

CAVE CREEK UNIFIED SCHOOL DISTRICT #93
PURCHASE ORDER TERMS, CONDITIONS AND INSTRUCTIONS

This order is subject to the following terms and conditions and by accepting the order, or any part thereof, the Seller agrees to accept said terms and conditions.

GENERAL

1. The term **Purchaser** means Cave Creek Unified School District #93. The term **Seller** means the person, firm, or corporation from whom the merchandise/service has been ordered. The term **Buyer** means a person who buys, or contracts to buy goods and services, on behalf of Cave Creek Unified School District #93.
2. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Purchaser unless accepted in writing by Purchaser.
3. Seller may not assign this order without Buyer's prior written consent.
4. Time is of the essence of this order.

COMPLIANCE

1. No change(s) of any kind will be made on this order without the prior approval of the Purchaser.
2. Unless otherwise specified on the Purchase Order, items not received by June 30th of the fiscal year the Purchase Order is issued will be considered cancelled.
3. Any and all disputes or claims relative to the Purchase Order are subject to resolution through the mechanisms of the Arizona Education Procurement Code. All signatories agree that if a claim is made against the District and the District prevails under the Procurement Code, the contract party shall be responsible for the District's attorney fees and costs.
4. No waiver of a breach of any provision or any part of any provision of this order shall constitute a waiver of any other breach of such provision or any other provision.
5. Purchaser may, at any time, insist upon strict compliance with these terms and conditions, notwithstanding any course of dealing or usage of trade to the contrary.
6. Specifically, written terms, conditions and instructions relating to advertised requests for quotes, bids or proposals by Buyer and written offers from Seller take precedence over these printed terms, conditions and instructions where conflict exists, and this Purchase Order form is a part of the contract documents.

CONSULTANT AND PROFESSIONAL CONTRACT SERVICES

1. Sellers who are hired by the District to perform services shall agree to the following: "I certify that I am an independent Seller as defined in ARS 23-902(C) and that I do not require Workers' Compensation coverage. I hold Purchaser harmless and waive any rights or claims against the District."

TAXES, INVOICES, PACKING SLIPS

1. Purchaser is required to report and pay any Arizona Use Tax incurred or to be incurred on this purchase directly to the Arizona Department of Revenue. Identify and add such tax only if you pay directly to the state.
2. Invoices must clearly reference only one Purchase Order. Invoices must be itemized showing quantity, unit price, line item number, labor, material and state and/or local taxes. Purchaser shall endeavor to pay all invoices no later than 30 days from date of product/service receipt. Payment for goods/services shall be made after receipt of goods/services, unless otherwise stated.
3. The District reserves the right to review all payments made to the Vendor by auditing at a later date. Subject to such audit, the Vendor must immediately reimburse any overpayments.
4. Per ARS 15-906, all fiscal year invoices must be received, approved and paid within 60 days after the close of the fiscal year. The District's fiscal year ends June 30. The District is prohibited by statute from paying any fiscal year invoices not received within 60 days after the end of the fiscal year.
5. Seller shall enclose on packing slip and mark the package in which the packing slip is enclosed. Packing slips must reference Purchase Order numbers. Backorders and split orders must be noted; however, the quantity ordered must be delivered in full unless the Purchaser or Buyer agrees otherwise in writing. Any unauthorized quantity is subject to return at Seller's sole expense.

SHIPPING AND DELIVERY

1. All packages must list the Purchase Order number on the outside of each package. Failure to list Purchase Order number as required may cause refusal of packages. Reshipment shall be at vendor's own expense.
2. All items shown on the Purchase Order shall be shipped F.O.B. Destination unless otherwise noted on the Purchase Order.
3. If Seller cannot ship without delay, Seller shall immediately notify Purchaser of that fact and of the probable date of delivery.
4. Goods must be shipped as per instructions; otherwise, any extra handling charges will be deducted from the invoice.
5. Purchaser will not be responsible for any goods/services delivered without a Purchase Order.
6. In the event Seller's failure to deliver as and when specified, Purchaser reserves the right to cancel this order or any part thereof without prejudice to its other rights. Seller agrees that Purchaser may return part or all of any shipment received and may charge Seller with any loss or expense sustained as a result of such failure to deliver.
7. The "Ship To" address located on the Purchase Order must not be changed without prior approval of the purchaser's Purchasing Department.
8. A Material Safety Sheet must be enclosed with any product containing hazardous substance and the box containing the product shall be clearly marked.

PRICE

1. Price deviations and substitutions in kind are permitted **ONLY** with authorization of the Buyer.
2. No boxing, packaging or cartage charges will be paid by Purchaser unless specifically authorized in writing by the Purchaser.
3. It shall be understood that the cash discount period to Purchaser will date from the receipt of the invoice or the date of the receipt of goods, whichever is the later date.

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4. If price is omitted on the order, except where order is given in acceptance of quoted prices, it is agreed that Seller's price will be the lowest prevailing market price, and in no event is this order to be filled at higher prices than last previously quoted or charged without Purchaser's written consent.
5. Purchases on Blanket/Open Purchase Orders shall not exceed the total dollar amount listed on the Purchase Order including tax and freight. Overages become the responsibility of the Seller.

INSPECTIONS

1. All goods are subject to Purchaser's inspection within a reasonable time after arrival at the destination of use. If upon inspection, any goods are found to be unsatisfactory, defective, or of inferior quality or workmanship, or fail to meet the specifications or any other requirements of this order, Purchaser may return such goods to Seller at Seller's expense. Payment for goods prior to inspection shall not be construed to be an acceptance of unsatisfactory, defective, or non-conforming goods. Seller shall reimburse Purchaser for any amount paid by Purchaser for such non-conforming goods and for any costs incurred by Purchaser in connection with the delivery or return of such goods.
2. Purchaser will notify Seller within a reasonable time frame of any items that Purchaser wishes to return to Seller for credit, or exchange for other goods. Seller has 30 days following notification of return or exchange to retrieve the unwanted items from Purchaser. If the items have not been picked up by Seller after 30 days, Purchaser may dispose of unwanted items at their convenience.

WARRANTIES

1. Seller warrants that the goods will conform to the description and any applicable specifications, shall be of good merchantable quality and fit for the known purpose for which they are sold. This warranty is in addition to any express warranty or service guarantee given by Seller to Purchaser.
2. Seller warrants that the goods are free and clear of all liens and encumbrances and that Seller has a good and marketable title to same at the time title passes to Purchaser.
3. Seller shall comply with all state, federal, and local laws, regulations or orders applicable to the purchase, manufacturing, processing, construction, installation, servicing and delivery of goods. In the event of failure to comply with applicable laws, regulations or orders, the Seller shall reimburse the Purchaser for any loss incurred by Seller's failure to comply.
4. In the event any goods sold and delivered hereunder shall be covered by any patent, copyright or application thereof or other rightful claim of any third person, Seller shall indemnify and hold harmless Purchaser from any and all loss, cost, or expense of any and all claims, suits or judgments on account of the use of such goods in violation of rights under such patent, copyright, application or other rightful claim of any third person.

LIABILITY OF SELLER

1. In the event any goods sold and delivered hereunder shall be defective in any respect whatsoever, Seller shall indemnify and hold harmless the Purchaser from all loss or payment of all sums of money by reason of all accidents, injuries, or damages to persons or property that may happen to occur in connection with the use of such goods and/or contributed to by said defective condition.
2. Seller will hold Purchaser harmless from any or all damages or liability arising out of the death or injuries to persons or damage to property proximity caused by the negligence of Seller or his agents, servants or employees.
3. Seller shall be responsible for any and all loss or damage to the goods until delivered to Purchaser at the F.O.B. destination point specified on the face of the Purchase Order.

REGISTERED SEX OFFENDER RESTRICTION

1. Pursuant to this order, Seller agrees by acceptance of this order that no employee, or employee of its subcontractor, who is required to register as a sex offender, pursuant to ARS 13-3821, will perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. Seller further agrees by acceptance of the Purchase Order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the District's discretion.

STATUTORY & OTHER REQUIREMENTS

1. This agreement is subject to cancellation pursuant to ARS 38-511.
2. Purchaser may terminate the contract for cause and for convenience.
3. By accepting the Purchase Order, Seller affirms that Seller has not given, nor intends to give any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to any employee of the School District in connection with this order.
4. By accepting the Purchase Order, Seller confirms that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise precluded from participating in any public procurement activity with any federal, state or local government entity.
5. By accepting the Purchase Order, Seller agrees to comply with all local, state and federal laws, rules and regulations applicable to the work. All work shall be accomplished in conformance with OSHA safety requirements, and any additional federal, state or local requirements. Seller shall maintain all applicable license and permit requirements.
6. By accepting the Purchase Order, Seller agrees to comply and maintain compliance with FINA, ARS 41-4401 and ARS 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
7. By accepting the Purchase Order, Seller agrees to comply with ARS 35-592 and confirms that Seller is in compliance with the Export Administration Act.
8. By accepting the Purchase Order, Seller agrees to comply with ARS 35-393 and confirms that Seller is not currently engaged in and agrees for the duration of the contract to not engage in, a boycott of Israel. **Unless and until the District Court's injunction in Jordahl v. Brnovich et al., Case No. 3:17-cv-08263 (D. Ariz.) is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. 35-393.01 (A)) is unenforceable and the School District/Public Entity will take no action to enforce it.**

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9. By accepting the Purchase Order, Seller agrees to comply with fingerprinting requirements in accordance with ARS 15-512 unless otherwise exempted.
10. By accepting the Purchase Order, Seller agrees to maintain in current status all federal, state, and local licenses, certifications and permits required by the operation of the business conducted by Seller in accordance with ARS 32-1151.
11. In projects that are not federally funded, Seller must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed on costs on the Purchase Order, the additional costs may only apply to the portion of the work paid by the federal grantee.
12. Purchaser reserves all administrative, contractual and legal rights and privileges under the applicable laws and regulations with respect to this procurement in the event of contractor violation or breach of contract terms.

FEDERAL FUNDING & OTHER REQUIREMENTS

To the extent applicable, the Offeror, also referred to as the Contractor, shall comply with any and all federal, state, and local laws, statutes, ordinances, rules, regulations, and any interpreting guidance, as currently enacted or as subsequently amended, required for the receipt of federal funds, including, but not limited to, the following:

1. **Additional Information Requests:** If Federal grant monies are spent under the Purchase Order, Seller may be asked to provide additional information, disclosures and/or certification in compliance with federal regulations. This additional documentation may pertain to, but is not limited to, the following: federal lobbying (Section 319 of Public Law 101-121), international shipping, Clean Air Act, Federal Water Pollution Control Act, and debarment/suspension status.
2. **Affordable Care Act:** The Offeror understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The Offeror shall bear sole responsibility for providing health care benefits for its employees who provide services to the District as required by State or Federal law.
3. **Buy American Provision (only applies to Food & Nutrition food purchases):** The Offeror will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7CFR § 210.21(d) and 7 CFR § 220.16(d). The Offeror shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.
4. **Disclosure of Lobbying Activities:** Pursuant to Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), the Offeror must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 7 CFR § 3018.100 (Only applies to contracts over \$100,000)
5. **Certification Regarding Lobbying:** Pursuant to 31 USC 1352, the Offeror shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. (Only applies to contracts over \$100,000)
6. **Certificate of Independent Price Determination:** The Offeror certifies that:
 - a. All prices in this Offer have been arrived at independently, without, for purposes of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to (i) those prices; (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
 - b. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - c. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
(See FAR 3.103-1 for when required)
7. **Civil Rights Compliance (only applies to Food & Nutrition contracts):** In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs, including the Offeror, are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
 - a. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may

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access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- g.** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h.** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

12. Record Keeping: The books and records of the Offeror pertaining to operations under this Agreement shall be available to the District at any reasonable time. These records are subject to inspection or audit by representatives of the District, State Agency, the US Department of Agriculture (for food/nutrition only), and the US General Accounting Office at any reasonable time and place. The District shall maintain such records, for a period of not less than five (5) years after the final day of the contract, or longer if required for audit resolution (A.R.S § 35-214). 7CFR§210.23 and 2 CFR Part 200.318(i).

13. Invoicing (only applies to Food & Nutrition contracts): The Offeror fully discloses all discounts, rebates, allowances and incentives received by the Offeror from its suppliers. If the Offeror receives a discount, rebate, allowance, or incentive from any supplier, the Offeror must disclose and return to the District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the District. The Offeror must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. 7CFR§210.21(f)(1)(iv). No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 7CFR§210.21, nor may any expenditure be made from the nonprofit school food service account that permits or results in the Offeror receiving payments in excess of the Offeror's actual, net allowable costs. 7CFR§210.21 (f)(2).

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The return of purchase incentives, discounts, rebates, and credits will be to the Sponsor's non-profit Child Nutrition account.

- 14. Termination Clause:** The District may terminate for cause and for convenience the contract. Appendix II to 2 CFR Part 200. nly applies to contracts over \$10,000)
- a. Termination for Convenience:** The District may terminate the contract, in whole or in part, at any time by written notice to the Offeror when it is in the District's best interest, as determined by the District. When a contract is terminated for convenience, the Offeror will be paid its costs, including contract close-out costs, and for work performed through the date of termination. The Offeror shall promptly submit its termination claim to the District for payment.
 - b. Termination for Cause:** If the Offeror does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Offeror fails to perform in the manner called for in the contract, or if the Offeror fails to comply with any other provisions of the contract, the District may terminate this contract for default. Termination shall be affected by serving a notice of termination on the Offeror setting forth the manner in which the Offeror is in default. The Offeror will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
 - c. Waiver:** In the event the District elects to waive its remedies for any breach by Offeror of any covenant, term or condition of the contract, such a waiver shall not limit the District's remedies for any succeeding breach of that or of any other term, covenant, or condition of the contract.
 - d. Cure:** The District, in its sole discretion, may, in the event of termination for breach or default, provide the Offeror with an opportunity to cure such breach or default. The District may include the timing in which the contract may cure the breach or default in a notice of termination or through any other appropriate means.
- 15. E-Verify Requirement:** The Offeror warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A. (That subsection reads: After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
- 16. Solid Waste Disposal Act:** The Offeror shall comply with Section 6002 of the Solid Waste Act, as amended by the Resource Conservation and Recovery Act, and its implementing regulations.
- 17. Minority & Woman Businesses:** When federal funding may be used, the District shall take affirmative steps to ensure minority businesses, women's business enterprises, and labor surplus area firms are notified of solicitation opportunities when possible. Prime contractors are required to take the same affirmative steps set forth in 2 CFR Part 200.321 to solicit and reach out to small, minority, and women owned firms for subcontracting opportunities on a project.
- 18. Program Regulation (only applies to Food & Nutrition contracts):** Offeror shall be in conformance with applicable portions of the School Food Authority's (SFA) agreement under the program. Offeror will conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, and 250. Offeror shall provide products that meet Public Law 111-296, the Healthy Hunger-Free Kids Act of 2010 (HHFKA). Offeror's products shall meet grade level caloric, sodium, saturated fat, and trans-fat requirements.
- 19. Copeland Anti-Kickback Act and Davis-Bacon Act (for building projects in excess of \$2000):**
- a. Copeland "Anti-Kickback" Act -** All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act. In part, the Copeland "Anti-Kickback" Act prohibits each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
 - b. Davis-Bacon Act -** The OFFEROR shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). In part, the Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 20. Contract Violations or Breach of Contract:** The District reserves all administrative, contractual and legal rights and privileges under applicable laws and regulations with respect to this procurement in the event of contractor violation or breach of contract.
- 21. Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment:** Offeror agrees that it will not obligate or expend any grant funds in violation of 2 CFR § 200.216 and/or 2 CFR § 200.471.
- 22. Domestic Preference for Procurement.** Contractor is hereby notified the District will abide by 2 CFR 200.322, which encourages non-federal entities, to the greatest extent practical, to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Contractor also agrees to abide by 2 CFR 200.322 and is encouraged to provide similar preference as appropriate and to the extent consistent with law.
- 23. Rights to Inventions:** For all contracts that meet the definition of "funding agreement" under 34 CFR § 401.2(a) and where the District wishes to enter into a contract with a small business firm or non-profit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under the "funding

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agreement," the offeror shall comply with 37 CFR Part 401 (Rights to Inventions made by non-profit organizations and small business firms under Government Grants, Contracts, and Cooperative Agreements) and any implementing regulations issued by the awarding agency.

24. Offeror agrees to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. As specifically noted above and any other provisions required by federal, state, or local law as if stated herein and as incorporated herein by this reference.

INDEMNIFICATION

1. Notwithstanding all other provisions, Purchaser does not agree to accept responsibility, waive liability, or indemnify Seller, in whole or in part, for the errors, negligence, hazards, liabilities, contract breach and/or omissions of Seller, its employees and/or agents.

NON-APPROPRIATION

1. All parties acknowledge that the Client is a government entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of either's obligations under this contract, then this contract shall automatically expire without penalty to either party after written notice of the unavailability and non-appropriation of public funds. It is expressly agreed that neither party shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure.

GOVERNING LAW

1. This agreement shall be governed in accordance with the laws of Arizona without regard to conflict of law provisions. In the event that any action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.