

CITY OF MOUNTAIN VIEW

SECTION I: TERMS AND CONDITIONS

1. **Payment Terms:** The City of Mountain View (City) payment terms are, at a minimum, net thirty (30) days after Acceptance of service or delivery of goods and receipt of an accurate invoice, whichever occurs later. Complete and accurate invoices must be submitted in a timely manner and no later than thirty (30) days upon delivery of goods or completion of services. The Vendor’s invoice must match the unit prices listed on the Purchase Order and must include the City-authorized Purchase Order number. Vendors providing goods or services (Vendor or Contractor) may offer discounted payment terms and those should be listed on the Vendor’s response which City may accept at its discretion.

2. **Time of Delivery/Completion:** Time is of the essence. The Vendor shall deliver all goods or complete all services called for under this Agreement within the number of working/calendar days or by the date specified for completion in the Purchase Order, unless the delays are caused by the City or by acts of God. Failure to deliver on time shall be grounds for termination of this Agreement or invoke “Liquidated Damages” if required below.

3. **Freight Charges:** All prices bid shall include all freight costs and ownership transfers to the City at the City’s location and are F.O.B. destination to the designated locations. Freight or shipping charges (separate from handling) as well as California sales or use tax, if applicable, shall be prepaid and added to the invoice with ownership transferring to the City when delivery is completed to the City’s location.

4. **Inspection; Acceptance of Goods and Services.** All Goods and Services are subject to final inspection and acceptance by City. City may reject any Goods and Services which are not in accordance with the City-authorized Purchase Order. Acceptance of all Goods and Services shall occur only after City has had a reasonable time for inspection following delivery of goods or completion of services.

5. **Liquidated Damages:**

Required Not Required

If required, it is agreed by the Vendor that if the goods or services are not delivered complete, as called for in this proposal, damages will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is, therefore, agreed that the Vendor will pay to the City the sum of Three Hundred Fifty Dollars (\$350) per day for each and every calendar days delay in finishing the work in excess of the number of working or calendar days prescribed or in excess of the date specified for

completion or delivery of the goods or services, whichever is applicable in this Proposal; and the Vendor agrees to pay said liquidated damages as herein provided; and in case the same is not paid, Vendor agrees that the City may deduct the amount thereof from any moneys due or that may become due to the Vendor under this proposal.

Partial payments paid to the Vendor after the scheduled completion dates shall not be constituted as a waiver of the City's right to assess liquidated damages.

6. **Firm Prices:** All quotes will be held firm for a minimum of sixty (60) days after the bid due date listed above to allow adequate time for the City to consider each bid and make an award. All blanks for unit price and total price shall be completed. Any discrepancy between the unit price and the extended or total price shall be determined by taking the lower price. Upon receipt of Vendor's quote or proposal by the City, the Vendor shall be presumed to be thoroughly familiar with all the aspects of this proposal, including installation sites and all specifications and requirements of this proposal. The failure or omission to examine any location, equipment, form, instrument or document shall in no way relieve Vendor from any obligation in respect to this bid.

After award, pricing shall be held firm through the duration of the Agreement.

7. **Warranty:** The delivered or installed goods, equipment, or services shall be warranted to be free from defects in material and workmanship. The warranty period shall begin upon acceptance by the City. At a minimum, all goods, equipment, and services shall be warranted to operate satisfactorily in accordance with the requirements of these specifications, representations of the Vendor, and the published specifications of the manufacturer(s) for a period of at least one (1) year. Any defective goods, equipment, or services shall be replaced or repaired quickly at the City's location during the warranty period at no expense to the City. If repairs cannot be made at the City's location, the Vendor shall transport/ship the equipment to a repair facility. All repairs must be completed and the equipment returned to the City within seventy-two (72) hours of a call for service. If the Vendor fails to have the equipment repaired within seventy-two (72) hours, the Vendor shall provide substitute equipment of equal type and quality until the City's equipment is returned in operating condition to City's satisfaction.

This Section does not in any way limit the guarantee on any items for which a longer guaranty is specified or on any items which a manufacturer gives a guaranty for a longer period, nor does it limit the other remedies of City in respect to a latent defect, fraud, or implied warranties. Vendor shall furnish City all appropriate guaranties or warranty certificates upon completion of the project.

8. **Safety Data Sheets:** General Industrial Safety Order 5194 requires Safety Data Sheets (SDS) be supplied, for all applicable items, with the initial delivery.

9. **Live Scan Background Checks for City Facility Access:** [Required for unescorted access to City Facilities]

- a. All Contractor’s employees and subcontractor’s employees servicing the City’s account that require or request unescorted building access must be enrolled in the “Live Scan” fingerprint program and the Department of Justice shall determine whether any individuals have been arrested or convicted of a violent or serious felony or have a pending criminal proceeding for a felony as defined in Section 45122.1 of the California Education Code. This report must be received and accepted by the City from the Department of Justice prior to Contractor’s employees and subcontractor’s employees beginning work. No Contractor, Contractor employees, subcontractor, or subcontractor’s employees shall commence or continue work without clearance from the Department of Justice.
- b. All required fees related to the Live Scan application process and other travel costs and time associated with security clearance will be the responsibility of the Contractor.
- c. The forms and appointments may be obtained from the Mountain View Human Resources Department at 650-903-6309. Each applicant will make an appointment to obtain an application and to have fingerprints taken; applicable charges will apply at this time. The clearance process takes approximately two (2) weeks. After the clearance is given, an appointment should be made with the City’s Facilities Division, who will issue photo Contractor ID badges.
- d. While they are on the premises, Contractor’s employees shall display photo ID badges at all times.

10. **Licensed Contractor:**

Required Not Required

All contractors bidding on work requiring a State of California Contractor’s License must state under penalty of perjury that they are a licensed contractor by listing their license number, date of expiration, type of license and description of that type of license.

Contractor’s License No.: _____
Date of Expiration: _____
Type of License: _____
Description of License: _____

11. **Ownership and Collusion—Financial Interest by City Employees:** The Vendor confirms, by signing this Agreement, that he/she has not, directly or indirectly, been collusive with any other vendor or anyone else interested in this Agreement. Pursuant to Section 706 of the City of Mountain View Charter, no City officer or employee shall have a financial interest,

either directly or indirectly, in any contract, sale, purchase, or lease to which the City is a party.

12. **Conflict of Interest:** If, in performing the services set forth in this Agreement, Vendor makes, or participates in, a “governmental decision” as described in Title 2, Section 18700.3(a) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in City’s Conflict of Interest Code, Vendor shall be subject to City’s Conflict of Interest Code, the requirements of which include the filing of one (1) or more statements of economic interest disclosing the relevant financial interests of Vendor’s personnel providing the services set forth in this Agreement. . If subject to City’s Conflict of Interest Code, Vendor shall notify City’s City Clerk at city.clerk@mountainview.gov, 650-903-6304, or City Hall, 500 Castro Street, Third Floor, in order to enable electronic filing of the FPPC Statement of Economic Interest (Form 700).
13. **Assignment:** Neither this Agreement, nor any part of this Agreement, may be assigned without the written consent of the City.
14. **Termination:** Any purchase order issued as a result of this bid may be terminated by the City at any time with ten (10) days’ written notice to Vendor. The City will only pay for any goods or services ordered and accepted by the City. Any payments made in advance will be returned to the City on a prorated basis with the City only paying for those goods or services actually provided. In no event shall said fees exceed the maximum compensation established in the Agreement.
15. **Budget Appropriation:** Any purchase order issued as a result of this bid may be terminated every June 30 based upon the City Council not funding the purchase of goods or services to be provided in this bid after each July 1.
16. **Nondiscrimination:** Vendor shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military or veteran status, gender identity or expression, or genetic information.
17. **Applicable Laws and Attorneys’ Fees:** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys’ fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys’ fees of the City Attorney’s Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

18. **Subcontractors:** The City prefers a proposal with a single or primary vendor. If you propose a multi-vendor or subcontracted approach, clearly identify the responsibilities of each party and the assurances of performance you offer. The Vendor is the prime contractor and is solely responsible for all of the Vendor's subcontractors.

19. **Insurance:**

a. Commercial General Liability Insurance. Vendor shall obtain and maintain Commercial General Liability insurance in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. Vendor's insurance coverage shall be written on an occurrence basis.

b. Automobile Liability Insurance. Vendor shall obtain and maintain Automobile Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence.

>>Optional Insurance Coverage Requirements [Required if checked]:<<

c. Professional Liability Insurance. Vendor shall obtain and maintain Professional Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per claim. Professional Liability insurance must be maintained, and evidence of insurance shall be provided to City for at least three (3) years after completion of work under this Agreement.

X Child Abuse/Molestation or Sexual Misconduct Liability Insurance. Vendor shall obtain and maintain Child Abuse/Molestation or Sexual Misconduct Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

___ Garage Keeper's Legal Liability Insurance. Vendor shall obtain and maintain Garage Keeper's Legal Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per claim. Garage Keeper's Legal Liability insurance must be maintained for the term of the agreement and evidence of insurance shall be provided to City.

___ Transportation Insurance. Vendor shall obtain and maintain Transportation insurance in a minimum amount of One Million Dollars (\$1,000,000) per claim. Transportation insurance must be maintained for the term of the agreement and evidence of insurance shall be provided to City.

___ Pollution Liability Insurance. Vendor shall obtain and maintain Pollution insurance

in a minimum amount of One Million Dollars (\$1,000,000) per occurrence or claim.

>>END OF ****OPTIONAL—INSURANCE COVERAGES<<****

d. Workers' Compensation Insurance.

Required **Not Required**

If required, Vendor shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

Or

Required **Not Required**

If not required, Vendor is an individual or a company that has entered, or will be entering, into an agreement with City to provide goods or services.

Vendor is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and Vendor maintains Vendor is exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for City under said Agreement: (1) Vendor will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California; or (2) should Vendor become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, Vendor shall forthwith comply with those provisions and send evidence of financial compliance to City.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current *A.M. Best's Rating* of A:VII unless otherwise acceptable to City.

f. Verification of Coverage. Insurance, deductibles, or self-insurance retentions shall be subject to City's approval. Original Certificates of Insurance with endorsements shall be received and approved by City before work commences, and insurance must be in effect for the duration of the Agreement. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to City or increase the duration of the project.

g. Other Insurance Provisions:

- (1) If Vendor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Vendor. Any available insurance

proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

- (2) The City of Mountain View, and City's officers, officials, employees, and volunteers are to be covered as an additional insured by an endorsement at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of **both** CG 20 10, CG 2026, CG 20 33, or CG 20 38 and CG 20 37 if a later revision is used or other endorsement approved by City's Risk Manager for Commercial General and Automobile Liability coverages.
- (3) For any claims related to Vendor's services pursuant to this Agreement, Vendor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to City, and City's officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, and City's officers, officials, employees, and volunteers shall not contribute to it.
- (4) Vendor grants City a waiver of any rights to subrogation which any insurer of Vendor may acquire against City by virtue of the payment of any loss under such insurance (ISO CG 24 04 for CGL) and an endorsement to the Workers' Compensation policy. This provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.
- (5) Vendor shall provide thirty (30) days' notice to City in the event of cancellation or modification to the stipulated insurance coverage.
- (6) In the event Vendor employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of Vendor to ensure that all subcontractors comply with the same insurance requirements as stated in this Agreement.
- (7) Approval of the insurance by City or acceptance of the Certificate of Insurance by City shall not relieve or decrease the extent to which Vendor may be held responsible for payment of damages resulting from Vendor's services or operations pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.
- (8) If, for any reason, Vendor fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a material breach of Agreement. City, at City's sole option, may terminate this Agreement and obtain damages from Vendor resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Vendor, City may deduct from sums due to Vendor any premium costs advanced by City for such insurance.

20. **Hold Harmless:** To the fullest extent permitted by law, Vendor shall defend, indemnify and hold City, and City's officers, employees, agents and volunteers, harmless from any liability for damage or claims of same, including, but not limited to, personal injury, property damage, and death, which may arise from Vendor or Vendor's contractors, subcontractors, agents or employees' operations under this Agreement. City shall cooperate reasonably in the defense of any action, and Vendor shall employ competent counsel, reasonably acceptable to the City Attorney.

[This clause is applicable when Professional Liability Insurance is required:]

Hold Harmless. To the fullest extent permitted by law, Vendor shall indemnify, defend, and hold City, City's officers, employees, agents, and volunteers harmless from any liability for damage or claims for damage for personal injury, including, but not limited to, death and/or property damage, caused by negligent acts, errors, or omissions in performance of professional services or operations under this Agreement by Vendor or Vendor's contractors, subcontractors, agents, or employees. City shall cooperate reasonably in the defense of any action, and Vendor shall employ competent counsel reasonably acceptable to the City Attorney.

21. **Reliance Upon Professional Skill:** It is mutually agreed by the parties that City is relying upon the professional skill of Vendor, and Vendor represents to City that Vendor's work shall conform to generally recognized professional standards in the industry. Acceptance of Vendor's work by City does not operate as a release of Vendor's said representation.
22. **Independent Contractor.** It is agreed that Vendor is an independent contractor, and all persons working for or under the direction of Vendor are Vendor's agents and employees, or qualify as independent contractors as defined and required by applicable law and said persons shall not be deemed agents, officers, partners, or joint venturers of City by virtue of this Agreement. Vendor will defend, indemnify, and hold City harmless from any claims, demands, liabilities, costs, and expense arising from Vendor's misclassification of workers providing services under this agreement.
23. **Business License.** For any work done within the City, prior to issuance of a Purchase Order, Vendor shall comply with Article I of Chapter 18 of the Mountain View City Code. More information is available at City Hall, 500 Castro Street, Second Floor, Finance and Administrative Services Department Lobby or online at: <https://www.mountainview.gov/our-city/departments/finance-and-administrative-services/billing/business-licenses>
24. **Attachments or Exhibits.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

25. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement.
26. **Waiver.** The failure of City to insist upon a strict performance of any of the terms, conditions, and covenants contained herein shall not be deemed a waiver of any rights or remedies that City may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants contained herein.
27. **Headings.** The headings in this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.
28. **Public Records.** The parties recognize and acknowledge that City is subject to the California Public Records Act, California Government Code Section 7920.000 and following. Public records are subject to disclosure.
29. **Confidentiality.** Vendor shall instruct their employees and the employees of any subcontractors to keep as confidential information concerning the business of the City and the City's financial affairs, relations with City residents, and City employees and any other information which may be specifically classified as confidential by the City.
30. **Ownership of Data and Documents.** Vendor agrees all records, specifications, data, maps, designs, graphics, writings, recordings, and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and ACAD files, and other collateral materials collected, compiled, drafted, prepared, produced, and/or generated in the performance of this Agreement shall be the property of City. Vendor shall regularly provide such documents to City upon City's request. In the event this Agreement is terminated prior to completion of the scope of work, City shall provide all such data and documents to City forthwith.
31. **Compliance with Laws.** Vendor or Contractor agrees to comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "[The Code of the City of Mountain View](#), California." Vendor or Contractor specifically agree to comply with any laws, regulations and/or guidelines relating to COVID-19 including but not limited to Occupational Safety and Health Administration (OSHA), Center for Disease Control and Prevention (CDC), Santa Clara County Department of Public Health orders and or guidelines, and the City's protocols for suppliers and contractors related to COVID-19 which is located at <https://www.mountainview.gov/our-city/departments/finance-and-administrative-services/purchasing> and incorporated herein by this reference, as amended from time to time.
32. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

33. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To City:

City of Mountain View
Purchasing Agent
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

To Vendor:

See name and address listed
herein under Signatures

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

34. **Entire Agreement:** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

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35. **Signatures:** The undersigned understands and agrees that the conditions set forth in the instructions to vendors, the terms and conditions and the specifications, together with the bid and any other documents submitted in response to the foregoing, shall form a part of and be construed with the purchase order/contract.

VENDOR:

Mountain View Whisman School District	1400 Montecito Avenue
Company Name	Street Address of Company

	Mountain View, CA 94043
Signature of Officer	City, State, Zip

Dr. Rebecca Westover	650-526-3500
Printed Name of Officer	Telephone No./Fax No.

Chief Business Officer	rwestover@mvwsd.org
Title of Officer	E-mail Address

Date Signed	Federal I.D. Tax Number

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