bid. Bidders must complete and submit all of the following documents with the Bid Form and Proposal:
  - a. Non-Collusion Declaration.
12. Bidders shall submit the Non-Collusion Declaration with their bids. Bids submitted without the Non-Collusion Declaration shall be deemed nonresponsive and will not be considered.
13. All Products must conform to the terms and conditions set forth in the Contract Documents. The District reserves the right to reject all bids that do not conform to the Contract Documents. When bidding on brands other than those specified, the Bidder must state on the bid the brand, quality, model number, or other trade designation on each item bid other than "as specified". At a minimum, descriptive technical literature (manufacturer's specifications and a picture of the specific item), marked with the appropriate bid item number, should be provided fully describing the claimed "or equal" Product. Suitability and valuation of "equals" rest in the sole discretion of the District. It is understood and agreed to by the bidder that the District reserves the right to reject any such proposed substitution. If the Product offered by the bidder is not acceptable, in the sole opinion of the District, then the bidder expressly understands and agrees that bidder shall furnish the Products specified by the District.
14. Samples of Products may be required for evaluation. Samples will be delivered to the District and returned to the bidder at the bidder's expense. Bidders are hereby notified to have samples ready for prompt evaluation, if requested, within five (5) calendar days of bid opening. Samples that cannot be provided in that time may not be considered for award.

15. Bidder shall guarantee the Products against all defects or failures of materials and workmanship for a minimum period of one (1) year from the actual delivery date.
16. Do not include California Sales or Use Taxes in unit prices. This tax will be added and paid for by the District.
17. Minimum contract term is six (6) months. Quoted prices must stay in effect for six (6) months after award of bid and may be extended upon mutual consent of District and Bidder for an additional five (5) six-month periods in accordance with provisions contained in the Education Code, Sections 39644 (K-12) and 81644 (Community Colleges). A maximum price increase of 5% per contract term may be negotiated **subject to existing market conditions**. In the event of a general price decrease the District reserves the right to revoke the bid award unless the decrease is passed on to the District.
18. Subject to the provisions of **Paragraph 17** (above), and pursuant to Education Code, Sections 39644 and 81644, this bid may be extended (by mutual consent expressed in writing) for three (3) additional six month increments (total potential bid life of 36 months from Board of Education award).
19. **The annual estimated purchase quantities are 4,000 cases.** Quantities are based on estimated usage and the District's best estimate of future purchases throughout the term of the bid. Bidders are advised that actual orders may vary from stated quantities. This is an indefinite-quantity bid. Bidders shall not specify minimum or maximum quantities or charges for specific order types. Unlimited orders within the term of the contract shall be allowed to the awarding district at prices quoted.
20. All questions about the meaning or intent of the Contract Documents are to be directed via email to the District's Director of Purchasing Services, Darren Purseglove at [dpurseglove@dusd.net](mailto:dpurseglove@dusd.net). Interpretations or clarifications considered necessary by the District in response to such questions will be issued in writing by addenda and emailed, faxed, mailed, or delivered to all bidders recorded by the District as having received the Contract Documents or posted on the District's website at <https://web.dusd.net/purchasing/#bids>. Questions received less than **SEVEN (7)** calendar days prior to the date for opening bids may not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
21. Addenda may also be issued to modify other parts of the Contract Documents as deemed advisable by the District.
22. Each bidder must acknowledge each addendum in its Bid Form and Proposal by number or its bid shall be considered non-responsive. Each addendum shall be part of the Contract Documents. A complete listing of addenda may be secured from the District.
23. Any bid may be withdrawn, either personally or by written request signed by the bidder, at any time prior to the scheduled closing time for receipt of bids. The bid security for a bid withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this paragraph, shall be returned. No bidder may withdraw any

bid for a period of ninety (90) calendar days after the date and time set for the opening of bids.

24. No person, firm or corporation shall be allowed to make, or file, or be interested in more than one (1) bid for the same Project unless alternate bids are specifically called for by the District. A person, firm, or corporation that has submitted a subproposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders or submitting a bid.
25. The District's Governing Board shall award the contract, if it awards it at all, to the lowest responsive and responsible bidder based on the criteria as indicated in the Notice to Bidders. In the event two or more responsible bidders submit identical bids, the District shall select the bidder to whom to award the contract by lot.
26. The bidder to whom the contract is awarded shall execute and submit the following documents by 5:00 p.m. of the **SEVENTH (7th)** calendar day following the date of the Notice of Award. Failure to properly and timely submit these documents entitles District to reject the bid as nonresponsive. The District may award the contract to the next lowest responsive and responsible bidder, or reject all bids.
  - a. Agreement: To be executed by successful Bidder. Submit four (4) copies, each bearing an original signature.
  - b. Insurance Certificates and Endorsements as required.
27. Any bid protest by any bidder regarding any other bid must be submitted in writing to the District, before 5:00 p.m. of the **THIRD (3rd)** business day following bid opening.
  - a. Only a bidder who has actually submitted a bid, and who could be awarded the contract if the bid protest is upheld, is eligible to submit a bid protest. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder.
  - b. A bid protest must contain a complete statement of any and all bases for the protest and all supporting documentation. Materials submitted after the bid protest deadline will not be considered.
  - c. The protest must refer to the specific portions of all documents that form the basis for the protest.
    - (1) Without limitation to any other basis for protest, an inadvertent error in listing the California contractor's license number on the Designated Subcontractors List shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the correct contractor's license number is submitted to the District within 24 hours after the bid opening and the corrected number corresponds with the submitted name and location for that subcontractor.
    - (2) Without limitation to any other basis for protest, an inadvertent error listing an unregistered subcontractor shall not be grounds for filing a

bid protest or grounds for considering the bid nonresponsive provided that any of the following apply:

- (i) The subcontractor is registered prior to the bid opening.
  - (ii) The subcontractor is registered and has paid the penalty registration fee within 24 hours after the bid opening.
  - (iii) The subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.
- d. The protest must include the name, address and telephone number of the person representing the protesting party.
- e. The party filing the protest must concurrently transmit a copy of the protest and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- f. The procedure and time limits set forth in this paragraph are mandatory and are each bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceedings.
28. District reserves the right to reject any or all bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional bids, to re-bid, and to reject the bid of any bidder if District believes that it would not be in the best interest of the District to make an award to that bidder, whether because the bid is not responsive or the bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by District. District also reserves the right to waive any inconsequential deviations or irregularities in any bid. For purposes of this paragraph, an "unbalanced bid" is one having nominal prices for some work items and/or enhanced prices for other work items.
29. Discrepancies between written words and figures, or words and numerals, will be resolved in favor of figures or numerals.
30. It is the policy of the District that no qualified person shall be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award of contract, based on race, color, gender, sexual orientation, political affiliation, age, ancestry, religion, marital status, national origin, medical condition or disability. The successful bidder and its subcontractors shall comply with applicable federal and state laws, including, but not limited to the California Fair Employment and Housing Act, beginning with Government Code section 12900, and Labor Code section 1735.
31. Prior to the award of contract, District reserves the right to consider the responsibility of the bidder. District may conduct investigations as District deems necessary to assist in the evaluation of any bid and to establish the responsibility,





**BID FORM AND PROPOSAL**

To: Governing Board of the Downey Unified School District ("District")

From: \_\_\_\_\_  
(Proper Name of Bidder)

The undersigned declares that Bidder has read and understands the Contract Documents, including, without limitation, the Notice to Bidders and the Instructions to Bidders, and agrees and proposes to supply all necessary materials, and equipment and furnish all products in accordance with the terms and conditions of the Contract Documents.

PRODUCTS: **White Xerographic Paper**

("Product") and will accept in full payment for the Product the following total lump sum amount, all taxes included:

_____ dollars      \$ _____
<b><i>BASE BID</i></b>
<b><i>Bidder acknowledges and agrees that the Base Bid accounts for any and all Allowance(s), and Total Cost for Unit Prices.</i></b>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Downey Unified School District**

**Bid #22/23-11**

**White Xerographic Paper**

**EXHIBIT "A"**

<b>Item No.</b>	<b>DUSD Stock No.</b>	<b>UOM</b>	<b>Description</b>	<b>Brand</b>	<b>Approx. Annual Quantity</b>	<b>Unit Price</b>	<b>Extension</b>
1	331	CASE	White Xerographic Paper, 8-1/2" x 11", 20 pound bond, Acid free, Minimum 92% Brightness, For use in copiers, laser printers, inkjet printers and paper fax machines, 500 sheets per ream, 10 reams/case; Truckload/840 Cases (21 Pallets). All papers are to be factory wrapped with moisture proof wrapping. Discovery Copy #1501005 or Equal.		<b>4,000</b>	\$	\$

**Additional Detail Regarding Calculation of Base Bid**

1. The undersigned has notified the District in writing of any discrepancies or omissions or of any doubt, questions, or ambiguities about the meaning of any of the Contract Documents, and has contacted the District before bid date to verify the issuance of any clarifying addenda.
2. It is understood that the District reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of ninety (90) days.
3. The following document is attached hereto:
  - Non-Collusion Declaration
4. Receipt and acceptance of the following addenda is hereby acknowledged:

No. _____, Dated _____	No. _____, Dated _____
No. _____, Dated _____	No. _____, Dated _____
No. _____, Dated _____	No. _____, Dated _____

5. Bidder specifically acknowledges and understands that if it is awarded the contract, that it shall perform the Project while complying with all requirements of the Department of Industrial Relations, if required.
6. Bidder expressly acknowledges that it is familiar with and capable of complying with applicable federal, State, and local requirements relating to COVID-19 or other public health emergency/epidemic/pandemic including, if required, preparing, posting, and implementing a Social Distancing Protocol.
7. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Gov. Code, § 12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claims Act. It may also be considered fraud and the bidder may be subject to criminal prosecution.

Furthermore, bidder hereby certifies to the District that all representations, certifications, and statements made by bidder, as set forth in this bid form, are true and correct and are made under penalty of perjury.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Name of Bidder: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address of Bidder: \_\_\_\_\_

Taxpayer Identification No. of Bidder: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_ Web Page: \_\_\_\_\_

Contractor's License No(s) (if applicable):

No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

No.: \_\_\_\_\_ Class: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Public Works Contractor Registration No. (if applicable): \_\_\_\_\_

END OF DOCUMENT

**NON-COLLUSION DECLARATION  
(Public Contract Code Section 7106)**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.  
[Title] [Name of Firm]

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_,  
[Date]

at \_\_\_\_\_, \_\_\_\_\_.  
[City] [State]

Date: \_\_\_\_\_

Proper Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF DOCUMENT

**SAMPLE PURCHASE AGREEMENT**  
**DOWNEY UNIFIED SCHOOL DISTRICT**

This Purchase Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the Downey Unified School District, ("District") and \_\_\_\_\_ ("Vendor"), (individually each a "Party" and together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

- 1. Products.** Vendor shall furnish and deliver equipment, materials, or supplies ("Products") to the site(s) (each a "Site") as further identified in **Exhibit "A"** attached hereto and incorporated herein by this reference in the quantities designated in the bid or purchase order in accordance with the Bid Form and Proposal, specifications, and any samples furnished by the Vendor and accepted by the District.
- 2. Term.** Vendor shall commence providing Products under this Agreement on \_\_\_\_\_, 2023 through \_\_\_\_\_, 2023 ("Term"), unless this Agreement is terminated and/or otherwise cancelled prior to that time.

If mutually agreeable, the District reserves the right to renew the Agreement for additional six (6)-month terms, for a period not to exceed three (3) consecutive years total. This renewal is contingent upon competitive pricing and upon all terms and conditions of the original Agreement having been met to the satisfaction of the District. Such renewal will be made by notifying the Vendor, in writing, thirty (30) days prior to the expiration of the Agreement.

- 3. Submittal of Documents.** Vendor shall not commence providing the Products under this Agreement until the Vendor has submitted and the District has approved the certificate(s) and the endorsement(s) of insurance required as indicated below:

<u>          X          </u>	Signed Agreement
<u>          X          </u>	Workers' Compensation Certification
<u>                          </u>	Fingerprinting/Criminal Background Investigation Certification
<u>          X          </u>	Insurance Certificates and Endorsements
<u>          X          </u>	W-9 Form
<u>                          </u>	Other: _____

- 4. Compensation.** District agrees to pay Vendor according to the prices in Vendor's Bid Form and Proposal for the Products satisfactorily furnished and delivered pursuant to this Agreement, as such prices are shown on **Exhibit "A"**. Vendor agrees that all costs for delivery, drayage, freight, or the packing of said articles are to be borne by the Vendor.
- 5. Vendor.** The District shall not be responsible for any taxes or surcharges with the exception of sales tax or use taxes where applicable.
  - 5.1. Accounting.** Invoices shall be furnished with each delivery and include delivery site, product name, quantity, unit size, and unit price. One (1) copy is to be kept by the Vendor.

- The original invoice must be signed by the individual checking the dropped merchandise the following morning. An invoice signed by the District's

representative or designee is required in order for the invoice to be processed for payment.

- Statements for all goods purchased within a calendar month shall be on an individual Site basis.
- Statements shall be submitted no later than the fifth day following the close of each calendar month.

**5.2. Payment.** Invoices for purchases at the delivered price are not due and payable until delivery of Product and do not constitute an obligation by the District until the month following the month for which charges accrue. The District shall make every reasonable effort to pay invoices as promptly as regular District fiscal procedures permit. Payment is due thirty (30) days from the date the Product is received and accepted by the District, or thirty (30) days from the date a correct invoice is received by the District office, whichever is later. Vendor will inform the District of any special discounts for payment received with a ten (10) day period.

**5.3.** Invoices are checked regularly. Any discrepancies in pricing will require a credit for the price discrepancy and the pricing to be corrected, to avoid future errors. Continued negligence in invoicing will result in a \$50.00 fine for each item, in addition to a credit for the price discrepancy of the Products purchased. Ongoing, improper billing may result in termination of the Agreement. Ongoing, unapproved substitution, without cause by manufacturer or nature, is also reason for termination of the Agreement.

**5.4.** Price adjustments may be allowed to adjust prices upon presentation of suitable proof of a price increase from a manufacturer, processor or grower. A notice shall be sent including proof of any increase thirty (30) days prior to the increase. No increase to the price will be allowed sooner than one hundred eighty (180) calendar days from the date of the Agreement, including thirty (30) calendar days advance written notice. Any change to the price shall be subject to mutual agreement by both Parties.

**6. Additional Items.** During the Term of this Agreement, as the need for other products arises or new products are developed, the District reserves the right to add items to this Agreement. The price of such items shall be negotiated between the District and the Vendor using a similar mark-up percentage as all other existing/awarded products on the price request and shall be subject to the terms and conditions of this Agreement. Vendors must indicate the actual cost plus percentage cap/limit, as applicable. Vendor will provide the best pricing available based on type of item and quantity, which shall not exceed the actual cost plus percentage cap stated on price request response. Evidence and documentation of cost (at invoice price) will be provided by the Vendor upon District's request.

**7. Independent Contractor.** Vendor, in the performance of this Agreement, shall be and act as an independent contractor. Vendor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Vendor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and

income taxes with respect to Vendor's employees. In the performance of this Agreement as herein contemplated, Vendor is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the service, (ii) performing service that is outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the service performed, District being interested only in the results obtained.

## **8. Performance of Agreement.**

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

**8.2. Sanitation.** All Products shall be produced and handled in accordance with the best sanitary practices. Vendor's employees, equipment, and manufacturing plant shall meet state and county health department requirements to assure clean, sound, and sanitary Products.

**8.3. Delivery Time.** Vendor shall make deliveries, as requested by the District.

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

**8.5. Right to Inspect Vendor Facilities.** The District reserves the right to inspect the Vendor's facilities during the Term of the Agreement, and if representatives of the District determine after such inspection that Vendor is not capable of performance satisfactory to the District, the Agreement may be terminated by the District.

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

**8.7. Force Majeure.** The performance of this Agreement by either Party shall be subject to force majeure, including but not limited to acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder,



unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the Parties, where any of those factors, circumstances, situations, or conditions or similar ones make it illegal, impossible, inadvisable, or commercially impracticable to perform under the terms of this Agreement. The Agreement may be cancelled by either party, without liability, damages, fees, or penalty, for any one or more of the above reasons, by written notice to the other Party.

Neither Party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending Party. Such acts shall include acts for God, fire, flood, earthquake, other natural disaster, strike, lockout, riot, freight embargo, governmental statutes or regulations superimposed after the fact.

**9. Ordering.** Orders will be placed only via channels approved by the District's Director of Purchasing Services. Orders should not be accepted for items that are not on the price request or unauthorized substitutions. If such unauthorized items are ordered and delivered it will be at the discretion of District's Business Services Department personnel whether payment will be made to the Vendor for such items.

**10>Returns.** Vendor shall issue credit to the District for all Products returned, including damaged or decaying Products.

**11.Non-Conformance to Specifications.** If any Product fails to meet specifications, the District may require, within a reasonable time as determined by the District, cash restitution or in-kind replacement, at the District's discretion for the entire lot that failed.

**12.Warranty/Quality.** Unless a longer warranty is called for or provided elsewhere, the Vendor, manufacturer, or their assigned agents shall guarantee the workmanship, Product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from completion of all obligations described in **Exhibit "A."** All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

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

**14.Termination.**

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

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

**12.2.1** unsatisfactory product or service; or

**12.2.2** any reason determined to be detrimental to the health and welfare of students and school personnel; or

**12.2.3** material violation of this Agreement by the Vendor; or

**12.2.4** any act by Vendor exposing the District to liability to others for personal injury or property damage; or

**12.2.5** Vendor is adjudged a bankrupt, Vendor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Vendor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Products from another vendor. If the expense, fees, and/or costs to the District exceed the cost of providing the Products pursuant to this Agreement, the Vendor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

**15. Indemnification.** To the furthest extent permitted by California law, Vendor and its agents, officers and employees shall defend, indemnify, and hold harmless the District, its elected and appointed officers, agents, employees, volunteers, contractors and representatives from and against any and all claims, demands, losses, defense costs, expenses, attorney fees, litigation expenses, or liability which the District, its selected and appointed officers, agents, employees, volunteers, contractors and representatives may sustain or incur, or which may be imposed upon them by law for damages due to personal and bodily injury or death of persons, or damage to property, to the extent caused as a result of or arising out of the operations, negligent acts, errors or omissions, caused in whole or in part by the agents, officers and employees of Vendor in the performance of, in connection with, as a result of, and in accordance with the terms of the Agreement. The District shall have the right to accept or reject any legal representation that Vendor proposes to defend the indemnified parties. The indemnification provisions contained in this Agreement include but are not limited to any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of either Party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.

The indemnity provisions of this Agreement shall survive the expiration or earlier termination of this Agreement

**16. Insurance.**

**14.1** The Vendor shall procure and maintain at all times it performs any portion of the Agreement the following insurance with minimum limits equal to the amount indicated below.

TYPE OF COVERAGE	MINIMUM REQUIREMENT
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Workers' Compensation</b>	Statutory Limits

**14.1.1 Commercial General Liability and Automobile Liability Insurance.**

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

**14.1.2 Workers' Compensation.**

In accordance with provisions of section 3700 of the Labor Code, the Vendor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Agreement.

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

**14.2.1** A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

**14.2.2** Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

**14.2.3** An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance. An endorsement shall also state that Vendor's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

**14.2.4** All policies except the Workers' Compensation Insurance Policies shall be written on an occurrence form.

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

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

**18.Compliance with Laws.** Vendor shall observe and comply with all rules and regulations of the Governing Board of the District and all federal, state, and local laws, ordinances and regulations. All Products must conform to the provisions set forth in the federal, state, county, and city laws for their production, handling, processing, marketing, and labeling. Vendor shall give all notices required by any law, ordinance, rule and regulation bearing on providing the Products as indicated or specified. If Vendor provides any Products that are in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Vendor shall bear all costs arising therefrom.

**19.Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore Vendor agrees to comply with applicable federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Vendor agrees to require like compliance by all of its subcontractor(s).

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

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

**22.Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based

on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Products provided or services performed in connection with this Agreement.

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

**District:**

**Downey Unified School District**

ATTN: Purchasing  
11627 Brookshire Avenue  
Downey, CA 90241

FAX: 562-\_\_\_\_ - \_\_\_\_

**Vendor:**

[NAME]

ATTN: \_\_\_\_\_

\_\_\_\_\_, California 9\_\_\_\_\_

FAX: \_\_\_\_\_

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

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

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

**26. 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.

**27. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**28. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

- 29. Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 30. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 31. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 32. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 33. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
- 34. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 35. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

**Downey Unified School District**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**Information regarding Vendor:**

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or  
Social Security Number

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:  
\_\_\_\_ Individual  
\_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership  
\_\_\_\_ Limited Partnership  
\_\_\_\_ Corporation, State: \_\_\_\_\_  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other: \_\_\_\_\_

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