

MATERIAL REQUIREMENTS CONTRACT

between

SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON

(PORTLAND PUBLIC SCHOOLS)

and

**CONTRACTOR**

Contract No. MR [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](#Text50)

This Contract Shall be binding on the District only if it is

signed by THE DEPUTY CLERK OR AUTHORIZEDDESIGNEE

This Material Requirements Contract (“Contract”) is made by and between School District No. 1J, Multnomah County, Oregon (“Portland Public Schools” or “District”) and CONTRACTOR (“Contractor”). The parties agree as follows:

###### CONTRACTOR DATA

**Contractor Name:** CONTRACTOR

**Contact Name:**

**Address:**

**City, State, ZIP:**

**Telephone:**

**Email:**

**Contractor must submit a completed “Request for Taxpayer Identification Number and Certification” (Form W-9) with this signed contract.** Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Contractor. Contractor certifies under penalty of perjury that Contractor is a

Sole Proprietor Corporation  Limited Liability Company

Partnership  Nonprofit Corporation  Other [describe:      ]

Contractor represents and warrants that Contractor has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants that contractor will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this contract. Failure by the Contractor to comply with the tax laws of this state or a political subdivision of this state before the execution of this Contract or during the term of this Contract is a default for which the District may terminate this Contract and seek damages and other relief available under the terms of this Contract or under applicable law.

**District Point of Contact:**  Name of Dept./School Contract Manager (*Email prefix@pps.net*), Name of Dept./School, Portland Public Schools, P.O. Box 3107, Portland, Oregon 97208-3107

**\*All information in this contract is subject to public records law. Please contact the District Point of Contact listed above if you have questions.**

TERMS AND CONDITIONS

1. **Term and Termination.** This Contract becomes effective on        or the date on which the Contract is fully executed by both parties, ***whichever is later***. ***No party shall perform work under this Contract before the effective date***.  An email notification with a copy of the fully executed contract will be sent to the Contractor email listed above upon execution. At that time, work under the contract may begin.

Unless earlier terminated as provided below, this Contract shall continue through      .

Check if applicable:

  As provided for in (enter RFP/ITB/Quotes solicitation number, e.g., RFP #2016-1922), this Contract may be renewed for up to ( e.g. four additional one-year terms) by amendment signed by both parties.

1. **Detailed Description of Services / Statement of Work.** Contractor agrees to sell to District all of the goods described in Exhibit A (“Goods”) at the prices indicated in Exhibit A. District is not required to make any purchases under this Contract. District may add products to this contract at prices agreed upon by the parties.
2. **Cooperative Purchasing Option.** At the discretion of the Contractor and pursuant to ORS 279A and District procurement rules, other public agencies may purchase the awarded goods and services from the awarded Contractor(s), under the terms and conditions of this contract. Any such purchases will be between the Contractor and the participating public agency under separate contract and will not impact the Contractor’s obligations to the District.  Any estimated purchase volumes listed in this Contract do not include other public agencies and the District makes no guarantee as to their participation.
3. **Contract Documents.** This Contract consists ofthese Terms and Conditions and the documents (“Exhibits”) listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence over all other documents. The Exhibits to this Contract include the following documents:

Exhibit A - Description of Goods and Price List

Exhibit B (Name of Exhibit B) (If no Exhibit B, please delete these two fields.)

1. **General Product Requirements.** All items delivered shall conform to the Specifications and shall be in first class condition. Acceptance by the District shall be subject to inspection and approval. In case of conflict between the Specifications and these Standard Terms and Conditions, the Specifications shall prevail. The apparent silence of the Standard Terms and Conditions and Specifications as to any detail or the apparent omission of a detailed description concerning any point shall be regarded as meaning that only best commercial practice is to prevail and that only items manufactured with material and workmanship of first quality are to be supplied. All items delivered shall be of identical style, quality and appointments as those offered to the trade in general during the course of the model year. All items delivered shall be new current models, free and clear of all liens and encumbrances. Unless otherwise provided in the Specifications items shall, where appropriate, be prepared for delivery to and use by the District by a factory-franchised agent. Each item delivered shall be accompanied by all pre-delivery inspection sheets, coupons, certificates, descriptive literature, warranty cards and information provided by the manufacturer and furnished to the trade in general. All such documents shall be properly completed and signed in accordance with industry standards. All items required by the Specifications to be UL listed shall indicate the current UL listing on the item. All items that are required by the Specifications to have any other certification shall indicate that certification on the item or in the accompanying documentation.
2. **Inspection and Acceptance.** Goods furnished under this Contract shall be subject to inspection and test by the District at times and places determined by the District. If the District finds Goods furnished to be incomplete or not in compliance with the Contract, the District, at its sole discretion, may either reject the Goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the Goods to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the Goods and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District’s rights as buyer under the Uniform Commercial Code, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.
3. **Delivery.** Shipment of the Goods shall be made in the quantities and at the time or times specified on the purchase order or in supplementary documents furnished by District. Time is of the essence for this Agreement and failure to deliver the Goods within the time specified on the PO shall constitute a default. If at any time Contractor has reason to believe that deliveries will not be made as scheduled, Contractor shall immediately provide District with written notice setting forth the cause or causes of the anticipated delay. Late deliveries, deliveries of Goods which are defective or which do not conform to the PO, and failure to provide District, upon request, with reasonable assurances of future performance shall be causes allowing District to terminate the Agreement for cause, and Contractor shall be liable for all damages to District by reason of such events that caused termination. Should the actual delivery date be later than the delivery date specified in the PO through no fault of District, Contractor shall pay the difference between the cost of standard shipping and the cost of premium transportation.
4. **Warranty and Service.** Contractor warrants all Goods delivered to be free from defects in labor, material and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants to that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of contractor enforceable in accordance with its terms. All items delivered shall carry either the standard manufacturer's warranty and service policy providing that warranty work will be performed by any authorized manufacturer's dealer, or if specified in the Specifications, the warranty and service policy called for in the Specifications. In addition, unless otherwise noted in the Specifications, the warranty and service policy indicated above shall include the following terms and conditions:

a. There shall be no distance or time limitations, not applicable to the trade in general, on either standard or extended warranty and labor. All franchised or authorized dealers of the item shall honor warranty. Warranty maintenance requirements, when performed by District, shall be acceptable to dealer when said work performance meets or exceeds the dealer certification requirements. District shall provide evidence of such work performance upon request, as required by the manufacturer. Any extended warranty period customarily granted shall be made available to District at no additional cost, and

b.District shall be advised of all product recalls on all or any part of the item at no additional cost. All product recall information, replacement parts and labor, shall be provided to the District as soon as available to dealer.

1. **Payment and Invoicing.** The maximumtotal payment under this Contract is **$**      ; this is a not-to-exceed amount, and the District will not pay more than this amount unless specifically agreed to in an amendment executed by the parties.District will make no payment until this Contract is fully executed by the authorized representatives of both parties.
2. No expenses will be reimbursed under this Contract.
3. District shall pay Contractor for Goods listed in the attached Exhibit A at the prices set forth in Exhibit A.
4. Upon delivery and acceptance of Goods, invoice submittal and approval, and according to this Contract’s Terms and Conditions, District shall pay invoices net 30 days.

Invoices shall be submitted to the address below:

Name of District Staff Member Responsible for Payment Authorization

Department, Program, Section, or School Name

Portland Public Schools

PO Box 3107

Portland, OR 97208-3107

1. **Escalation/De-escalation.** PLEASE CHOOSE ONE:

**Markup.** The “Markup” component is a fixed dollar amount and shall be protected from increase for the first 12 months of this Contract. The fixed “Markup” for all items is the dollar amount calculated during bid evaluation even if a percentage was indicated.

Contractor must submit to District any proposed increase to the “Markup” at least 60 days before the proposed effective date of such increase. Any increase shall be limited (a) to an amount proportional to changes in the Consumer Price Index for the Portland Metropolitan Area, or (b) according to other documentation approved by District. District alone reserves the right to reject any proposed increase, documented or otherwise, and to further competitively bid items under this agreement as in the best interest of District.

District shall be given the immediate benefit of any price decrease. Contractor shall promptly notify District of the amount and effective date of the decrease. The decrease shall apply to orders placed on or after the effective date of the decrease. Invoices shall reflect prices in effect on the date the order was placed with Contractor.

**OR**

**Cost Adjustments.** Both parties agree that contracted prices shall be fixed for the first 12 months of this Contract. Contractor must submit to District any proposed cost adjustments at least 60 days before the proposed effective date of such increases with a detailed explanation for each adjustment. District alone reserves the right to reject any changes to this Contract it deems unacceptable.

District shall be given the immediate benefit of any price decrease. Contractor shall promptly notify District of the amount and effective date of the decrease. The decrease shall apply to orders placed on or after the effective date of the decrease. Invoices shall reflect prices in effect on the date the order was placed with Contractor.

1. **Other** **Payment Issues.**

a. Payment of Laborers: This provision is required by statute. In addition to applicable federal and local laws, ORS 279B.220 requires that Contractor

1. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
2. Pay all contributions or amounts due the Industrial Accident Fund by the contractor or subcontractors, if permitted, incurred in the performance of the contract.
3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

If Contractor neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Contract as such claim becomes due, District may pay such claim to the party furnishing the Goods or services and subtract the payment amount from funds due or to become due the Contractor. District’s payment of such a claim shall not relieve Contractor or Contractor's surety, if any, from its obligation to any unpaid claims.

b. Payment for Medical Care: This provision is required by statute. As required by ORS 279B.230 and to the extent any of Contractor’s employees are covered by Oregon employment laws, Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for such services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such service.

1. **Independent Contractor Status.** By its signature on this contract, Contractor certifies that the service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600, and that Contractor is solely responsible for the work performed under this Contract. Contractor represents and warrants that Contractor, its subcontractors, employees, and agents are not "officers, agents, or employees" of the District within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300).  Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Agreement.
2. **Subcontracts and Assignment.** Contractor shall not subcontract, assign, delegate, or transfer any of its duties, rights, or interests under this Contract without the prior written consent of District. District may withhold such consent for any or no reason. If District consents to an assignment or subcontract, then in addition to any other provisions of this Contract, Contractor shall require any permitted subcontractor to be bound by all the terms and conditions of this Contract that would otherwise bind Contractor. The parties agree that any such subcontracts shall be construed as matters solely between the Contractor and its subcontractor and shall have no binding effect on District.
3. **Successors in Interest.** This Contract shall bind and inure to the benefit of the parties, their successors, and approved assigns, if any.
4. **No Third Party Beneficiaries.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third parties unless they are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
5. **Nonperformance.** As used in this Contract, “failure to perform” means failure, for whatever reason, to deliver Goods and/or perform work as specified and scheduled in this Contract. If Contractor fails to perform under this Contract, then District, after giving seven days’ written notice and opportunity to cure to Contractor, has the right to complete the work itself, to obtain the contracted Goods and/or services from other contractors, or a combination thereof, as necessary to complete the work. Both parties agree that Contractor shall bear any reasonable cost difference, as measured against any unpaid balance due Contractor, for these substitute Goods or services.
6. **Early Termination.** This Contract may be terminated as follows unless otherwise specified herein:

a. Mutual: District and Contractor may terminate this Contract at any time by their written agreement.

b. District’s Sole Discretion: District in its sole discretion may terminate this Contract for any reason on 30 days’ written notice to Contractor.

c. Breach: Either party may terminate this Contract in the event of a breach by the other party. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within 15 days of the date of the notice, then the non-breaching party may terminate this Contract at any time thereafter by giving a written notice of termination.

1. Contractor Licensing, etc.: Notwithstanding Section 17(c), District may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.
2. Furlough: District reserves the right to terminate or otherwise suspend this Contract if District's Board determines that funding is insufficient to remain fully open and calls for a District-wide furlough or similar temporary District reduction in operations. Any temporary closure shall not affect amounts due Contractor under this Contract, subject to a pro-rated adjustment for reduction in services or need for Goods during the furlough.
3. **Payment on Early Termination**: Upon termination pursuant to Section 17 (Early Termination), District shall pay Contractor as follows:
4. If District terminates this Contract for its convenience under Section 17(a) or 17(b), then District must pay Contractor for Goods ordered before the termination date if and only if Contractor performed in accordance with this Contract. District shall not be liable for any direct, indirect, or consequential damages. Termination by District shall not constitute a waiver of any other claim District may have against Contractor.
5. If Contractor terminates this Contract under Section 17(c) due to District’s breach, then District shall pay Contractor for Goods delivered before termination date if and only if Contractor performed in accordance with this Contract.
6. If District terminates this Contract under Sections 17(c) or 17(d) due to Contractor’s breach, then District must pay Contractor for Goods delivered before the termination date less any setoff to which District is entitled and if and only if Contractor performed such work in accordance with this Contract.
7. **Force Majeure; Suspension of Work; Compensation**

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party.  In the event of a Force Majeure act, event, or occurrence:

1. District may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract; or
2. District may suspend portions of or all of the Work upon written notice.

When a suspension is required by reason of Force Majeure, through no fault of Contractor or the District, neither party owes the other for the impact of the suspension.

1. **Remedies.** In case of Contractor breach and in addition to the provisions of Sections 17 and 19, District shall be entitled to any other available legal and equitable remedies. In case of District breach, Contractor’s remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
2. **Hazardous Materials.** Contractor shall notify District before using any products containing hazardous materials to which District employees, students, or the general public may be exposed. Products containing hazardous materials are those products defined by Oregon Administrative Rules, Chapter 437. Upon District request, Contractor must immediately provide Material Safety Data Sheets to District for all materials subject to this provision.
3. **Access to Records; Contractor Financial Records.** Contractor agrees that District and its authorized representatives are entitled to review all Contractor books, documents, papers, plans, and records, electronic or otherwise (“Records”), directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain all Records, fiscal and otherwise, directly relating to this Contract in accordance with generally accepted accounting principles so as to document clearly Contractor's performance. Following final payment and termination of this Contract, Contractor shall retain and keep accessible all Records for a minimum of three years, or such longer period as may be required by law, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.
4. **Compliance with Applicable Law.** For the services provided under this Contract, Contractor shall comply with all federal, state, and local laws applicable to public contracts and the work done under this Contract, and with all regulations and administrative rules established pursuant to those laws.
5. **Indemnification.** Contractor shall defend and indemnify District, its officers, directors, employees, and agents from and against all liabilities, losses, expenses, claims, actions, or judgments (including attorney fees) recovered or made against District for any damage, injury, or death to persons or damage to property caused by the negligent or intentional acts or omissions of Contractor, its officers, employees, agents, or subcontractors related to Contractor’s performance under this Contract.  Contractor’s indemnification of District extends to conditions created by this Contract or based upon violation of any statute, ordinance, or regulation.  This provision is in addition to any common law or statutory liability and indemnification rights available to District.  Contractor’s indemnification of District shall not apply to damage, injury, or death caused by the negligent actions of District, its officers, directors, employees, or agents.  District must promptly notify Contractor in writing of any such claim or demand to indemnify and shall cooperate with Contractor in a reasonable manner to defend such claim.
6. **Patent Infringement.** Contractor agrees to indemnify and hold harmless District against all claims for patent infringement arising from the purchase, installation, or use of any item delivered to District and to assume all expenses, including attorney fees, and pay all damages arising from such claim.
7. **Insurance.** At all times while providing services under this Contract, Contractor shall maintain in force at Contractor’s expense insurance coverage at least equal to the value of this Contract and the following insurance coverage(s), as applicable:

a. Workers’ Compensation. As required by ORS 656.017, subject employers shall provide workers’ compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees shall have this insurance unless exempt under ORS 656.027. Contractors that are statutory subject employers shall submit a certificate of insurance to District showing proof of coverage.

c. General Liability. Contractor shall maintain general liability insurance coverage of at least $1,000,000 for each claim, incident, or occurrence, and at least $2,000,000 annual aggregate coverage.

d. Motor Vehicle Liability. If Contractor is providing services that require Contractor to transport District personnel, students, or property, then in addition to any legally required insurance coverage, Contractor shall maintain motor vehicle liability insurance of at least $1,000,000 for each claim, incident, or occurrence.

e. Additional Requirements.All insurance coverage shall be provided by an insurance company having an A.M. Best rating of at least A- and/or licensed to do business in Oregon. Contractor alone is responsible for paying all deductibles and retentions. A cross-liability clause or separation of insureds condition shall be included in all general liability policies required by this Contract. Contractor’s coverage shall be primary in the event of loss.

f. Certificate of Insurance. Upon District request, Contractor shall furnish to District a current certificate of insurance for each of the above coverages within 48 hours of District request. Each certificate must state the relevant deductible or retention level. For general liability coverage, the certificate must state that District, its agents, officers, and employees are additional insureds with respect to Contractor’s services provided under this Contract. The certificate must specify an additional insured endorsement, and Contractor shall attach a copy of the endorsement to the certificate.

1. **Waiver; Severability.** Waiver of any default or breach under this Contract by District does not constitute a waiver of any subsequent default or a modification of any other provisions of this Contract. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
2. **Non-discrimination Clause.** Both parties agree that no person shall be subject to unlawful discrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service in programs, activities, services, benefits, or employment in connection with this contract. The parties further agree not to discriminate in their employment or personnel policies.
3. **Controlling Law; Venue.** The parties agree that Oregon law will govern any dispute related to this Contract, and any litigation arising out of the Contract shall be conducted in courts located in Multnomah County, Oregon.
4. **Amendments.** Any amendments, consents to or waivers of the terms of this Contract must be in writing and signed by both parties.
5. **Counterparts.** The parties may execute this Contract in counterparts, each of which constitutes an original and all of which comprise one and the same Contract.  Counterparts may be delivered by electronic means.
6. **Entire Agreement.** When signed by both parties, this Contract (and any attached exhibits) is their final and entire agreement. As their final and entire expression, this Contract supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
7. **Notices.** All notices or demands of any kind required or desired to be given by District or Contractor must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the respective party at the addresses herein.

**I HAVE READ THIS CONTRACT AND ITS ATTACHED EXHIBITS, IF ANY. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS CONTRACT on behalf of the party I represent AND AGREE TO BE BOUND BY ITS TERMS.**

**CONTRACTOR DISTRICT**

CONTRACTORSCHOOL DISTRICT NO. 1J,

MULTNOMAH COUNTY, OREGON

Signature Emily Courtnage

Director, Purchasing & Contracting

Contractor Printed Name and Title Date

Date