

Delano Union School District

RFP# 2020-003

Fiber Optic Cabling

PURCHASE CONTRACT

AND REQUIRED FORMS

(To be submitted upon award of Contract)

PURCHASE CONTRACT
(Non-Public Works)

THIS PURCHASE CONTRACT is between the Delano Union School District ("District") and ("Vendor").

District and Vendor agree as follows:

1. Purchase. Vendor sells to District, and District purchases from Vendor, the equipment, materials, and/or supplies identified on Attachment A. In addition, Vendor shall do everything required to provide and furnish all labor, materials, tools, equipment, and all utility and transportation services required, to deliver, install, and/or assemble the items procured as required in this Purchase Contract and any specifications and other requirements issued by District in connection with this purchase. The purchase of equipment, materials, and/or supplies under this Purchase Contract, along with any associated services, shall be referred to collectively as the "Purchase."

All equipment, material, and/or supplies to be furnished, and all work to be performed, shall be in conformity with any plans, drawings, specifications, bonds, insurance policies, conditions, and modifications of any of those which, by this reference, are made a part of this Purchase Contract.

2. Contract Documents. The complete contract includes all documents comprising the bid package (including but not limited to any Instructions to Bidders, Bid Form, Substitution Listing, Workers' Compensation Certificate, Guarantee) and all modifications, addenda, and amendments of or to any of these documents, all of which are incorporated by reference into this contract.

3. Contract Price. Subject to the terms and conditions of this contract, District shall pay to Vendor for all items furnished and work to be performed under this contract the total sum of \$.

4. Payments.

A. Payment of the contract price shall be made when the product or service has been satisfactorily delivered to District and an invoice for completed services/delivery has been presented. In addition, the following terms of payment apply:

B. From the payments specified in Paragraph A, District may make any deductions authorized or required by law or this contract including, by way of example only, the following:

- (1) Liquidated and other damages described in this contract;
- (2) Defective equipment, materials, supplies, or work not remedied;

- (3) Failure of Vendor to make proper payments to its subcontractor(s) or material men for materials or labor;
- (4) Damage to another Vendor.
- (5) Other damages sustained by District.

5. Time for Performance. Vendor shall commence work on the Purchase on the date directed by District and shall complete the Purchase within 20 calendar days thereafter. Other delivery and/or timing issues are as follows: All goods must be delivered to Delano Union School District on or before September 6, 2019.

6. Submission of Bonds and Insurance Certificates. Vendor shall not commence any work on the Purchase until Vendor has submitted to District all insurance certificates and bonds required by this Contract. All bonds and certificates shall be submitted to District within 7 days following issuance of this contract by District.

7. Liquidated Damages. For each calendar day completion is delayed beyond the time allowed in this contract for delivery of equipment, materials, or supplies, or rendering of services, Vendor shall forfeit and pay to District the sum of \$1,000.00, which shall be deducted from any payments due to or to become due to Vendor.

In addition to any liquidated damages which may be assessed, if Vendor fails to complete the Purchase within the time period provided in the contract documents, and if as a result District finds it necessary to incur any costs and expenses (for example, relating to the acquisition and use of facilities pending completion of the Purchase, or damages to another vendor), Vendor shall pay all those costs and expenses incurred by District. These costs and expenses may include but are not limited to such items as rental payments, inspection fees, and additional consultant fees related to the Purchase. These costs and expenses may be retained by District from any payments otherwise due to Vendor.

8. Insurance. Vendor shall obtain insurance acceptable to District with a company or companies licensed to do business in the State of California and acceptable to District. Vendor shall maintain, at his own cost and expense during the term of this contract, the following insurance:

A. Workers' Compensation Insurance for all of Vendor's employees in amounts not less than that required by law. Pursuant to Labor Code Sections 3700 and 1860 and following, Vendor shall submit to District an acceptable Workers' Compensation Certificate.

B. Public liability and property damage insurance with per occurrence limits not less than \$1,000,000.00 for death or personal injury and \$1,000,000.00 for property damage. The policy(ies) shall contain an endorsement naming District as an additional insured insofar as this Purchase Contract is concerned, and provide that notice shall be given to District at least 30 days prior to cancellation or material change in the form of such policy(ies). Vendor shall furnish District with certificates of insurance containing the endorsements required under this

section, and District shall have the right to inspect the original policy(ies) of such insurance upon request.

C. ***[Additional Insurance Requirements, e.g., professional liability.]***

9. Performance/Payment Bonds. Payment and performance bonds are not required on this Purchase, unless required in supplementary conditions.

10. Extra Work. Vendor and District agree that changes in this Contract or in the Purchase to be made under this Contract shall become effective only when written in the form of a supplemental condition or Change Order and approved and signed by District and Vendor. Should District direct or request additional purchases or work not otherwise included within Paragraph 1 of this Contract, the cost of the additional purchases or work shall be added to the Contract Price and paid by District pursuant to this Contract. The term "cost" as used in this paragraph means the actual cost to the Vendor of the labor, equipment, materials, supplies, or subcontracts required for the additional purchase or work, increased by ten percent for Vendor overhead and profit, including increased bond costs, if applicable.

11. Indemnification. Vendor shall indemnify and hold the District, its officers, agents, and employees free and harmless from any and all claims, losses, damages, liabilities, and expenses, including attorney's fees and costs, arising from the death or injury of any person or persons, or from the damage or destruction of any property, caused by or connected with the performance of this Contract by Vendor, his agents, subcontractors, or employees.

12. Termination of Contract. Should Vendor commit any of the acts specified in this paragraph, District may, by giving seven days written notice to Vendor, without prejudice to any other rights or remedies afforded District by law or by this Contract, terminate the services of Vendor under this contract; take possession of the Purchase and the premises on which it is located; take possession of all materials, tools, and appliances located on the premises; and complete the Purchase by whatever method District may deem expedient. Vendor shall be deemed to have committed an act specified in this paragraph if Vendor:

- A. Is adjudged a bankrupt;
- B. Makes a general assignment for the benefit of creditors;
- C. Refuses or fails to supply enough properly skilled workers or proper materials to complete the Purchase in the time specified in this Contract;
- D. Fails to make prompt payment to subcontractors, workers, or material men for labor performed on or materials furnished to the Purchase;
- E. Persistently disregards any laws or ordinances relating to the Purchase or its completion; or
- F. Otherwise commits a substantial violation of any provision of this Contract.

13. Extension of Time. Liquidated damages shall not be imposed because of any delays in completion of the Purchase due to (1) unforeseeable causes beyond the control and without the fault or negligence of Vendor and (2) performing any extra purchase or work pursuant to this Contract.
14. Clean-up. Vendor shall, on completion of the Purchase, remove all debris and surplus materials from the Purchase site.
15. Notices. Any and all notices or other matters required or permitted by this Contract or by law to be served on, given to, or delivered to either District or Vendor by the other party to this Contract shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or to a supervisory employee of that party, or in lieu of personal service, when deposited in the United States mail, first class postage paid, addressed to District at 1405 12th Avenue, Delano, California, or to Vendor at 11151 Veirs Mill Road, Wheaton, MD, California. Either party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this paragraph.
16. Guarantee. Vendor guarantees all Purchase work for a period of one year after acceptance of the work by District and shall repair or replace any or all work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials. This shall be in addition to any equipment or materials warranties as specified and/or required elsewhere.
17. Labor Code. Vendor shall comply with all applicable provisions of the California Labor Code in providing products or services under this Purchase Contract.
18. Laws and Regulations. Vendor shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the work required by this Contract.
19. Substitutions. No substitutions are permitted under this Contract.
20. Utilities. Unless otherwise agreed by the parties in writing, all utilities including but not limited to electricity, water, gas, and telephone used in connection with the Purchase shall be furnished and paid for by Vendor.
21. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted and this Contract shall be read and enforced as though it were included. If through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the Contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract, and any later changes which do not materially and substantially alter the positions of the parties.

22. Ownership of Drawings. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other Purchase documents and copies thereof furnished by District are District's property. They are not to be used in other work and are to be returned to District on request at completion of work.

23. Entire Agreement. This document, including any conditions, exhibits, schedules, plans, or specifications to which it refers, constitutes the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the Purchase which is the subject of the agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Contract.

24. Status of Parties. The parties agree that in performing the services specified in this Agreement, Contractor shall act as an independent contractor. Except as specified in this Contract, Contractor shall determine the means and methods for carrying out the work to achieve the result required by Owner. Contractor shall be free to contract for similar services to be performed while under contract with Owner, provided that Contractor will not accept such engagements which interfere with performance under this Contract. Contractor is not entitled to participate in any pension plan, insurance, bonus, or similar benefit Owner provides for its employees.

Any employees or assistants retained by Contractor shall be the responsibility of Contractor and not of Owner. Contractor shall determine the hours during which the services shall be performed and the sequence of tasks, subject to the reasonable business needs of Owner.

25. Miscellaneous.

A. Waiver. Any of the terms or conditions of this Contract may be waived at any time by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction either of that term or condition as it applies on a subsequent occasion or any other term or condition of this Contract.

B. Assignment. Neither party may assign any rights or benefits or delegate any duties under this Contract without the written consent of the other party. Any purported assignment without written consent shall be void.

C. Parties in Interest. Nothing in this Contract, whether express or implied, is intended to confer any rights or remedies under or by reason of this Contract on any person other than the parties to it and their respective successors and assigns, nor is anything in this Contract intended to relieve or discharge the obligation or liability of any third person to any party to this Contract, nor shall any provision give any third person any right of subrogation or action against any party to this Contract.

D. Severability. If any provision of this Contract is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall continue in full force and effect and shall in no way be impaired or invalidated.

E. Governing Law. The rights and obligations of the parties and the interpretation and performance of this Contract shall be governed by the laws of California, excluding any statute which directs application of the laws of another jurisdiction.

F. Authority to Enter Into Agreement. Each party to this Contract represents and warrants that it has the full power and authority to enter into this Contract, to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery, and performance of the Contract.

G. Conflict of Interest. The parties to this Contract have read and are aware of the provisions of Section 1090 and following and Section 87100 and following of the Government Code relating to conflict of interest of public officers and employees. Contractor represents that it is aware of no financial or economic interest of any officer or employee of Owner relating to this Contract. It is further understood that if such a financial interest does exist at the inception of this Contract, Owner may immediately terminate this Contract by giving written notice to Contractor. Contractor shall comply with the terms of Government Code Section 87100 and following during the term of this Contract.

H. Nondiscrimination. Neither Contractor nor any officer, agent, employee, or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on any ground prohibited by law, nor shall any of them harass any person in the course of performing this Contract based on gender or any other basis prohibited by applicable law.

I. Licenses and Permits. Contractor represents that Contractor, and Contractor's employees who will render services under this Contract, are fully qualified and competent to provide the services called for under the Contract. Contractor shall secure and maintain in force any permits or licenses required to perform the services called for under this Contract, at Contractor's expense unless specified otherwise in the Contract.

ADDITIONAL OPTIONAL PROVISIONS (BOTH PARTIES INITIAL IF APPLICABLE)

Confidentiality. Contractor shall at all times protect the confidentiality of all matters to which Contractor has access under this Contract, including but not limited to any records pertaining to pupils or employees. Contractor shall not disclose or discuss the facts of any such matter with any person other than Owner's authorized representatives without prior written consent of Owner, a court order, judicial subpoena,

or other valid legal process. Contractor shall notify Owner immediately by telephone and fax of any subpoena or court order seeking information covered by this Contract.

Contractor's Records. Contractor agrees to maintain and make available to Owner accurate books and records relative to all activities under this Contract. Contractor shall permit Owner to audit, examine, and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, personnel records, or other data related to all other matters covered by this Contract. Consultant shall maintain such data and records in an accessible location and condition for a period not less than years from the date of final payment under this Contract.

Pupil Safety Requirements. Contractor certifies that neither Contractor nor any of its employees or subcontractors who may come in contact with pupils has been convicted of a felony as defined in Education Code Section 45122.1. Contractor shall contract with the Department of Justice for "subsequent arrest service" and shall immediately inform Owner, and remove from Owner's or other premises where pupils may be present, any employee or subcontractor whom Contractor discovers has been subsequently charged with a felony defined in Education Code Section 45122.1, pending resolution of the criminal charge. Contractor shall indemnify, hold harmless, and defend Owner from any and all damages, claims, lawsuits, penalties, or causes of action arising out of Contractor's failure to comply with this section or arising out of Contractor's removal of any employee based on a subsequent arrest.

Pupil Safety Requirements. Owner has determined that Contractor's activities will involve limited or no contact with Superintendent's pupils. However, in order to help assure the safety of pupils, Contractor's employees shall check in at the site office upon arrival and departure to notify Owner's personnel of their presence. Contractor's employees shall not travel to areas of the campus where pupils are present other than the site office without the consent of Owner or Owner's designee.

Executed at Delano, Kern County, California.

DATED: _____

93215

DATED: _____

OWNER

By: _____

Title Asst. Supt. of Business

Address 1405 12th Avenue, Delano, CA

VENDOR

By: _____

Representative of Vendor

Name of Vendor:

Print Name of Signatory:

Title

Address

14-WORKERS' COMPENSATION CERTIFICATE

PROJECT TITLE: BID #: 2020-003 Fiber Optic Cabling

OWNER: Delano Union School District

Labor Code Section 3700 provides:

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

"(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

"(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

"(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702."

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

Print Name of Contractor Above

By: _____

Date:

Print Name Above

Title:

[In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.]

16-FINGERPRINTING CERTIFICATION BY CONTRACTORS

Delano Union School District (referred to as "Owner")
RFP 2020-003 Fiber Optic Cabling (*Project Identification*)

I, _____, am an
[type or print name]

- [check one]
- Owner of the company named below
 - Partner of the partnership named below
 - President or CEO of the corporation named below
 - Principal of the joint venture named below
 - Other [specify]

The contracting entity named below is a contractor on the referenced project and as such hereby certifies:

- [check one or more]
- [For compliance with Education Code Section 45125.2(a)(1)]
That a physical barrier will be erected at the workplace to limit employee contact with Owner's pupils.
 - [For compliance with Education Code Section 45125.2(a)(2)]
That the contracting entity named below will provide continual supervision and monitoring of the employees of the entity and its subcontractors through its employee _____. It has been ascertained by the Department of Justice that the named employee has not been convicted of a violent or serious felony. Contractor has requested subsequent arrest information from the Department of Justice concerning such employee and will immediately notify District and remove the employee from the Project if subsequent arrest information indicates the employee has been convicted of a serious or violent felony.
 - [For compliance with Education Code Section 45125.2(a)(3)]
That the contracting entity named below has contracted with Owner for reimbursement of Owner expense incurred in providing surveillance by school personnel of the employees of the entity and its subcontractors on the Project.
 - [For compliance with Education Code Section 45125.1(g).
Note: We believe this section may still be applicable to construction contractors where 45125.2(a) is insufficient to ensure pupil safety, e.g., where workers will be simultaneously working at various locations on a school site.]

That neither myself nor any employees of the contracting entity named below or its subcontractors on the Project who are required by law to submit or have their fingerprints submitted to the Department of Justice, and who may come in contact with pupils, have been convicted of a felony defined in Education Code Section 45122.1.

- [For compliance where there is limited contact or less with pupils] That the contracting entity named below is exempt from fingerprinting requirements as the Owner has determined the employees of the entity and its subcontractors will have no more than limited contact with Owner's pupils during the Project.

[name of contracting entity]

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

DATE:

SIGNATURE _____

20-DRUG-FREE WORKPLACE CERTIFICATION

PROJECT TITLE/BID #: RFP 2020-003 Fiber Optic Cabling

OWNER: Delano Union School District

This Drug-Free Workplace Certification is required pursuant to Government Code Section 8350 and following sections, and the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract for the procurement of any property or services from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a state agency may be subject to suspension of payments or termination of the contract and the contractor may be subject to debarment from future contracting, if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract from a state agency shall certify that it will provide a drug-free workplace by doing all of the following:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition;
- B. Establishing a drug-free awareness program to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The person's or organization's policy of maintaining a drug-free workplace;
 - 3. The availability of drug counseling, rehabilitation, and employee-assistance programs;
 - 4. The penalties that may be imposed upon employees for drug abuse violations;
- C. Requiring that each employee engaged in the performance of work on the Project be given a copy of the statement required by subdivision (a), and that as a condition of employment on the Contract the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substances at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the Owner determines that I have either (a) made a false certification or (b) violated this certification by failing to carry out the requirements of Section 8355, the contract awarded is subject to suspension of payments, termination, or both. I further understand that should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 and following sections.

I acknowledge that I am aware of the provisions of Government Code Section 8350 and following sections, and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Name of Contractor

Signature

Print Name Above

Print Title Above

Date: