

**CHABOT-LAS POSITAS COMMUNITY COLLEGE  
DISTRICT**

**INVITATION FOR BID NO.: 12-05**

**Custodial Supplies, Annual Requirements  
Paper Products & Dispensers  
Maintenance & Operations (M&O) Dept.**

**Bids Due: February 22, 2012/2:00 P.M.**



**Return Bids To:  
Chabot-Las Positas Community College District  
Purchasing and Warehouse Services  
ATTN: Annie Harris  
5020 Franklin Drive  
Pleasanton, California 94588**

**Tel.: (925) 485-5205  
Fax: (925) 485-5253**

# TABLE OF CONTENTS

Custodial Supplies, Annual Requirements,  
Paper Products & Dispensers  
Maintenance & Operations (M&O) Dept.

## Invitation for Bid #12-05

GENERAL INSTRUCTIONS TO BIDDERS .....	1
BID SCHEDULE .....	6
BID FORM.....	8
BID SIGNATURE FORM .....	9
BIDDER'S REFERENCE FORM.....	10
NON-COLLUSION AFFIDAVIT .....	11
PURCHASE ORDER TERMS & CONDITIONS .....	12

# CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

5020 Franklin Drive  
Pleasanton, CA 94588  
(925) 485-5205

## Invitation for Bid

This is not an order

**Date: January 30, 2012**

### Bid #12-05

The Chabot-Las Positas Community College District hereafter referred to as "District" is seeking bids for "**Custodial Supplies, Annual Requirements, Paper Products & Dispensers, Maintenance & Operations (M&O) Dept.**" The original and two (2) copies of the bid must be signed and submitted in a sealed envelope, addressed to **Chabot-Las Positas Community College District, Purchasing and Warehouse Services, ATTN: Annie Harris, 5020 Franklin Drive, Pleasanton, CA 94588**. The above bid number must be referenced on the outside of the envelope. Bids must be delivered on or before **February 22, 2012/2:00 P.M.** Postmarking prior to this time is not sufficient.

=====

### GENERAL INSTRUCTIONS TO BIDDERS Custodial Supplies, Annual Requirements, Paper Products & Dispensers, Maintenance & Operations (M&O) Dept.

1. **Questions:** Any questions regarding the information contained in this Invitation for Bid must be submitted in writing via facsimile to: Annie Harris at (925) 485-5253 or via e-mail to: [aharris@clpccd.org](mailto:aharris@clpccd.org), no later than four (4) working days prior to bid opening. The last day for submission of questions is **February 14, 2012**. The District is closed for presidents' day **February 17- 20, 2012**.
2. **Preparation of Bids:** No bid will be considered unless submitted on the form(s) furnished. All bids must be in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrections entered adjacent and must be initialed in ink by the person signing the bid. Bid on each item and each part of each item separately and not in combination with other items, unless otherwise specified. In case of a discrepancy between the unit price and the extension, the unit price will be considered as correct. Bid extensions and totals must be computed where applicable. The bid must be signed in ink by a representative authorized to bind the company.
3. **Bid Submittal:** Faxed Bids or bids sent via electronic mail **will not** be accepted. Failure to meet the deadline will result in disqualification of the bid. Any submittals will be returned unopened and without review. All bids shall be submitted in sealed envelopes clearly marked on the outside "**Custodial Supplies, Annual Requirements, Paper Products Dispensers, Maintenance & Operations (M&O) Dept., Bid #12-05**".
4. **Documents Accompanying Bid:** The Bidder must submit with the bid the following: Bid Schedule; Bid Form; Bid Signature Form; Bidder's Reference Form – provide the names and telephone numbers of at least three (3) other public purchasing organizations who have purchased the same or similar product within the last five (5) years; Non-Collusion Affidavit, and any and all Addenda issued.

5. **Bid Withdrawal:** A bidder may withdraw a bid before the designated time and date for opening of the bids, by submitting a written request to the Manager, Purchasing and Warehouse Services, identifying the reason(s) for the desired bid withdrawal. A bidder may be permitted to withdraw a bid thirty (30) days after the designated time for opening bids with the District's approval.
6. **Compliance with Specifications:** All products furnished under this bid shall be subject to inspection and rejection by the District for defects or non-compliance with the specifications. If a bidder fails to meet the specifications of the accepted bid, the District may at its option annul and set aside the contract entered into with the bidder, either in whole or in part, and enter into a new contract in accordance with law for furnishing such article so agreed to be furnished. Items not meeting the specifications of the quoted contract, or substituted items will be rejected. Items that are not in good condition or, in any manner not meeting the specifications shall be rejected. It is the responsibility of the bidder to provide quoted items in a timely manner. Failure to do so may require the District to purchase the items from any available source. The difference between the quoted price and the amount paid will be charged to the bidder.
7. **Addenda:** If the specifications are revised, the District's Buyer will issue an addendum addressing the nature of the change. Bidders must sign and include any and all addenda, and return with the bid package.
8. **Bid Protest:** Any bidder submitting a bid to the District may file a protest of the District's intent to award the contract provided that each and all of the following are complied with:
  - a. The bid protest is in writing.
  - b. The bid protest is filed and received by the Director, Business Services not more than five (5) calendar days following the date of issuance of the of the District's Notice of Intent to Award the Contract; and
  - c. The written bid protest sets forth, in detail, all grounds for the bid protest, including, without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence. Any bid protest not confirming with the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the Director, Business Services or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the Director, Business Services, or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The District's Board of Trustees will render a final determination and disposition of a bid protest by taking action to adopt, modify or reject the disposition of a bid protest as reflected in the written statement of the Director, Business Services, or his/her designee. Action by the District's Board of Trustees relative to a bid protest shall be final and not subject to appeal or reconsideration by the District, the Director, Business Services, any other employee or office of the District, or the District's Board of Trustees. The rendition of a written statement by the Director, Business Services (or his/her designee) and action by the District's Board of Trustees to adopt, modify or reject the disposition of the bid protest reflected in such written statement shall be express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's award of the Contract, the District's disposition of any bid protest or the District's

decision to reject all bids. In the event that any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorney fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.

9. **Product Identification, Quality, Packaging and Labeling Requirements:**
- a. **Alternate Packaging:** The District specifies the pack size required for each product listed, keeping in mind the variance in the kind and size of container and number of units in a shipping case commercially available, a bidder is not prevented from submitting a bid on a different kind and size of container and/or number of units in a shipping case. **Do not offer packaging that is not available commercially.**
  - b. **New Merchandise:** Bidder guarantees items offered and delivered to be of current standard production. Bidder also guarantees items offered and delivered to be new, unused, and free from any and all defects in material, packaging and workmanship and agrees to replace defective items promptly at no charge to the District.
  - c. **Storage of Products:** Bidder guarantees that the content of each product will not change in composition and/or performance during normal warehouse storage and handling conditions, for a period of one year from date of delivery. If any such changes occur and the contents are unsuitable for the intended use, all unused materials shall be returned to the vendor at their expense and a full refund or replacement, including freight shall be made to the District.
  - d. **Environmental Products:** The District encourages environmentally preferable products, i.e., products or services that have a lesser or reduced human effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product or service: 1) emphasis on multiple environmental considerations such as recycled content, energy and water efficiency, renewable resource use and toxicity considerations rather than any single environmental feature; 2) evaluation of environmental impacts throughout the life cycle of the product which includes impacts during the manufacture, use and disposal of the product; and 3) recognition of cost and performance remain critical factors in all purchasing decisions.
10. **Samples:** The District may request samples from the lowest, responsive, responsible bidder for test and evaluation purposes. Bidders upon notification shall have three (3) business days to provide samples. Samples not meeting the District's specifications shall be rejected and the process shall move forward to the next lowest, responsive, responsible bidder until an award can be made.
11. **Responsive Bid/Responsible Bidder:** A "responsive bid" is a bid, which meets all the terms, conditions and specifications of the Invitation for Bid. A "responsible bidder" is a bidder who has the financial resources, personnel, facilities, integrity, and overall capability to complete the contract successfully. In order to be determined as a responsible bidder, submitting a responsive bid, bidders must comply with all requirements in all sections of this bid.
12. **Bidder Requirements:** It is the responsibility of the bidder to furnish the manufacturer's product number for each item bid. Please insert the brand name, product number and pack size for each item bid in the applicable areas on the bid schedule.

13. **Bidder's Representative**: The successful bidder shall appoint a representative to act as a liaison between the vendor and the District. This representative shall have the authority to make binding decisions for the vendor. The representative's name and telephone number shall be provided to the District after notification of award of the contract. Any telephone calls from the District to the vendor must be responded to within twenty-four (24) hours. Calls made to the vendor on Fridays, must be responded to prior to noon on the following Monday.
14. **Price Quote Offered**: The District has access to any public agency master contract or public group purchasing organization (GPO), or piggyback contract for the same products listed in this IFB. This may include but is not limited to the following:
- CAL-SAVE
  - State of California, CMAS
  - WSCA
  - US Communities
  - E&I Cooperative
  - CSU Chancellor's Office
  - Foundation for California Community Colleges (FCCC)
  - NPP National Purchasing Partners, or others
15. **Pricing**: Pricing will be reviewed to determine the low bidder. The successful bidder will be notified of the award in writing. The pricing submitted shall be firm. Prices quoted shall be **F.O.B. Destination**. Prices shall be all inclusive, except for tax. Do not include tax in the unit or total prices. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the vendor and included in the bid price. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, bidder **MUST** indicate the items required and attendant costs or forfeit the right to payment for such items.
16. **Escalation Clause**: Bid prices shall remain fixed throughout the first (1) year of the contract agreement. Thereafter, price increases **may be** allowed solely for causes outside the control of the supplier and must be documented for the District's review and approval prior to implementation.
17. **Estimated Quantities**: The quantities listed in the Bid Schedule are estimates only based on current or potential usage. The District anticipates considerable activity resulting from this IFB award. However, there is no guarantee of the actual quantities to be acquired. There are no minimum order requirements or additional charges or fees associated with them.
18. **Basis of Award**: the District will award the bid to the lowest responsive and responsible bidder, or bidders whose bid meets specifications. In determining the award the District will consider the following: cost, performance and references. The District reserves the right, at its sole discretion, to accept or reject any and all bids and to waive informalities or irregularities when it is in the District's best interest to do so.
19. **Contract Award**: The District's intention is to award a one-year contract with the option to renew for four (4) additional one year periods, without re-bidding, providing that quality and service remain in accordance with the specifications. The District has no obligation to renew and may decide to re-bid the contract at any time for any reason. The contract may be canceled without cause by either party provided termination notice is given in writing sixty (60) days in advance of termination date.

20. **Deliveries and Delivery Addresses:** Chabot College, Maintenance and Operations Department (M&O), 25555 Hesperian Blvd, Bldg. 3000, Hayward, CA 94545 and Las Positas College, Maintenance and Operations Department (M&O), 3000 Campus Hill Drive, Bldg. 3000, Livermore, CA 94551.
- a. No receiving dock is present at either of these locations and inside delivery is required. Delivery driver will offload to the ground. All deliveries shall be made by pallet whenever possible. It is anticipated that orders will be placed one per month, but may be placed more often, if necessary.
  - b. A packing slip must be provided with each delivery. Packing slips must be accurate. Shortages and backorders must be clearly noted.
  - c. All cartons and/or cases shall be clearly identified as to the contents inside.
21. **Processing and Delivery Conditions:**
- a. Deliveries of quoted items **must be** guaranteed during the contract period. Exceptions to this must be approved by the Supervisor, M&O Dept., or a designated representative prior to delivery. Substitutions must be tested and approved.
  - b. Orders may be phoned in, faxed, sent electronically, or picked up by the vendor's representative from the M&O Dept. Confirmed delivery schedule must be met unless an emergency beyond the vendor's control arises.
  - c. Deliveries shall be made "**just-in-time**", next day delivery is preferred, but not more than forty-eight (48) hours for standard stocked items.
22. **Purchase Order and Delivery:** The successful bidder shall not deliver products without a District purchase order, signed by an authorized representative of the District. Any special information concerning delivery should be included, on a separate sheet, if necessary. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Non-conformance shall constitute a breach, which must be rectified prior to the expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by the District.
23. **Purchase Order Terms and Conditions:** The Chabot-Las Positas Community College District (hereinafter called "District") Purchase Order is issued with the following Standard Terms and Conditions.
- By accepting a District Purchase order, and/or performing hereunder, Seller agrees to comply fully with the Terms and Conditions of purchase set forth in these Terms and Conditions, each Purchase Order issued by the District includes these Terms and Conditions set forth in full thereon. Acceptance of a District Purchase Order is expressly limited to the Terms and Conditions of the Purchase Order and none of the Seller's Terms and Conditions shall apply in acknowledging a Purchase Order or in the acceptance of a Purchase Order. Acceptance by District of the Goods or Services delivered under a Purchase Order shall not constitute agreement to Seller's Terms or Conditions. Seller may not ship under reservation.
24. **Bidder's Reference Form:** The bidder is requested to complete and submit this form with the bid.
25. **Non-Collusion Affidavit:** The bidder must submit the District's Non-Collusion Affidavit attached.

## BID SCHEDULE

### Custodial Supplies, Annual Requirements, Paper Products & Dispensers Maintenance & Operations (M&O Dept.)

#### IFB No. 12-05

Item No.	Items and Descriptions	Desired Pack	Est. Qty.	Price/Unit	Total Cost
	<b>Paper Products</b>				
1	Paper Liner for feminine hygiene disposal receptacle,  Brand: Product Code: Pack Size:	500/CS  _____	3/CS		
2	White Towel, 700 feet per roll, EPA compliant recycled  Brand: Product Code: Roll Length: Pack Size:	6 RO/CS  _____	698/CS		
3	Bathroom Tissue,, white 2-ply, sheet size: 3.85" x 4.05", coreless, 1000 sheets per roll, EPA compliant recycled  Brand: Product Code: Sheets per/roll: Pack Size:	1800 RO/CS  _____	375/CS		
4	Toilet Tissue, white 2-ply, coreless, 100 sheets per roll, sheet size: 3.85" x 4.05"  Brand: Product Code: Sheets per/roll: Pack Size:	36 RO/CS  _____	186/CS		
5	Seat Covers, 250 per pack, 5000/cs  Brand: Product Code: Pack Size:	20 PK/CS  _____	95/CS		
6	Paper Towel, multifold, white, 250 sheets per pack, , sheet size: 9.25" x 9.50"  Brand: Product Code: Sheets per/roll: Pack Size:	16 PK/CS  _____	75/CS		



Item No.	Items and Descriptions	Desired Pack	Est. Qty.	Price/Unit	Total Cost
7	Hand Towels, rolls, center pull, white 1-ply, 320 sheets/roll, 7.80" x 15.0 sheet size,  Brand: Product Code: Sheets per/roll Pack Size:	6 RO/CS	2/CS		
	<b>Dispensers</b>				
8	Toilet Tissue Dispenser, covered, side-by-side, 2 roll dispenser, high capacity, holds either size tissue, Color: Smoke or dark color, must accept proposed roll.  Brand: Product Code: Color:	EA	24		
9	Toilet Paper Dispenser, two roll dispenser, covered, vertical mount, Color: Translucent Smoke or dark color, holds 1000 sheet coreless rolls,  Brand: Product Code: Color:	EA	24		
10	Seat Cover Dispenser, Color: Smoke or dark color, plastic, holds two packages of seat covers, Size: 16"W x 12" H x 3"D  Brand: Product Code: Color:	EA	50		
11	Single Towel Dispenser, high capacity, holds estimated 700' of towel, must hold proposed roll. <b>Hands Free: comparable to: Georgia Pacific "Soft pull", Wausau "Optiserv", Tork "Torkmatic", or "Intuition". Must not be battery operated.</b>  Brand: Product Code: Model:	EA	5		
				<b>Taxable Sub-Total</b>	
				<b>Tax (CA 8.75%)</b>	
				<b>Total</b>	

**NOTE: During the term of the contract bidders maybe required to supply spindles, which must be compatible with Bobrick and ASI Dispensers. The exact kind and quantity is not known and must be provided at no additional cost to the District.**

**BID FORM**

**Custodial Supplies, Annual Requirements,  
Paper Products & Dispensers  
Maintenance & Operations (M&O) Dept.**

**IFB #12-05**

Failure to complete all portions of the bid form, in its entirety, and to submit all additional information, certificates, samples and affidavits (as applicable), may render the bid non-responsive and bar award of the contract.

**1. BID INFORMATION**

Bid for goods and services to be furnished in accordance with the terms, conditions, specifications, and prices herein quoted are proposed on the following attached, itemized pages.

- 2. It is understood that the **DISTRICT** reserves the right to reject any and all bids and that this bid shall remain open and not be withdrawn for a minimum of 30 days after the opening of bids.
- 3. Names of all persons interested in the foregoing proposal as principals or principal officers are as follows:

---



---



---



---

**IMPORTANT NOTICE:** (If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individuals co-partners composing firms; if bidder or other interested person is an individual, state first and last names in full).

- 4. If the bidder is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and is in good standing in the State of \_\_\_\_\_, and that \_\_\_\_\_ is authorized to act for and bind the corporation.

**BID SIGNATURE FORM**

**Custodial Supplies, Annual Requirements,  
Paper Products & Dispensers  
Maintenance & Operations (M&O) Dept.**

**IFB #12-05**

**Bidder:** \_\_\_\_\_  
(Firm's name must be EXACTLY as it appears on License)

**By:** \_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Printed Name & Title)

*\*\*\*Bid must be signed by an individual. DO NOT use pre-printed stamp.*

**Street Address:**

\_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Telephone #** \_\_\_\_\_

VENDOR INFORMATION: Please check which of the following categories apply to your company.

SOLE OWNERSHIP \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_

CORPORATION \_\_\_\_\_ OTHER: SPECIFY \_\_\_\_\_

SMALL BUSINESS \_\_\_\_\_ \_\_\_\_\_

MINORITY-OWNED \_\_\_\_\_ WOMEN-OWNED \_\_\_\_\_

DISABLED-VETERAN \_\_\_\_\_

**Sub-Contractors: (Please list all-subcontractors name, address, and phone numbers below):**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BIDDER'S REFERENCE FORM**  
**Custodial Supplies, Annual Requirements,**  
**Paper Products & Dispensers**  
**Maintenance & Operations (M&O) Dept.**

**IFB #12-05**

Bidder: \_\_\_\_\_

IFB Name/Title: Custodial Supplies, Annual Requirements, Paper Products & Dispensers,  
Maintenance & Operations (M&O) Dept.

IFB Number: # 12-05

The Bidder is requested to provide three (3) references below (preferably public purchasing organizations):

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: # ( ) \_\_\_\_\_

Fax/ \_\_\_\_\_ Internet address: \_\_\_\_\_

Description and date(s) of commodities and services provided: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: # ( ) \_\_\_\_\_

Fax/ \_\_\_\_\_ Internet address: \_\_\_\_\_

Description and date(s) of commodities and services provided: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reference Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: # ( ) \_\_\_\_\_

Fax/ \_\_\_\_\_ Internet address: \_\_\_\_\_

Description and date(s) of commodities and services provided: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

References will be contacted to confirm the Bidder's abilities and qualifications as stated in the Bidder's Response. The District may deem the Bidder's Response non-responsive if a reference is not obtainable from a listed reference after reasonable attempts.

\_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

**STATE OF CALIFORNIA**  
**COUNTY OF \_\_\_\_\_**

I, \_\_\_\_\_, being first duly sworn, deposes and says that I am  
(Typed or Printed Name)  
the \_\_\_\_\_ of \_\_\_\_\_, the party submitting  
(Title) (Bidder Name)  
the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Bid Proposal is genuine and not collusive or sham.
3. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.
4. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Bid Proposal and related documents are true.
6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_  
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
(City, County and State)

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code and Telephone Number)



CHABOT- LAS POSITAS COMMUNITY COLLEGE DISTRICT  
Purchasing and Warehouse Services Department

**Purchase Order Terms & Conditions**  
**For Purchase Order # \_\_\_\_\_**

This Agreement is made by and between \_\_\_\_\_ (“Seller”) and the Chabot-Las Positas Community College District (District) as of \_\_\_\_\_, 20\_\_ for the purchase of \_\_\_\_\_, as follows:

- 1. Entire Agreement:** The following terms and conditions, together with such terms as are set forth in this Purchase Order ("Order"), such plans, specifications or other documents as are incorporated by reference in the Purchase Order, and any amendments in any subsequent authorized writing from District, shall constitute the entire contract between the District and Seller and shall supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. If performance specifications, technical product descriptions or other similar descriptive materials submitted by Seller in connection with the Order have been incorporated by reference in the Purchase Order these shall not be deemed to supersede any contrary requirements of District, but to the extent that such materials are not inconsistent with District's requirements, they shall constitute a part of the basis of this agreement.
- 2. Payment:** Payment terms are as set forth in the Purchase Order. . If no terms are specified, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming with the terms of this Order or (ii) invoicing. Except as otherwise provided in the Purchase Order the price includes all applicable Federal, State and local taxes and duties. All Federal, State and local taxes and duties shall be separately itemized on any invoices. Seller assigns to District all rights to refunds of sales and use taxes paid in connection with this Order and agrees to cooperate with District in the processing of any refund claims.
- 3. Changes:** District may make changes to this Order, including drawings and specifications for specially manufactured goods and place of delivery, by giving written notice to Seller. If such changes affect the cost of or the time required for performance of this Order, an equitable adjustment in the price or date of delivery or both shall be made. No change by Seller is allowed without written approval of District. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Article excuses Seller from delivering the goods and services described in this Order. Except as otherwise provided herein, no other supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound thereby.
- 4. Time:** If delivery or completion dates can not be met, Seller shall inform District immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of this Order unless District modifies this Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the District, at District's option and without prior notice to Seller may either approve a revised date or may cancel this Order and may obtain such goods or work elsewhere and in either event the Seller shall be liable to the District for any resulting loss incurred by the District. Seller's sole remedy for a delay caused by District shall be an extension in the time for Seller's performance equal to the duration of District's delay. Seller shall not be liable for damages resulting from Seller's failure to deliver or complete, or for delays in delivery or completion occasioned by strikes, lock-outs, fires, war or acts of God. **TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS ORDER.**
- 5. Improper Performance:** In addition to other remedies provided by law, District reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Order if Seller fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Order. Acceptance of any part of the Order shall not bind the District to accept any future shipments or work nor deprive it of the right to return goods already accepted. At District's option, all disputes arising in connection with this Order shall be resolved by arbitration in

accordance with the rules of the American Arbitration Association, except that each party shall have the discovery rights established by the California Code of Civil Procedure.

6. **Cancellations:** The District may cancel this Order in whole or in part, for no cause, upon written or fax notice to the Seller, effective when sent, provided such notice is sent at least fourteen (14) days prior to the delivery date specified on the face of this Order.

In addition, the District may cancel this Order in whole or in part at any time for cause by written or fax notice to the Seller, effective when sent, in the event that Seller: (a) fails to comply with any term or condition of this Order including, but not limited to, delivery terms; or (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; or (c) files a voluntary petition in bankruptcy; or (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; or (e) voluntarily ceases trading; or (f) merges with or is acquired by a third party; or (g) assigns any of its rights or obligations under the Order to a third party without the District's advance written consent.

Upon the occasion of any one of the aforesaid and in addition to any remedies, which the District may have in law or in equity, the District may also cancel this order or any outstanding deliveries hereunder by notifying Seller in writing of such cancellation. Seller shall thereupon transfer title and deliver to the District such work in progress or completed material as may be requested by the District. The District shall have no liability to Seller beyond payment of any balance owing for materials purchased hereunder and delivered to and accepted by the District prior to the Seller's receipt of the notice of termination, and for work in progress requested for delivery to the District.

7. **Rescheduling:** The District may without liability at least fourteen (14) days prior to the scheduled delivery date appearing on the Order defer delivery on any or every item under said Order by giving oral notice to the Seller (confirmed in writing within ten (10) working days) of any necessary rescheduling.

8. **Warranty:** The goods and services furnished shall be exactly as specified in the Order, and shall be free from all defects in design, workmanship and materials. The goods and services are subject to inspection and test by the District at any time and place. If the goods and services furnished are found to be defective, the District may reject them, or require Seller to correct them without charge, or require a reduction in price, which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by the District, the District may terminate this Order in whole or in part. Seller bears all risks as to rejected goods and services. Seller shall reimburse the District for all transportation costs, other related costs incurred, and overpayments in respect of the neglected goods and services. These express warranties shall not be waived by reason of acceptance or payment by the District. This Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of California providing any protection to the District, including but not limited to all warranty protection (express or implied) and all of the District's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Data Sheet or in other materials incorporated by reference.

9. **Risk of Loss:** Unless the Order expressly states otherwise, all goods shall be shipped FOB the "Ship to" location designated in the Purchase Order... Risk of loss shall not pass to District until goods called for in this Order actually have been received and accepted by the District at the destination specified herein. Seller assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if District has agreed to pay freight, express or other transportation changes.

10. **Electronic/Facsimile Transmission:** If this Order is transmitted by telecopier or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Seller, but only if the Transmit Terminal Identification on the Purchase Order correctly includes the notation "Chabot-Las Positas Community College District," "Chabot Community College," or "Las Positas Community College".

11. **Hold Harmless:** From and after the date of this Order, the Seller agrees to indemnify, defend and hold harmless the District from any and all claims, regardless of by whom such claim or claims may be

asserted, for personal injury or property damage or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by Seller pursuant to this Order.

12. **Assignment/Subcontracting**: Neither party shall have any right to assign this Order or any benefits arising from this Order without prior written consent of the other and, unless otherwise agreed upon in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Seller shall not, except in the case of raw materials (including castings, forgings, and rough welded structures) or standard commercial goods or except as otherwise agreed in writing by the District, delegate or subcontract the work on any item of material or service to be delivered or performed under this Order.
13. **Shipping, Packaging and Labeling**: All Material purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, the District's packaging specification. The Seller shall mark on all containers, handling and loading instructions, shipping information, part number, purchase order number and item number, quantity in box, shipment date, and names and addresses of the Seller and the District. An itemized packing list must accompany each shipment. Each packing slip shall include; this Order number, quantity, item description, order date, shipping date and delivery address, but shall not include pricing information.
14. **Notification of Hazardous Products**: The Seller hereby agrees to notify the District of any inherent hazard related to any materials or goods being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to the District's Director of Purchasing and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by the District or others and any additional information that the District should reasonably expect to know to protect its interest.

All shipments of hazardous materials under this Order shall comply with current U.S. Department of Transportation (DOT) regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations as published in 29 CFR 1910.1200, for the transporting and labeling of hazardous materials. Material Safety Data Sheets (MSDS) shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made.

15. **Work On-Site**: The following additional conditions will apply if work is to be performed by the Seller at any of District's locations.
  - a. All persons furnished by Seller shall be deemed Seller's employees or agents and Seller shall comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor.
  - b. Seller shall indemnify, hold harmless and defend District from any and all claims and liabilities for injuries or death and also for any and all claims and liabilities arising out of loss or damage to property, caused by or resulting from the performance of the work covered hereby.
  - c. Seller shall at all times during the term of this Agreement, or any extension thereof, maintain comprehensive general liability insurance coverage in the amount of \$1,000,000 per occurrence and in the aggregate for all claims made during any one policy year. Seller shall, upon request of the District, provide proof that the services provided are covered under its policy and that the District is named or fully covered as an additional insured.
  - d. Seller agrees to comply fully with all provisions of all applicable workers' compensation insurance laws, and shall procure and maintain in full force and effect worker's compensation insurance covering its partners, employees and agents while said persons are performing services pursuant to this Agreement. In the event that an employee of Seller performing this



Agreement files a worker's compensation claim against the District, Seller agrees to defend and hold the District harmless from such claim.

- e. The work shall be performed in a first class and workmanlike manner by qualified and efficient workers who shall not cause labor conflicts with any workers employed by the District or others working at District's facilities. The work shall be performed in strict conformity with the strictest quality standards mandated and/or recommended by all generally recognized organizations establishing quality standards for work of the type to be performed hereunder. Seller shall be solely responsible for controlling the manner and means by which it and its employees perform labor and services and it shall observe, abide by and perform all of its obligations in accordance with all legal requirements. Without limiting the foregoing, Seller shall control the manner and means of the labor and services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Order shall govern.
  - f. Seller is responsible for securing all applicable licenses and permits and compliance therewith and the price shall be deemed to include the cost of these items.
  - g. The site shall be kept free of waste and, on completion, left "broom clean." In case of dispute District may remove waste at Seller's expense.
  - h. If requested, Seller shall furnish satisfactory evidence of the kind, quality and quantity of labor and materials used or to be used.
  - i. The Seller, for itself and for all subcontractors and material men, agrees that no mechanic's lien or other claim shall be filed or maintained by the Contractor or by any subcontractor, material man, laborer or any other person, whatsoever, for or on account of any work done or materials furnished under this Order. This agreement shall be an independent contract and the Seller shall execute and deliver to District a separate Waiver of Liens (in form and substance satisfactory to the District).
  - j. In every subcontract entered into by the Seller after the execution and delivery of this Order or in connection herewith, the Seller shall incorporate a provision, similar to the foregoing paragraph, to the effect that neither the subcontractor nor any party acting through or under him shall file or maintain any mechanic's lien or other claim against the District in connection with the work to be performed hereunder.
- 16. Non-Discrimination in Employment:** In connection with the performance of work under this Order, the Seller agrees that it will not unlawfully discriminate on the basis of race, color, religion, gender, national origin, age or medical condition, sexual orientation or marital status or any other characteristic protected by law in the delivery of programs or services set forth herein. In the event of the Seller's non-compliance with the non-discrimination clauses of this Order or with any of the said rules, regulations, or orders, this Order may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further District contracts as provided by law.
- 17. Compliance with Laws and Regulations:** The Seller represents and warrants to District that Seller and its employees, agents, and any subcontractors have filed all certifications and have obtained all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required in connection with this Order.

18. **Waiver**: A waiver of any breach or any of the covenants, terms or provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other covenant, term or provision.
19. **Termination for Convenience**: District may terminate this Order at any time without incurring liability to Seller for lost profits or any other costs other than the value of conforming work completed on site or goods delivered.
20. **Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of the State of California.
21. **Venue**: In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
22. **No Third Party Beneficiaries**: Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to anyone other than the Parties to this Agreement. No one is an intended third-party beneficiary of this Agreement.
23. **Attorney's Fees**: If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
24. **Captions**: The captions used herein as headings of the various paragraphs and subparagraphs hereof are for convenience only, and the parties agree that such captions are not to be construed as a part of the Agreement or to be used in determining or construing the intent or context of this Agreement.
25. **Counterparts**: This Agreement may be executed in any number of counterpart copies, all of which shall constitute one and the same Agreement and each of which shall constitute an original.
26. **Severability**: If any of the provisions or portions thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected thereby.