

**CONTRACT FOR
INSTALLATION, OPERATION, MAINTENANCE AND MANAGEMENT OF
ELECTRIC VEHICLE CHARGING STATIONS**

**LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
AND
TurnOnGreen, Inc.**

This contract for installation, operation, maintenance, and management of electric vehicle (“EV”) charging stations, including limited design, at multiple at District sites (“**Contract**”) is entered into on April 17, 2023, by and between the **Livermore Valley Joint Unified School District** (“**District**”) and **TurnOnGreen Inc.** (“**Vendor**”). District and Vendor may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

WHEREAS, the District seeks to contract for the procurement, limited design, installation and ongoing support, in accordance with Public Contract Code Section 20118.2, at the following District sites (“**Project**”):

- Tier 1: Marylin Ave Elementary School
- Tier 2: East Avenue Middle, Joe Michell TK-8, Livermore High

(“**Site(s)**”); and

WHEREAS, the District requires specialized equipment and services in connection with the Project; and

WHEREAS, Vendor is specially experienced and competent to provide to the District the specialized equipment and services required for the Project; and

WHEREAS, Vendor has indicated its willingness and commitment to provide its specialized equipment and services to the District on the terms set forth in this Contract; and

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Vendor shall provide and install the equipment as described in **Exhibit A**, attached hereto and incorporated herein by this reference (“**Services**” or “**Work**”). The scope of Services will generally consist of the following:
 - Install, operate, maintain and manage electric vehicle (“EV”) charging stations – Tier 1. Tier 2 for District consideration after successful implementation of Tier 1.
- 1.1. The Services shall be performed at the Sites.
- 1.2. The Vendor’s Services at any one of the sites or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining Vendor’s Services at other site(s). The provisions of this Contract shall apply to the Vendor’s Services at each site, without regard to the status of the remaining component(s). Vendor shall invoice for each inspection and test separately and for each site separately and District shall compensate Vendor for each site separately on a proportionate basis based on the level and scope of Services completed for each site.
2. **Term.** The Services shall be completed within the time specified in **Exhibit B** (“**Contract Time**” or “**Term**”) from the date specified in the District’s Notice(s) to Proceed, as indicated in the Schedule in **Exhibit B**, attached hereto and incorporated herein by this reference (“**Schedule**”).
 - 2.1. Time is of the essence and failure of Vendor to perform work on time as specified in this Contract is a

material breach of this Contract. Vendor agrees that if the Work is not completed within the Contract Time, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Vendor shall forfeit to the District, as fixed and liquidated damages for these incalculable damages, the sum of **Five Hundred Dollars (\$500.00)** per day for each and every calendar day of delay beyond the date indicated in the Schedule for the EV charging stations Installation Completion at the Sites

2.2. **Maintenance and Support.** The term of Vendor’s maintenance and support obligations identified in **Exhibit A** attached hereto shall be **three (3) years** and shall commence from the date of Completion of the Project.

3. **Submittal of Documents.** The Vendor shall not commence the Work under this Contract until the Vendor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

| | |
|---------------|---|
| <u> X </u> | Signed Contract |
| <u> X </u> | Certifications to be completed by Vendor (See Exhibit C) |
| <u> X </u> | Insurance Certificates and Endorsements |
| <u> X </u> | W-9 Form |
| <u> X </u> | Performance Bond (See Exhibit C) |
| <u> X </u> | Payment Bond (See Exhibit C) |
| <u> </u> | [Other]: _____ |

4. **Compensation.**

4.1. Installation cost shall be covered by the vendor. (“**Installation Price**”).

4.2. Vendor will retain 100% of revenue generated from chargers until the cost of equipment, installation, and annual network and O&M fees have been recouped. Vendor will reimburse the district for power used every quarter based on seasonal and TOU utility rates. Once costs and any annual fees have been recouped by vendor the district will receive from vendor every quarter 30% of all net revenues excluding any LCFS credits that are sold.

5. **Incentives.** Vendor shall seek and procure the following incentives for the benefit of the District:

Rebates and Incentives to be reviewed by LVJUSD. Vendor agrees to work with District staff to complete and submit various applications at no cost to the district on those programs the District determines to pursue.

6. **Expenses.** District shall not be liable to Vendor for any costs or expenses paid or incurred by Vendor in performing Services for District.

7. **Independent Contractor.** Vendor, in the performance of this Contract, shall be, and act as, an independent contractor. Vendor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Vendor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Vendor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.

8. **Designated Representatives.** The Vendor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the

District for the design, coordination or management of other work related to the Project.

9. **Materials.** Vendor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Contract, including, without limitation, the equipment specified on the Equipment List attached hereto as **Exhibit C**.
10. **Performance of Services.**
 - 10.1. **Standard of Care.** Vendor represents that Vendor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Vendor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 10.2. **Meetings.** Vendor and District agree to participate in regular meetings on at least a weekly basis to discuss strategies, timetables, implementations of services, installation of equipment and any other issues deemed relevant to the operation of Vendor's performance of Services.
 - 10.3. **District Approval.** The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 10.4. **Safety and Security:** Vendor is responsible for maintaining safety in the performance of this Contract. Vendor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
 - 10.5. **Lead-Based Paint:** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead.
 - 10.6. **Workers:** Vendor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Vendor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.
 - 10.7. **Payment Bond And Performance Bond:** The Vendor shall not commence the Work until it has provided to the District, in the forms included in **Exhibit C**, attached hereto and incorporated herein by this reference, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to **100 percent of the Installation Price** issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.
11. **Originality of Services.** Except as to standard generic details, Vendor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Contract, shall be wholly original to Vendor and shall not be copied in whole or in part from any other source, except that submitted to Vendor by District as a basis for such services.
12. **Copyright/Trademark/Patent.** Vendor understands and agrees that all matters produced under this Contract shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Vendor consents to use of Vendor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

13. **Audit.** Vendor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Vendor transacted under this Contract. Vendor shall retain these books, records, and systems of account during the Term of this Contract and for five (5) years thereafter. Vendor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Contract. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Vendor and shall conduct audit(s) during Vendor's normal business hours, unless Vendor otherwise consents.
14. **Warranty/Quality:** Unless a longer warranty is included with the installed equipment, the Vendor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from completion. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.
15. **Termination.** If Vendor fails to perform the Services and Vendor's duties to the satisfaction of the District, or if Vendor fails to fulfill in a timely and professional manner Vendor's obligations under this Contract, or if Vendor violates any of the terms or provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Vendor. The Vendor and its performance bond surety, if any, shall be liable for all damages caused to the District by reason of the Vendor's failure to perform and complete the Contract. District shall also have the right in its sole discretion to terminate the Contract for its own convenience upon District giving three (3) days written notice thereof to the Vendor. In case of a termination for convenience, Vendor shall be paid for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.
16. **Indemnification.** To the furthest extent permitted by California law, Vendor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, pertaining to, or relating to, the negligent (active or passive, ordinary or gross), reckless (ordinary or gross), or willful acts, omissions, errors and/or other conduct of Vendor, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Contract, including without limitation the payment of all consequential damages, unless Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. District has the right to pre-approve any legal representation that Vendor proposes to defend District.
17. **Insurance.**
- 17.1. The Vendor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below. District shall be listed as additional insurance and as certificate holder.
- 17.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Vendor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)
- 17.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation

Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Vendor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Contract are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

| Type of Coverage | Minimum Requirement |
|---|---------------------|
| Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments | |
| Each Occurrence | \$ 1,000,000 |
| General Aggregate | \$ 2,000,000 |
| Automobile Liability Insurance - Any Auto | |
| Each Occurrence | \$ 1,000,000 |
| General Aggregate | \$ 2,000,000 |
| Workers Compensation | Statutory Limits |
| Employer's Liability | \$ 1,000,000 |

- 17.2. **Proof of Carriage of Insurance.** The Vendor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 17.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 17.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Vendor's insurance policies shall be primary to any insurance or self-insurance maintained by District.
 - 17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 17.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

18. **Installation Work.**

- 18.1. The Parties acknowledge that this Contract shall require labor to perform the Work. Vendor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Vendor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive contracts.
- 18.2. The above-referenced labor is subject to compliance monitoring and enforcement by the Department

of Industrial Relations (“DIR”). District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5. Vendor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof. Vendor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4. Vendor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates. Copies of the prevailing rate of per diem wages are on file with the District and available on the DIR website. **Certified Payroll Records:** Vendor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

- 18.3. One or more project inspectors (“Inspectors”) employed by the District and approved by DSA may be assigned to the Project in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s’) duties will be as specifically defined in Title 24. The labor required for the Work shall be under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Project at any time. The Vendor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Vendor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Vendor’s responsibility for providing efficient and capable superintendence. The Inspector shall have the authority to reject the Work that does not comply with this Contract or is in violation of the requirement established by DSA. In addition, the Inspector may stop any Work which poses a probable risk of harm to persons or property.
19. **Assignment.** Vendor shall not assign or subcontract its obligations under this Contract without the District’s written consent.
20. **Compliance with Laws.** Vendor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Vendor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Vendor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Vendor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant’s receipt of a written termination notice from the District. If Vendor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Vendor shall bear all costs arising therefrom.
21. **Certificates/Permits/Licenses.** Vendor and all Vendor’s employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Contract.
22. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Vendor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Vendor agrees to require like compliance by all its subcontractor(s).
23. **No Rights in Third Parties.** This Contract does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

24. **District's Evaluation of Vendor and Vendor's Employees and/or Subcontractors.** The District may evaluate the Vendor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Vendor and the Vendor's employees and subcontractors and each of their performance.
 - 24.2. Announced and unannounced observance of Vendor, Vendor's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Contract, District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract for the services performed in connection with this Contract.
26. **Confidentiality.** The Vendor and all Vendor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Vendor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Contract.
27. **Notice.** Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

District:
 Livermore Valley Joint Unified School District
685 E Jack London Blvd, Livermore, California
 94551
 ATTN: Tracy Dreher

Vendor:

 _____, California 9____
 ATTN: _____

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

28. **Integration/Entire Contract of Parties.** This Contract constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Contract may be amended or modified only by a written instrument executed by both Parties.
29. **California Law.** This Contract shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Contract shall be maintained in the county in which the District's administrative offices are located.
30. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
31. **Severability.** If any term, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
32. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Contract, except as otherwise provided in this Contract, has any authority to bind the other to any agreements or undertakings.

- 33. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Contract, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney’s fees.
- 34. Captions and Interpretations.** Paragraph headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the Parties.
- 35. Calculation of Time.** For the purposes of this Contract, “days” refers to calendar days unless otherwise specified.
- 36. Signature Authority.** Each party has the full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each Party has been properly authority and empowered to enter into this Contract.
- 37. Counterparts.** This Contract and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 38. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20____

Dated: _____, 20____

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT

TurnOnGreen Inc.

By: _____

By: _____

Print Name: Teresa Fiscus

Print Name: _____

Print Title: Asst. Supt. Of Business Services

Print Title: _____

Exhibit A

1. Overall Scope of Installation Work.

Tier 1 install, operate, maintain and manage electric vehicle (“EV”) charging stations.

Tier 2 for District consideration after successful implementation of Tier 1.

General. Firm must be appropriately licensed to perform the Services and have extensive experience with the Office of Public School Construction (“OPSC”), California Building Standards Code (Title 24, California Code of Regulations), Department of Toxic Substances Control, and the Division of the State Architect (“DSA”). Firm must have experience in the design of public school facilities in addition to being a public school district representative, working with construction managers, inspectors, contractors and other school facility related consultants, and establishing project scope and project budgets.

The District requires a “turn-key” solution. The firm will be responsible for all EV charging station hardware, necessary cable runs, and installation of networking equipment at the Sites as needed. The firm will be responsible for coordinating all its work with District staff, including the District’s Technology Coordinator, in configuring the networking equipment to work with the District’s existing Local Area Network as necessary.

2. District Sites.

Tier 1: Marylin Ave Elementary

Tier 2: East Avenue Middle, Joe Michell TK-8, Livermore High

3. Capacity and Scalability. The system must have the capability of adding additional EV charging stations as deemed necessary by the District.

4. Safety. All EV charging stations must be vandal proof and compliant with all applicable safety requirements.

5. Maintenance and Operation Support. The District requires three (3) years technical and onsite support with the option to continue annual support after the 3-year period has ended.

**Exhibit B
Schedule of Work**

| | Site | Scheduled Installation | Delivery Point | Installation Complete |
|---|--------------------|-------------------------------|-----------------------|------------------------------|
| Tier 1 | Marilyn Ave School | July 8, 2024 | | August 1, 2024 |
| For District consideration after successful implementation of Tier 1. | | | | |
| Tier 2 | East Avenue Middle | | | |
| Tier 2 | Joe Michell TK-8 | | | |
| Tier 2 | Livermore High | | | |

**Exhibit C
BONDS AND CERTIFICATIONS**

PERFORMANCE BOND

PERFORMANCE BOND (100% of Installation Price)
(Note: Vendor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Livermore Valley Joint Unified School District ("**District**")** and _____ ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)
 ("**Project**" or "**Contract**")

which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ ("**Surety**") are held and firmly bound unto the Board of the District in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Vendor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Vendor remains. Nothing herein shall limit the District's rights or the Vendor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its

obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Vendor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

Attention: _____

Telephone No.: (_____) _____ - _____

Fax No.: (_____) _____ - _____

E-mail Address: _____

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ___ day of _____, 20__.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

Vendor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND

PAYMENT BOND -- Vendor's Labor & Material Bond (100% of Installation Price)

(Note: Vendor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Livermore Valley Joint Unified School District ("**District**")** and _____ ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

_____ (Project Name)
 ("**Project**" or "**Contract**")

which Contract dated _____, 20____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Installation Price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and _____ ("**Surety**") are held and firmly bound unto the Board of the District in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 3179 through 3214 and 3247 through 3252 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ___ day of __

_____, 20__.

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

Vendor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

CERTIFICATIONS TO BE COMPLETED BY VENDOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Vendor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Contract and these certifications on behalf of Vendor and that by executing this Contract he/she is certifying the following items.

Labor Code Sections 1860-1861 (Workers' Compensation). In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I certify that I am aware of the provisions of Section 3700 of the Labor Code 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 the performance of the work of this contract.

Government Code Sections 8355-8357 (Drug-Free Workplace). I certify that I will provide a drug-free workplace by doing all of the following:

- (1) 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 the actions that will be taken against employees for violations of the prohibition.
- (2) Establishing a drug-free awareness program to inform employees about all of the following:
 - (A) The dangers of drug abuse in the workplace.
 - (B) The person's or organization's policy of maintaining a drug-free workplace.
 - (C) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (D) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

Tobacco-Free Environment. Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes buildings, grounds, owned vehicles and vehicles owned by others while on District property. I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits the electronic cigarettes,

“vaping” or similar product uses on District sites.

No Hazardous Materials. I certify that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“New Hazardous Material”), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Vendor’s work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District’s determination. The costs of any such tests shall be paid by Vendor if the material is found to be New Hazardous Material.
- (ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing “New Hazardous Material,” will be immediately rejected and this Work will be removed at Vendor’s expense at no additional cost to the District.

Imported Materials. All soils, aggregate, or related materials (“Fill”) that Vendor, a subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code (“CEQA”), and shall comply with the requirements for a Phase I environmental assessment acceptable to the Department of Toxic Substances Control. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

I certify that I am duly authorized to legally bind the Vendor to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Vendor: _____

Signature: _____

Print Name: _____

Title: _____

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Vendor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Vendor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Vendor has taken at least one of the following actions with respect to the Project (check all that apply):

_____ Pursuant to Education Code Section 45125.1, Vendor has obtained for any employee (or subconsultant(s)'s employee) who will interact with pupils, outside of the immediate supervision and control of the pupil's parent or guardian or a school employee, a valid criminal records summary provided by the Department of Justice (DOJ).

- The employee must provide sets of fingerprints to the DOJ that the DOJ will use to obtain criminal record summary information from itself and the Federal Bureau of Investigation (FBI).
- The DOJ shall review the criminal record summary it obtains from its internal search and from the FBI to ascertain whether an applicant for employment has a conviction, or an arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. If the criminal record summary for an employee reflects a conviction or arrest for any of these, that employee shall not perform any services for the District.
- The Vendor shall immediately provide any subsequent arrest and conviction information it receives to any local educational agency that it is contracting with pursuant to the subsequent arrest service.; and/or

_____ Pursuant to Education Code section 45125.2, Vendor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Vendor's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Vendor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Vendor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Vendor's employees and its subcontractors' employees is:

Name: _____ **Title:** _____

_____ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Vendor that will be on a Project Site and the employees of the Subcontractor(s) that will be on a Project Site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Vendor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Vendor.

Date: _____

Proper Name of Vendor: _____

Signature: _____

Print Name: _____

Title: _____