

**LIVERMORE VALLEY
JOINT UNIFIED SCHOOL DISTRICT**

PURCHASE AGREEMENT

This Agreement is made this 11th day of June, 2024 by and between **LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT**, “District” and Lincoln Aquatics, “Seller” (“Agreement” or “Contract”) with respect to the following recitals:

- A. District is a public school district organized and existing under the laws of the State of California.
- B. Seller was the lowest responsible bidder for the District’s Bid #23-24/004 for the purchase and delivery of pool chemicals (“Supplies”)

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

- 1. Location for Delivery. Seller agrees to deliver the Supplies to District at the following addresses:
Maintenance Warehouse, 4801 Ladd Ave, Livermore, CA 94550
Granada High School 400 Wall Street Livermore CA 94551
Livermore High School 600 Maple Street Livermore CA 94550
- 2. Time for Delivery. Seller shall satisfactorily and timely deliver the Supplies in full to the District as specified in the District’s bid package documents for Bid No. 23-24/004 (“Bid Package”), including but not limited to any addenda. Time is of the essence in this Contract. If Seller fails to satisfactorily and timely deliver the Supplies, the District may purchase supplies from other sources and recover damages from Seller as allowed by applicable law, including but not limited to the purchase cost in excess of the contract price (see next section) and other costs incurred due to Seller’s failure to timely deliver.
- 3. Contract Term and Not-to-Exceed Price. The term of this Contract is one (1) year(s) from the date of award of the Contract by the District’s governing board (“Term”). For every satisfactory and timely delivery of ordered Supplies, District agrees to pay Seller based on the unit prices and taxes listed by Seller in the Seller’s Bid Form for those Supplies, with such payment being made within forty-five (45) calendar days following receipt of Seller’s invoice or satisfactory and timely delivery, whichever is later. The District’s total purchases from Seller under this Contract may not exceed one hundred twenty-three thousand dollars (\$123,000). At any time during the Term, District may terminate the Contract for convenience effective upon Seller’s receipt of written notice of such termination; and such written notice may limit or delay the effective date of the termination.
- 4. Conformance to Contract Documents. Seller agrees that the Supplies to be furnished pursuant to this Contract shall conform to all of the requirements set forth in the Contract Documents, as defined below.
- 5. Indemnity. Seller shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the “District Parties”), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature, and description (collectively, the “Claims”) directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, breach of contract, or willful misconduct of Seller, or Seller’s employees, agents, or volunteers (collectively, the “Seller Parties”), in the performance of or failure to perform Seller’s obligations under this Contract or for any infringement of the patent rights, copyright or trademark of any person or persons in consequence of the

use by the District of Supplies supplied pursuant to this Contract.

6. Transportation Charges. Seller agrees to deliver all Supplies prepaid unless otherwise specified. All costs for delivery and packaging of Supplies are the responsibility of Seller unless otherwise stated.

7. Inspection. All Supplies furnished must be in conformity with the Contract Documents and will be subject to inspection and approval by the District after delivery. District reserves the right to reject and return at the risk and expense of the Seller any portion of the Supplies which may be defective or which fails to comply with the specifications in Contract Documents.

8. Insurance. Without in any way limiting Seller's liability, or indemnification obligations set forth in Paragraph 6 above, Seller shall secure and maintain throughout the Term of this Agreement the following insurance:

Commercial General Liability – Including bodily injury	\$1,000,000 each occurrence \$2,000,000 aggregate
Property Damage Liability	\$250,000 each occurrence
Medical Expense	\$5,000 any one person
Products-Completed Operations Aggregate	\$1,000,000
Automobile Liability	\$1,000,000 each occurrence, CSL
Workers Compensation	Statutory limits pursuant to state law
Employers' Liability	\$1,000,000 each accident, disease (each employee and policy limit)

Neither Seller nor any of the Seller Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Seller's insurance policies shall be attached to this Agreement as proof of insurance.

9. Independent Contractor Status. Seller is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Seller is free from the control and direction of District in connection with the manner in which it provides the Services to District. Seller understands and agrees that Seller and the Seller Parties shall not be considered officers, employees, agents, partners, or joint ventures of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. Taxes. All payments made by District to Seller pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from amounts payable to Seller, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Seller 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 Seller and the Seller Parties and otherwise in connection with this Agreement.

11. Fingerprinting Notice and Acknowledgement. Seller and the Seller Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code (“Education Code”) section 45125.1, and shall complete and submit the Fingerprinting Notice and Acknowledgement Form.

12. Tuberculosis Certification. Seller and the Seller Parties shall at all times comply with the tuberculosis (“TB”) certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Seller hereby represents and warrants to District the following:

A. Seller and Seller Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. The following Seller and Seller Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

_____. [Attach and sign additional pages, as needed.]

Seller shall maintain on file the certificates showing that the Seller and Seller Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Seller and shall be available to District upon request or audit.

Seller further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by Seller and Seller Parties are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. Confidential Information. Seller shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Seller shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Seller shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. Assignment/Successors and Assigns. Seller shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the District’s governing board.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. Written Notice. Written notice shall be deemed to have been duly served by a Party if delivered in person to Seller at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Seller shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Seller agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. Non-Discrimination. There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. Attorneys' Fees. If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.

22. Liability of District. Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

23. Time. Time is of the essence to this Agreement.

24. Waiver. No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

25. Entire Agreement. This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

27. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

28. Warranty of Authority. The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

29. Forms. The following documents are incorporated into the Contract as the "Contract Documents":

- Bid Cover Sheet
- Fingerprinting Notice and Acknowledgement
- Workers' Compensation Certification
- Drug-Free Workplace Certification
- Fingerprinting Certification (see Exhibit B of the Fingerprinting Notice and Acknowledgement)
- Local Business Participation Form (If applicable)
- The bid package issued by the District for the Contract ("Bid Package"), which shall include, but not be limited to, the Bid Requirements, the Bid Conditions, Required Submittals, and all addenda

30. Safety Regulations. All equipment and supplies furnished, and/or all work performed, shall meet all applicable safety regulations of the Division of Industrial Safety of the State of California, and Health & Safety code of the State of California.

31. Mediation. A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first hereinabove written.

LIVERMORE VALLEY JOINT
UNIFIED SCHOOL DISTRICT

[SIGNATURE]

By: Asst. Supt. of Business Svc.
[TITLE]

[DATE]

Seller

[SIGNATURE]

By: _____
[TITLE]

[DATE]

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 Seller, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Seller; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Seller has taken at least one of the following actions (check all that apply):

All Workers Fingerprinted. The Seller has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Seller’s employees and all of its subcontractors’ employees who interact with pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, has a valid criminal records summary as described in Education Code Section 44237 (Seller shall “require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.”). A complete and accurate list of Seller’s employees and of all of its subcontractors’ employees who may interact with District pupils during the course and scope of the Contract is attached hereto; and/or

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

Continual Supervision by Fingerprinted Employee. Pursuant to Education Code section 45125.2, Seller certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Seller 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 Seller's employees and its subcontractors' employees is:

Name: _____ Title: _____

Unoccupied Site. 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 Seller that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

Seller’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 Seller.

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Seller: _____

Signature: _____

Print Name _____ Title: _____

CERTIFICATIONS TO BE COMPLETED BY SELLER

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

Labor Code Sections 1860-1861 (Workers' Compensation). In accordance with Labor Code section 3700, every seller will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury 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 acknowledge and certify under penalty of perjury 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 seller 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 seller or grantee has made a false certification under Section 8355.
- (2) The seller 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.

I ACKNOWLEDGE AND CERTIFY UNDER PENALTY OF PERJURY THAT I AM DULY AUTHORIZED TO LEGALLY BIND THE SELLER TO ALL PROVISIONS AND ITEMS INCLUDED IN THESE CERTIFICATIONS, THAT THE CONTENTS OF THESE CERTIFICATIONS ARE TRUE, AND THAT THESE CERTIFICATIONS ARE MADE UNDER THE LAWS OF THE STATE OF CALIFORNIA.

Date: _____ Proper Name of Seller: _____

Signature: _____

Print Name: _____ Title: _____