

# DRAFT

## MONTEREY PENINSULA REGIONAL PARK DISTRICT PURCHASE AGREEMENT

This Agreement is made this 5th day of June, 2024, by and between **Monterey Peninsula Regional Park District**, “District,” and **Aries Buildings, LLC**, “Vendor,” (“Agreement,” or “Contract”) with respect to the following recitals:

A. District is a regional park district organized and existing under the laws of the State of California.

B. Vendor was the lowest responsible bidder for the District’s Bid No. 202324-2 for the purchase and delivery of the items of equipment, materials, and supplies detailed in the Bid Package (defined below) provided by the District (“Items”).

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

- Location for Items. Vendor agrees to deliver and install the Items to District at the following address: Palo Corona Regional Park, 4860 Carmel Valley Road, Carmel, CA 93923.
- Time for Delivery. Vendor shall satisfactorily and timely deliver the Items in full to the District as specified in the District’s bid package documents for Bid No. 202324-2 (“Bid Package”), including but not limited to the Purchase Specifications and any addenda. Time is of the essence in this Contract. If Vendor fails to satisfactorily and timely deliver the Items, the District may purchase items from other sources and recover damages from Vendor 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 the Vendor’s failure to timely deliver.
- Contract Price. District agrees to pay Vendor the price of One Hundred Twenty-Five Thousand Thirty-Eight dollars and 91cents. Dollars (\$125,038.91) within forty-five (45) calendar days following receipt of Vendor’s invoice for the satisfactory and timely delivery and installation of the Items.
- Conformance to Contract Documents. Vendor agrees that the Items to be furnished and installed pursuant to this Agreement (“Contract”) shall conform to all of the requirements set forth in the Contract Documents, as defined below.
- Indemnity. Vendor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, governing board, and members of its governing board (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 Vendor, or Vendor’s employees, agents, or volunteers (collectively, the “Vendor Parties”), in the performance of, or

failure to perform, Vendor'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 the Items supplied pursuant to this Contract.

6. Transportation Charges. Vendor agrees to deliver all Items prepaid unless otherwise specified. All costs for delivery and packaging of Items are the responsibility of Vendor unless otherwise stated in the Contract Documents, as defined below.

7. Inspection. All Items 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 Vendor any portion of the Items which may be defective or which fails to comply with the specifications in Contract Documents.

9. Insurance. Without in any way limiting Vendor's liability, or indemnification obligations set forth in Paragraph 5 above, Vendor shall secure and maintain at its own expense throughout the Term of this Agreement the following insurance: (i) **Comprehensive General Liability insurance.** VENDOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.; (ii) **Commercial Automobile Liability insurance.** VENDOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the VENDOR arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident (iii) **Worker's Compensation insurance** as required by Labor Code section 3200, *et seq.*, if applicable. VENDOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

**Umbrella or Excess Liability insurance.** [*Optional depending on limits required*]. VENDOR shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies

## **Other provisions or requirements**

**Proof of insurance.** **VENDOR shall provide certificates of insurance** to DISTRICT as evidence of the insurance coverage required herein, **along with a waiver of subrogation endorsement** in favor of DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers **for workers' compensation**. Insurance certificates and endorsements must be approved by DISTRICT's Risk Manager **prior to commencement of performance**. Current certification of insurance shall be kept on file with DISTRICT at all times during the term of this contract. DISTRICT reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** VENDOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by VENDOR, his agents, representatives, employees or subVENDORS.

**Primary/noncontributing.** Coverage provided by VENDOR shall be primary and any insurance or self-insurance procured or maintained by DISTRICT shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DISTRICT before the DISTRICT's own insurance or self-insurance shall be called upon to protect it as a named insured.

**DISTRICT's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, DISTRICT has the right but not the duty to obtain the insurance it deems necessary and any premium paid by DISTRICT will be promptly reimbursed by VENDOR or DISTRICT will withhold amounts sufficient to pay premium from VENDOR payments. In the alternative, DISTRICT may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the DISTRICT's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow VENDOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. VENDOR hereby waives its own right of recovery against DISTRICT, and shall require similar written express waivers and insurance clauses from each of its subVENDORS.

**Enforcement of contract provisions (non-estoppel).** VENDOR acknowledges and agrees that any actual or alleged failure on the part of the DISTRICT to inform VENDOR of non-compliance with any requirement imposes no additional obligations on the DISTRICT nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the VENDOR maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the VENDOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

**Notice of cancellation.** VENDOR agrees to oblige its insurance agent or broker and insurers to provide to DISTRICT with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that DISTRICT and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to DISTRICT and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that VENDOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** VENDOR agrees to ensure that its subVENDORS, and any other party involved with the project who is brought onto or involved in the project by VENDOR, provide the same minimum insurance coverage and endorsements required of VENDOR. VENDOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. VENDOR agrees that upon request, all agreements with VENDORS, subVendors, and others engaged in the project will be submitted to DISTRICT for review.

**DISTRICT's right to revise specifications.** The DISTRICT reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the VENDOR ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the VENDOR, the DISTRICT and VENDOR may renegotiate VENDOR's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by DISTRICT. DISTRICT reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by DISTRICT.

**Timely notice of claims.** VENDOR shall give DISTRICT prompt and timely notice of claims made or suits instituted that arise out of or result from VENDOR's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** VENDOR shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

Neither Vendor nor any of the Vendor Parties shall commence performing any portion of the Contract 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 Vendor's insurance policies shall be attached to this Agreement as proof of insurance.

10. Independent Contractor Status. Vendor is engaged in an independently established trade, occupation, or business to provide the Items required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Vendor is free from the control and direction of District in connection with the manner in which it provides the Items to District. Vendor understands and agrees that Vendor and the Vendor Parties shall not be considered officers, employees, agents, partners, or joint venturers 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.

11. Taxes. All payments made by District to Vendor 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 Vendor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. 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 Vendor and the Vendor Parties and otherwise in connection with this Agreement.

12. Assignment/Successors and Assigns. Vendor 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.

13. 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.

14. 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.

15. 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 Monterey, 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.

16. Written Notice. Written notice shall be deemed to have been duly served by a Party if delivered in person, or sent by registered or certified or overnight mail, to the other Party's last business address known to the person who sends the notice.

17. 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. Vendor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances. Vendor 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. Forms. The following documents are incorporated into the Contract as the “Contract Documents”:

- Bid Cover Sheet.
- Bid security.
- Iran Contracting Act Certification.
- Workers’ Compensation Certification.
- The bid package issued by the District for the Contract (“Bid Package”), which shall include, but not be limited to, the Invitation for Bids, the Instructions to Bidders, the Purchase Specifications, the Bid Form, the Bid Bond, this Agreement, and all addenda.

32. 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.

33. 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.

34. Prevailing Wage. Vendor agrees to follow all applicable laws regarding payment of prevailing wage for installation of mobile office unit. Wage rates for this Project shall be in accordance with the "General Wage Determination Made by the Director of Industrial Relations Pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1", for Monterey County. Wage rates shall conform with those posted at the Project site and available to any interested party at <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

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

MONTEREY PENINSULA  
REGIONAL PARK DISTRICT

ARIES BUILDING SYSTEMS, LLC  
Vendor

By \_\_\_\_\_  
Rafael Payan, PhD, General Manager

By \_\_\_\_\_  
Dan McGinnis