

**ALBANY UNIFIED SCHOOL
DISTRICT INDEPENDENT CONTRACTOR
SERVICES AGREEMENT**

This agreement is hereby entered into this 13th Day of December, 2022, in the County of Alameda, State of California, by and between the Albany Unified School District, hereinafter referred to as "DISTRICT", and Virco, Inc. hereinafter referred to as 'CONTRACTOR.' DISTRICT and CONTRACTOR shall be collectively referred to as the Parties.

Contractor Address:

<u>2027 Harpers Way,</u>	<u>Torrence</u>	<u>CA</u>	<u>90501</u>
STREET ADDRESS	CITY	STATE	ZIP

Contractor Services. Contractor agrees to provide the following services to District (collectively, the "Services"): Supply and deliver 466 Virco Zuma® Series chairs for the Marin Elementary School Re-Build project in accordance with Exhibit A, attached herein.

1. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor and all of Contractor's employees, agents or volunteers (the "Contracted Parties") have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other legal qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. If any of the Services are performed by any of Contractor's Parties, such work shall only be performed by competent personnel under the supervision of and in the employment of Contractor.
2. **Term.** CONTRACTOR shall commence providing services under this AGREEMENT upon execution of this contract. There shall be no extension of the Term of this Agreement without the express written consent from all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contracted Parties. In the event of early termination, Contractor shall be paid for satisfactory work performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.
3. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party; however, the parties may agree in writing to a shorter time period for the effectiveness of such termination. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially violates any of the terms of this Agreement, any act or omission by Contractor or the Contracted Parties exposes District to potential liability or may cause an increase in District's insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Such termination shall be effective immediately upon Contractor's receipt of said notice.
4. **Compensation.** DISTRICT agrees to pay the CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed Fifty-Eight Thousand Nine Hundred and Thirty-Five Dollars and Sixty-Six Cents (\$58,935.66). DISTRICT shall pay

CONTRACTOR according to the following terms and conditions:

- Such compensation shall be based on:
 - ☐ An hourly rate of ___ for a total amount of ___ hours
 - ☐ A daily rate of \$ ___ for a total amount of ___ days
 - ☒ Total amount of \$58,935.66
- Payment method shall be:
 - ☐ Upon Completion
 - ☐ Date of Service
 - ☒ Other (Specify): Invoiced monthly based on % complete

Any work performed by Contractor in excess of said amount shall not be compensated.

Payment shall be made upon approval of DISTRICT and receipt of an invoice from CONTRACTOR one copy clearly marked original. CONTRACTOR's invoice shall be sent to: Albany Unified School District, Attention: Accounts Payable, 819 Bancroft Way, Berkeley, CA, 94710.

5. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor of the Contracted Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contracted Parties by District. Furthermore, any Equipment or workmanship that does not conform to the regulations of this Agreement may be rejected by District and in such case must be promptly remedied or replaced by Contractor at no additional cost to District and subject to District's reasonable satisfaction.
6. **California Residency.** Contractor and the Contracted Parties shall be residents of the State of California.
7. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Education, members of the Board of Education (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 the performance of this Agreement, including but not limited to Contractor's or the Contracted Parties' use of the site; Contractor's or the Contracted Parties' performance of the Services; Contractor's or the Contracted Parties' breach of any of the representations or warranties contained in this Agreement; injury to or death of persons or damage to property or delay or damage to District or the District Parties; or for any act, error, omission, negligence, or willful misconduct of

Contractor, the Contracted Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

8. **Insurance.** Without in any way limiting Contractor's liability or indemnification obligations set forth in Paragraph 8 above, District reserves the right to require contractor to procure and maintain throughout the Term of this Agreement the following insurance:
(i) comprehensive general liability insurance with limits not less than \$1,000,000.00 each occurrence and \$1,000,000.00 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000.00 each occurrence and \$1,000,000.00 in the aggregate; if applicable; and neither Contractor nor any of the Contracted Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insured. 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 any of the required insurance is not reinstated, District may, at its sole option, terminate this Agreement. All of the policies shall also 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.
9. **Independent Contractor Status.** Contractor, in the performance of this Agreement, shall be and act as an Independent Contractor. Contractor understands and agrees that s/he and the Contracted 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 Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from compensation payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor 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 Contractor and the Contracted Parties and otherwise in connection with this Agreement.
11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contracted Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:
- ☒ Contractor and the Contracted Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.
- ☐ The following Contracted Parties have **more than limited contact** (as determined by District) with District students during the Term of this Agreement:
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[Attach and sign additional pages, as needed]

- ☐ All of the Contracted Parties noted above, at no cost to District, have completed background checks and have been fingerprinted under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints reveal that none of these Contracted Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information, including additional personnel, which differs in any way from the representations set forth above, Contractor shall immediately notify District and prohibit any new personnel from having any contact with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any such contact is permissible.

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

- ☒ Contracted Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.
- ☐ The following Contracted 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: _____

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

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement 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 such contact is permissible.

13. **Confidential Information.** Contractor 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. Contractor shall not use such student information for any purpose other than carrying out the obligations under this agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.
14. **Assignment.** Contractor 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.

15. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Contractor and District and their respective successors and assigns.
16. **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.
17. **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.
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate court in Alameda County, California.
19. **Non-Discrimination.** PROVIDER shall not discriminate on the basis of a person's actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, gender identity, gender expression, sex, or sexual orientation in employment or operation of its programs.
20. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified mail to the last business address known to the person who sends the notice.
21. **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. Contractor 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. Contractor 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.
22. **Attorney Fees.** If any legal action is taken to 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.
23. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incident damages, including but not limited to lost profits in connection with this Agreement.
24. **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.

25. **Subject To Approval of Board.** This Agreement confers no legal or equitable rights until it is approved by the District Board of Education at a lawfully conducted public meeting.

IN WITNESS WHEREOFF, the parties have executed this Agreement as of the Effective Date.

DISTRICT:

ALBANY UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

CONTRACTOR:

VIRCO, INC.

By: _____

Name: _____

Title: _____

Address for District Notices:

Albany Unified School District
819 Bancroft Way,
Berkeley, CA 94710

Address for District Notices:

Virco, Inc.
2027 Harpers Way
Torrence, CA 90501

Date of Board Approval: _____