WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT
NOTICE OF PROCUREMENT OF POOL BOILER EQUIPMENT
BID # 14-1617

PLEASE TAKE NOTICE that the West Valley-Mission Community College District ("District") has issued bid documents, contract documents and related documents (collectively "Contract Documents") for the procurement of Pool Boiler Equipment ("the Equipment") for the District's West Valley College Campus Pools.

1. **The Equipment**. The scope and requirements for the Equipment, including delivery requirements, are set forth in the Contract Documents. Equipment furnished by the successful Vendor will be installed by others.

2. **Obtaining Contract Documents**. Bidders who wish to participate in this bid should email their request to general.services@wvm.edu. There is no deposit or other costs for obtaining the Contract Documents.

3. **Submittal of Bid Proposal**.
   3.1. District Forms. Bid Proposals must be submitted in strict conformity to the requirements of Contract Documents and on forms furnished by the District where applicable. Bid Proposals must conform with, and be responsive to, the requirements set forth in the Contract Documents.
   3.2. Bid Security. Each Bidder must submit Bid Security conforming to the requirements set forth in the Contract Documents concurrently with submission of the Bidder's Bid Proposal.
   3.3. Latest Date/Time for Submission of RFP Responses. The latest date and time for submission of Bid Proposals is 2:00 P.M. Jan 6th, 2017. The District will only consider Bid Proposals submitted to the District at or prior to the date/time set forth above.
   3.4. Location for Submission of RFP Responses. Responses to the RFP must be submitted to:
   West Valley Mission Community College District
   Department of General Services
   Warehouse and Facilities Building
   14000 Fruitvale Ave.
   Saratoga, California 95070
   Bid Proposals will be deemed submitted to the District only if actually delivered to the District's Department of General Services, at the above-identified address.
   3.5. Sealed Bid Proposals. Bid Proposals must be submitted in sealed envelopes with the exterior of such envelope prominently marked to: (i) the Bid Number assigned to this procurement; and (ii) identify the firm submitting the Bid Proposal.

4. **Award of Contract**. The Contract to furnish the Equipment will be awarded only by action of the District's Board of Trustees. If award of the Contract is made, it will be to the responsible Bidder submitting the lowest priced responsive Bid Proposal for the Equipment subject to this procurement.

5. **District Reservation of Rights**. The District reserves the right to waive minor and inconsequential irregularities or informalities in the bidding process or in a Bid Proposal. The District reserves the right to reject all Bid Proposals.

Advertise: San Jose Post Dec 9th, 2016
San Jose Post Dec 16th, 2016

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INSTRUCTIONS FOR BIDDERS

1. **Procurement of Pool Boiler Equipment; Proposal and Performance Requirements.**

   1.1. General. The materials, equipment and other goods subject to this procurement consists primarily of **Pool Boiler** equipment and related items intended for installation at the District's West Valley College campus in the Pool Equipment Room. Product Description/Specification and Manufacturer Responsibilities are set forth in Attachments A and B. Installation of the Pool Boiler will be contracted after equipment procurement and is not part of this bid..

   1.2. Price Proposal for All Items. Bidders must submit proposed pricing for every item of materials, equipment and other goods subject to this procurement. Failure of a Bidder to propose pricing for every item of materials, equipment and other goods will result in rejection of the Bidder's Bid Proposal for non-responsiveness.

   1.3. Pricing and Delivery Commitments of Successful Bidder. In accordance with the terms of the Purchase Order, pricing proposed by the successful Bidder for materials, equipment and other goods subject to this procurement shall remain firm through and including Feb 31st, 2017 By written notice to the successful Bidder the District may require the successful Bidder to furnish additional quantities of the materials, equipment and other goods subject to the scope of the Purchase Order awarded to the successful Bidder for the price proposed, and upon the terms and conditions set forth in the Purchase Order.

   1.4. Piggyback Clause

   Other county offices of education, school districts and public agencies within California may desire to award a contract in response to this Invitation for Bid. If authorized by Bidder under schedule of this invitation, Bidder shall provide equipment include in this bid to these offices and districts at the same prices and upon the same terms and conditions pursuant to Sections 20118 and 20652 of the California Public Contract Code. The District waives the right to require offices and districts to draw their warrants in favor of the District as provided in said code sections.

   1.5. Product Data Submittal Binder. Each Bidder must separately bind and submit concurrently with the Bidder's Bid Proposal a binder of Submittals setting forth information ("Product Data Submittal Binder") for each item of materials, equipment and other goods subject to this procurement. Failure of a Bidder to submit product data concurrently with submitting the Bid Proposal, as required herein, the Bidder's proposal will be deemed non-responsive and rejected. The Product Data Materials for each item of the Pool Boiler or an accessory thereto must include all requirements noted in Attachment 1 (Product Data Submittal Binder Requirements) to these Instructions for Bidders. Product data submitted by a Bidder must reflect compliance with Equipment Requirements and Specifications for the Pool Boiler subject to this procurement (Equipment Requirements and Specifications are appended to the Purchase Order as Attachment A, TECHNICAL SPECIFICATIONS FOR A Complete POOL BOILER SYSTEM"; Equipment Design Diagrams are Attachment B, DIAGRAM #1 through DIAGRAM #5). The Bid Proposal of a Bidder whose product data does not reflect full compliance with Equipment Requirements and Specifications will be rejected for non-responsiveness.

2. **Preparation and Submittal of Bid Proposal.**

   2.1. Completion of Bid Proposal. All information required by the bid forms must be completely and accurately provided. Numbers shall be stated in both words and figures where so indicated in the bid forms; conflicts between a number stated in words and in figures are governed by the words. Partially completed Bid Proposals or Bid Proposals submitted on other than the bid

forms included herein are non-responsive and will be rejected.

2.2. No Bidder Modifications. Changes to the bid forms which are not specifically called for or permitted may result in the District's rejection of the Bid Proposal as being non-responsive.

2.3. Submittal of Bid Proposal. Bid Proposals shall be submitted in sealed envelopes bearing on the outside the Bidder's name and address and identification of the Work for which the Bid Proposal is submitted. Bidders are solely responsible for timely submission of Bid Proposals to the District at the place designated in the Call for Bids. The District will place a date/time stamp machine in a conspicuous location at the place designated for submittal of Bid Proposals. A Bid Proposal is submitted only if the outer envelope containing the Bid Proposal is stamped by the District's date/time stamp machine. The date/time stamp is controlling and determinative as to the date and time of the Bidder's submittal of its Bid Proposal. The foregoing notwithstanding, whether or not Bid Proposals are opened exactly at the time fixed in the Call for Bids, no Bid Proposals shall be received or considered by the District after it has commenced the public opening and reading of Bid Proposals; Bid Proposals submitted after such time are non-responsive and will be returned to the Bidder unopened.

2.4. Withdrawal of Submitted Bid Proposal. Any Bidder may withdraw or modify its Bid Proposal by written request actually received by the District prior to the scheduled closing time for the receipt of Bid Proposals and the District's public opening and reading of Bid Proposals.

2.5. Incomplete, Illegible Bid Proposals. Bid Proposals must not contain any erasures, interlineations or other corrections unless the same are suitably authenticated by affixing in the margin immediately opposite such erasure, interlineations or correction the surname(s) of the person(s) signing the Bid Proposal. Any Bid Proposal not conforming to the foregoing may be deemed by the District to be non-responsive. If any Bid Proposal or portions thereof, is determined by the District to be incomplete, illegible, ambiguous or inconsistent, whether by virtue of any erasures, interlineations, corrections or otherwise, the District may reject such a Bid Proposal as being non-responsive.

3. **Examination Contract Documents.** Each Bidder shall at its sole cost and expense carefully review the Contact Documents; submission of a Bid Proposal is prima facie evidence of such action by the Bidder. The failure of a Bidder to receive or examine any of the Contract Documents shall not relieve such Bidder from any obligation under the Contract Documents.

4. **Interpretation of Contract Documents.** If the Bidder is in doubt as to the true meaning of any part of the Contract Documents; finds discrepancies, errors or omissions therein; or finds variances in any of the Contract Documents with applicable rules, regulations, ordinances and/or laws, a written request for an interpretation or correction thereof may be submitted to the District. Bidders are solely responsible for submitting to such request not less than three (3) days prior to the scheduled closing date for the receipt of Bid Proposals. Interpretations or corrections of the Contract Documents will be by written addendum issued by or on behalf of the District. No person is authorized to render an oral interpretation or correction of any portion of the Contract Documents to any Bidder, and no Bidder is authorized to rely on any such oral interpretation or correction. Failure to request interpretation or clarification of any portion of the Contract Documents pursuant to the foregoing is a waiver of any discrepancy, defect or conflict therein. Requests of Bidders, pursuant to the foregoing shall be submitted in writing or by email to: Derek Allen, Project Manager, DSA School Inspectors Inc, Derek@DSAschoolinspectors.com.

5. **District's Right to Modify Contract Documents.** Before the public opening and reading of Bid Proposals, the District may modify the scope of materials, equipment or other goods subject to this

procurement, the requirements therefore, the Contract Documents, or any portion(s) thereof by the issuance of written addenda disseminated to all Bidders who have obtained the Contract Documents. If the District issues any addenda during the bidding, the failure of any Bidder to acknowledge such addenda in its Bid Proposal will render the Bid Proposal non-responsive and rejected.

6. **Bidders Interested in More Than One Bid Proposal; Non-Collusion Affidavit.** No person or entity shall submit or be interested in more than one Bid Proposal for the Equipment; provided, however, that a person or entity that has submitted a sub-proposal to a Bidder or who has quoted prices for materials to a Bidder is not thereby disqualified from submitting a sub-proposal, quoting prices to other Bidders or submitting a Bid Proposal for the Work. The form of Non-Collusion Affidavit included in the Contract Documents must be completed and duly executed on behalf of the Bidder; failure of a Bidder to submit a completed and executed Non-Collusion Affidavit with its Bid Proposal will render the Bid Proposal non-responsive.

7. **Award of Contract**. The Contract for the materials, equipment, products and goods, if awarded, will be by action of the District's Board of Trustees to the responsible Bidder submitting the lowest priced responsive Proposal for all items of materials, equipment or goods subject to this procurement.

8. **Bid Security Return.** The Bid Security of two or more low Bidders, the number being solely at the discretion of the District, will be held by the District for ten (10) days after the period for which Bid Proposals must be held open (which is set forth in the Call for Bids) or until posting by the successful Bidder of the bond(s) and certificates of insurance required, whichever first occurs, at which time the Bid Security of such other Bidders will be returned to them.

9. **Forfeiture of Bid Security.** If the Bidder awarded the Contract hereunder fails or refuses to execute the Agreement within five (5) days from the date of receiving notification that it is the Bidder to whom the Contract has been awarded, the District may declare the Bidder's Bid Security forfeited as damages caused by the failure of the Bidder to enter into the Contract and may thereupon award the Contract for the Work to the responsible Bidder submitting the next lowest Bid Proposal or may call for new bids, in its sole and exclusive discretion.

10. **Public Records.** Bid Proposals and other documents responding to the Call for Bids become the exclusive property of the District upon submittal to the District. Upon the District's issuance of the Notice of Intent to award the Contract, all Bid Proposals and other documents submitted in response to the Call for Bids shall thereupon be considered public records, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code §3426.1). A Bidder that indiscriminately marks all or most of its Bid Proposal as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid Proposal non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bid Proposals are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such Bid Proposals, by request made to the District in conformity with the California Access to Public Records Act, California Government Code §§6250, et. seq. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Bid Proposal deemed exempt from disclosure hereunder, the Bidder submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation

attorneys' fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

11. **Notice of Intent to Award Contract.** Following the public opening and reading of Bid Proposals, the District will issue to Bidders timely submitting a Bid Proposal, a Notice of Intent to Award the Contract, identifying the Bidder to whom the District intends to award the Contract, and the date, time and place of the Board of Trustees meeting to consider award of the Contract.

12. **Bid Protest.** Any Bidder submitting a Bid Proposal to the District may file a protest of the District's intent to award the Contract(s) provided that each and all of the following are complied with:

    (i) The bid protest is in writing;
    (ii) The bid protest is filed and received by the District's Vice-Chancellor, Administrative Services, not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and
    (iii) The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Vice-Chancellor, Administrative Services, or such individual(s) as may be designated by him, shall review and evaluate the basis of the bid protest. Either the District's Vice-Chancellor, Administrative Services, or other individual designated by her/him shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The rendition of a written statement by the Vice-Chancellor, Administrative Services, or his designee, is an express conditions precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District's award of the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals. In the event that any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.

[End of Section]

ATTACHMENT 1 TO INSTRUCTIONS FOR BIDDERS
WEST VALLEY MISSION COMMUNITY COLLEGE DISTRICT

PRODUCT DATA SUBMITTAL BINDER REQUIREMENTS

A. Product Data: Product data forming a part of the Product Data Submittal Binder must conform to the following.

a. Standard printed data and information describing the equipment. Include manufacturer's technical data, operating characteristics, furnished specialties and accessories
   i. Mark to show which products and options are applicable.
   ii. Manufacturer's catalog cuts

b. Include the following information:
   i. Manufacturer's product specifications and scope of work
      1. Electrical integration requirements.
   ii. Manufacturer's written recommendations

B. Installation Requirements: Product data forming a part of the Product Data Submittal Binder must conform to the following.

a. Standard printed data and information describing the equipment.

b. Include the following information:
   i. Manufacturer's written installation requirements
   ii. Manufacturer's recommendations.
   iii. Requirements for coordination with other construction trades.

C. Warranty

a. Include copies of warranties and bonds and lists of circumstances and conditions that would affect validity of warranties

b. Include procedures to follow and required notifications for warranty claims.

[END OF ATTACHMENT 1]

Requirements for Equipment

-Equipment is to be comparative to system requirements laid out below

(2)FBN1751 Crest Condensing Boiler. Or Equal

(2)PUM20079 Grundfos Magna 3 Boiler Pumps. Or Equal

(2)KIT30133 Neutralization Kits. Kelvion NT1
Heater Piping, 6” Common Piping. Butterfly V
Boiler Inlet. -ASME 0002 Expansion Tank, Non 6” Amtrol In-line Air
1) -Fill Valve. Equipment Mounted on 6” Channel Fr

115 DEGREE HIGH LIMIT SHIPPED LOOSE TO BE INSTALLED ON SYSTEM PIPING.

The estimated dimensions of the skid will be 105” wide x 80” deep x 84” high. Or close to this specification

Boiler Pump

1. Primary pump, factory supplied and sized to ensure minimum, continuous circulation through boiler

2. Variable speed boiler pump Control: Boiler may be programmed to send a 0-10V DC output signal to an ECM or VFD boiler pump to maintain a designed temperature rise across the heat exchanger. The boiler shall be able to operate in this mode with a minimum temperature rise of 20 degrees F and a maximum temperature rise of 80 degrees F.

Factory Installed Controls:

1. The boiler shall have a built in cascade controller to sequence and rotate lead boiler to ensure equal runtime while maintaining modulation of up to 8 boilers of different btu inputs without utilization of an external controller. The factory installed, internal cascade controller shall include the following

   A- Lead Lag

   B- Efficiency optimization: The control module shall allow multiple boilers to fire at minimum firing rate in lieu of Lead/Lag

   C- Front End Loading

D- Rotation of lead boiler: The control module shall change the lead boiler every hour for the first 24 hours after initializing the cascade. Following that, the leader will be changed once every 24 hours.

BID BOND

KNOW ALL MEN BY THESE PRESENT that we, _____, as Surety and _____, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT, hereinafter "the Obligee," for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal to the Obligee for the Work commonly described as **WEST VALLEY COLLEGE POOL BOILER EQUIPMENT**.

WHEREAS, subject to the terms of this Bond, the Surety is firmly bound unto the Obligee in the penal sum of ten percent (10%) of the maximum amount of the Bid Proposal submitted by the Principal to the Obligee, as set forth above.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for ninety (90) days after opening of said Bid Proposal; and if the Principal is awarded the Contract, and shall within the period specified therefor enter into a written contract with the Obligee, in accordance with the Bid Proposal as accepted and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such, or in the event of the withdrawal of said Bid Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bond(s) within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid Proposal and the amount for which the Obligee may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the Obligee in again calling for Bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, the Work to be performed thereunder, the Drawings or the Specifications accompanying the same, or any other portion of the Contract Documents shall in no way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract, the Call for Bids, the Work, the Drawings or the Specifications, or any other portion of the Contract Documents.

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys fees.

[CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agents or representatives.

(Principal's Corporate Seal)

_____
(Principal Name)

By:_____
(Typed or Printed Name)

(Attach Notary Acknowledgement
Of Principal's Signature)

Title:
_____

_____
(Surety Name)

(Surety's Corporate Seal)

By:_____
(Signature of Attorney-in-Fact for Surety)

_____
(Typed or Printed Name)

(Attach Attorney-in-Fact Certificate and
Notary Acknowledgments)

Contact name, address, telephone number and email address for notices to the Surety

_____
(Contact Name)

_____
(Address)

_____
(Telephone & Fax)

_____
(Email address)

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA
COUNTY OF _____

I, _____, being first duly sworn, deposes and says that I am
(Typed or Printed Name)
the _____ of _____, the party submitting
(Title) (Bidder Name)
the foregoing Bid Proposal ("the Bidder") for the West Valley College Pool Boiler Building Pool Boiler Equipment procurement in connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.

2. The Bid Proposal is genuine and not collusive or sham.

3. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.

4. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.

5. All statements contained in the Bid Proposal and related documents are true.

6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this ____ day of _____, 20__ at _____.
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ _____
Signature (Address)

_____ _____
Name Printed or Typed (City, County and State)

(_____) _____ (Area Code and Telephone Number)

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BID PROPOSAL

TO: **WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT**, a California Community College District, acting by and through its Board of Trustees ("the District").

FROM: _____
(Name of Bidder)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone/Telecopier)

_____
(E-Mail Address of Bidder's Representative(s))

_____
(Name(s) of Bidder's Authorized Representative(s))

1. Bid Proposal

1.1 Bid Proposal Amount. The undersigned Bidder proposes and agrees to furnish and deliver materials, equipment, and/or other goods as well as completion of all other obligations of the successful Bidder under the Contract Documents for the procurement described as **WEST VALLEY COLLEGE POOL BOILER BUILDING POOL BOILER EQUIPMENT** for sum of:
_____Dollars
($_____) ("Bid Price")

The Bidder confirms that it has checked all of the figures and understands that neither the District nor any of its agents, employees or representatives shall be responsible for any errors or omissions on the part of the undersigned Bidder in preparing and submitting this Bid Proposal.

1.2 Acknowledgment of Bid Addenda. The Bidder confirms that this Bid Proposal incorporates and is inclusive of, all items or other matters contained in Bid Addenda issued by or on behalf of the District.

_____ **Addenda Nos.** _____ received, acknowledged
(initial) and incorporated into this Bid Proposal.

2. Documents Accompanying Bid. The Bidder has submitted with this Bid Proposal the following: (a) Bid Security; (b) Non-Collusion Affidavit; (c) Bid Proposal Proposed Price Breakdown; and (d) Product Data Submittal Binder. The Bidder acknowledges that if this Bid Proposal and the foregoing documents are not fully in compliance with applicable requirements set forth in the Notice Calling for Bids, the Instructions for Bidders and in each of the foregoing documents, the Bid Proposal may be rejected as non-responsive.

3. Award of Contract. If the Bidder submitting this Bid Proposal is awarded the Contract, within five (5) days after notification of award of the Contract, the Bidder awarded the Contract shall deliver to the District the Certificates of Insurance evidencing all insurance coverages required under the Contract Documents. The District shall thereafter submit to the Bidder awarded the

Contract a Purchase Order for execution by the Bidder for the equipment, materials, and other goods to be furnished by the Bidder awarded the Contract. Failure of the Bidder awarded the Contract to strictly comply with the preceding may result in the District's rescission of the award of the Contract and/or forfeiture of the Bidder's Bid Security. In such event, the District may, in its sole and exclusive discretion elect to award the Contract to the responsible Bidder submitting the next lowest Bid Proposal, or to reject all Bid Proposals.

4. **Attorneys Fees.** By executing this Bid Proposal, the undersigned Bidder expressly acknowledges and agrees that in the event that the Bidder institutes any legal or equitable proceedings in connection with this Bid Proposal and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom. This provision shall constitute a binding agreement that shall be enforceable as and against the parties hereto pursuant to and in accordance with California Civil Code §1717. This attorney fee provision shall be solely limited to legal or equitable proceedings arising out of a bid protest and shall not extend to or have any force and effect in connection with the Contract awarded hereunder nor operate to modify, condition or in way affect the terms and conditions of the Contract or Purchase Order awarded hereunder.

_____ Acknowledged and Agreed by Bidder.
(Full Signature)

5. **Acknowledgment and Confirmation.** The undersigned Bidder acknowledges its receipt, review and understanding of the Contract Documents pertaining to the procurement of materials, equipment or other goods under this Bid Proposal. The undersigned Bidder certifies that the Contract Documents are, in its opinion, adequate, feasible and complete for furnishing the equipment, materials, and other goods specified and intended by the Contract Documents. The undersigned Bidder certifies that it has, or has available, all necessary equipment, personnel, materials, facilities and technical and financial ability to furnish and deliver the materials, equipment and/or goods subject to this Bid Proposal for the amount bid herein within the Contract Time and in accordance with the Contract Documents.

By: _____
(Signature)

(Corporate Seal)

_____
(Typed or Printed Name)

Title: _____

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PURCHASE ORDER

This Purchase Order sets forth the terms and conditions relating to purchase of materials, equipment, products and goods generally described as **WEST VALLEY COLLEGE POOL BOILER EQUIPMENT** by the West Valley-Mission Community College District ("District") from _____ ("Vendor").

1. **Contract Documents**. The Contract Documents consist of this Purchase Order, the Bid Proposal and other documents submitted by the Vendor to the District as a Bidder, and the Attachments A and B hereto.

2. **Materials, Equipment, Other Goods Furnished by Vendor**.

2.1 Scope of Equipment. The materials, equipment and other goods to be furnished by the Vendor hereunder (collectively, "the Equipment") are set forth in Attachment A (TECHNICAL SPECIFICATIONS FOR A POOL BOILER) hereto, which is incorporated herein by this reference.

2.2 Equipment Requirements. Equipment furnished by the Vendor hereunder shall comply with and conform to the Equipment Requirements and Specifications set forth in Attachment A (TECHNICAL SPECIFICATIONS FOR A POOL BOILER) and Attachment B (DIAGRAMS #1 through #5). Equipment not in compliance and conformity to requirements and specifications set forth in Attachments A and B is subject to rejection by the District.

3. **Contract Price** The price for the Vendor to furnish and deliver the Equipment under the Contract Documents along with the Vendor's performance of all other obligations of the Vendor under the Contract Documents is _____ Dollars ($_____).

4. **Contract Time.** All Equipment and related documentation to be furnished by the Vendor under the Contract Documents shall be delivered to the District no earlier than December 31st, 2016 and no later than Feb 31st, 2017. ("Contract Time").

5. **Liquidated Damages.** If any item of Equipment and all other obligations of the Vendor under the Contract Documents are not delivered or otherwise completed in accordance with the terms of this Purchase Order and/or the time/date designated in Attachment A, Vendor will be subject to assessment and withholding of Liquidated Damages in the sum of One Thousand Dollars ($1,000) per day until delivery of the item of Equipment is completed and/or other obligations of the Vendor under the Contract Documents are completed. The District may deduct Liquidated Damages assessed hereunder from any portion of the Contract Price then or thereafter due the Vendor.

6. **Delivery; Freight.** Equipment furnished by the Vendor under this Purchase Order shall be delivered to the District at the District Warehouse, 14000 Fruitvale Avenue, Saratoga California, or at an alternate location to be designated at a later time. . All freight, packaging, drayage or other shipping or handling charges shall be included in the Contract Price. The Vendor shall notify the District Representative by email not less than two (2) working days prior to and not more than five (5) working days prior to the Vendor's delivery of any item of Equipment hereunder of the delivery date/time and the items of Equipment included with each delivery. Equipment delivered to the District shall be subject to District inspection, verification

and acceptance. The Vendor shall be responsible for loss, damage, destruction of Equipment until an item of Equipment is accepted by the District.

7. **Taxes.** All sales and/or use taxes of the State of the California or a local jurisdiction on equipment and/or materials furnished under the Contract Documents for which the District is not exempt shall be paid by the Vendor.

8. **Payment of the Contract Price**. The District shall make payment upon the Vendor's delivery of Shop Drawings and the District's acceptance thereof, delivery of the Equipment to the District, the District's acceptance thereof, the Vendor's full performance of all obligations under the Contract Documents relating to such delivered item of Equipment and the Vendor's submission of a properly itemized invoice. Upon receipt of the Vendor's invoice, the District shall promptly verify that the Vendor has performed all other obligations hereunder. Within thirty (30) days of the District's confirmation of the Vendor's performance of all obligations hereunder, the District shall make payment of the Contract Price.

9. **Inspection**. All equipment and materials furnished under the Contract Documents are subject to inspection and rejection for non-compliance with requirements of the Contract Documents; the cost of inspection and the cost to return District rejected Equipment will be backcharged the Vendor and deducted from the Contract Price. If the value of such backcharges exceeds the Contract Price due the Vendor, the Vendor shall be liable to the District for all such backcharges exceeding the Contract Price. All costs to re-furnish any item of Equipment not accepted by the District shall be borne solely and exclusively by the Vendor and the Vendor shall be liable to the District for Liquidated Damages relating to an item of Equipment not accepted by the District until the item of Equipment delivered to the District is accepted by the District.

10. **Changes**. The District may, by written order, make Changes to the Equipment and subject to this Purchase Order, issue additional instructions and/or to add to or delete Equipment subject to this Purchase Order. No Change may be made without the prior written approval and direction of the District. Adjustments of the Contract Price or the Contract Time on account of a Change authorized hereunder will only be made by written Change Order duly executed by the Vendor and the District.

11. **Indemnification**. Unless arising solely out of the active negligence or willful misconduct of the District, the Vendor shall indemnify, defend and hold harmless the District, the District's Board of Trustees and all members thereof and the District's employees, officers, agents and representatives from all claims, demands and liabilities, including without limitation, attorney fees, which arise out of or related in any manner to the Contract Documents. The Vendor's obligations shall include without limitation: (a) injury to, or death of, persons; (b) damage to property; (c) theft or loss of property; and (d) other losses, damages or costs arising out of, in whole or in part, of the acts, omissions or other conduct of the Vendor, or its employees, officers, agents or representatives.

12. **Vendor Insurance**. At all times during performance of obligations hereunder, the Vendor shall obtain and maintain the policies of insurance set forth below:

Workers Compensation	Per applicable law
Employer's Liability	One Million Dollars ($1,000,000)
Commercial General Liability	
Per Occurrence	One Million Dollars ($1,000,000)

Aggregate Two Million Dollars ($2,000,000)

Vendor shall deliver to the District Certificates of Insurance evidencing the foregoing policies of insurance with at least the minimum coverage amount set forth above.

13. **District Right to Terminate**. The Vendor's failure to comply with any term or condition of the Contract Documents shall constitute default of the Vendor; in such event, the District may terminate the Purchase Order, in whole or in part, upon seven (7) days written notice to the Vendor. Unless the Vendor shall have commenced, and diligently thereafter prosecute to completion, all required actions to cure such default(s), the Purchase Order (or portions thereof as designated by the District) shall be deemed terminated without further action of the District; such termination shall be effective, without further action of the District or the Vendor, the seventh (7th) day after the date of the District's written notice. If the District terminates the Purchase Order for default of the Vendor, the Contract Price due the Vendor shall be the value of the Equipment actually delivered to the District and accepted by the District prior to the effective date of such termination, as reduced by all losses, costs and damages incurred by the District as a result of the Vendor's default and costs to complete the Vendor's obligations under this Purchase Order. If losses, costs and damages incurred by the District as a result of the Vendor's default and costs to complete the Vendor's obligations under this Purchase Order exceed the Contract Price due the Vendor, the Vendor shall make payment of such excess amount to the District within ten (10) days of the District's demand therefor. In addition to the preceding, the District may terminate the Purchase Order, in whole or in part, at any time for the convenience of the District by written notice to the Vendor, in which case, the payment of the Contract Price shall be limited to the value of the materials, equipment or other goods actually furnished and delivered by the Vendor to the District at the time of the termination for the District's convenience.

14. **Warranties**.

14.1 Vendor Warranties. In addition to warranties arising by operation of law, the Vendor and the manufacturer of the Equipment expressly warrants to the District that the materials, equipment and other goods subject to this Purchase Order are: (i) fit for intended use(s) thereof; (ii) free of defects in materials or workmanship; and (iii) conform to all requirements of the Contract Documents. Upon delivery of the Equipment to the District, the Vendor shall concurrently deliver to the District Representative the written warranty of the Equipment manufacturer which conform to the foregoing requirements.

14.2 Warranty Durations. Warranty obligations of the Vendor and Equipment manufacturer for each item of Equipment and/or components there are for a minimum of three (3) years.

14.3 Commencement of Warranties. The Equipment warranty set forth herein commence upon use of the Equipment in the Pool Boiler Building.

14.4 District Remedies. If any Equipment furnished under the Contract Documents, or portions thereof, do not conform to warranty requirements set forth herein, the District shall give the Vendor written notice of the failure of such materials, equipment or other goods to conform to warranty requirements and may: (i) require the Vendor, at the Vendor's sole cost and expense, to provide labor, materials and other goods or services necessary to promptly correct or replace any Equipment or other portions thereof not conforming to warranty requirements (including preservation, packaging, packing, marking and transportation); (ii) cause Equipment not conforming to warranty requirements to be corrected or replaced, with all costs, expenses, charges and fees associated or arising out of such corrections or replacements being charged to, and the

sole responsibility of the Vendor; (iii) retain such Equipment and reduce the Contract Price by an amount equitable under the circumstances.

14.5 Non-Exclusive Remedies. The rights and remedies of the District under this Purchase Order are in addition to, and not in lieu of, any other rights or remedies of the District arising out or related to the failure of materials, equipment or other goods furnished hereunder to conform to warranty requirements, whether such other rights and remedies arise under the Contract Documents or by operation of law.

15. Miscellaneous.

15.1 Disputes.

15.1.1 **Claims Under $375,000**. In the event of disputes, disagreements or other matters in controversy between the District and the Vendor and the value of each such dispute, disagreement or matter in controversy is $375,000 or less, the dispute resolution procedures set forth in Public Contract Code §20104 et seq.

15.1.2 **Claims Over $375,000**. If any dispute, disagreement or other matter in controversy between the District and the Vendor is greater than $375,000, each such dispute, disagreement or other matter in controversy shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association and its Construction Industry Arbitration Rules in effect at the time that a Demand for Arbitration is filed. Arbitration proceedings shall be conducted in Sacramento, California.

15.1.3 **Vendor Obligation to Perform.** Notwithstanding any dispute, disagreement or other matter in controversy arising out of this Purchase Order, the Vendor shall continue to diligently perform its obligations hereunder and prosecute the same to completion, subject to a subsequent resolution of such dispute, disagreement or other matter in controversy.

15.2 Governing Law; Interpretation. This Purchase Order and the Contract Documents shall be governed by the laws of the State of California. This Contract Documents shall be interpreted as a whole and not in favor of the District or the Vendor.

15.3 Successors. The Contract Documents shall be binding upon and inure to the benefit of the respective successors-in-interest of the District and the Vendor. The foregoing notwithstanding, the Vendor shall not assign the Purchase Order, any right or obligation thereunder or any portion thereof without the prior written consent of the District, which may be granted, denied or conditioned in the sole discretion of the District.

15.4 Permits; Approvals. Unless otherwise expressly provided in the Contract Documents, the Vendor shall obtain and pay for all fees, permits or approvals necessary to complete its obligations hereunder without adjustment of the Contract Time or the Contract Price.

15.5 Days. Unless otherwise stated in the Contract Documents, all references to “days” shall be deemed references to calendar days.

15.6 Severability. If any term, condition or provision of the Contract Documents deemed invalid, illegal or unenforceable by a Court of competent jurisdiction, such term, condition or provision shall be deemed severed here from, but all other terms, conditions and provisions hereof shall remain unaffected and in full force and effect.

15.7 Notices. Notices of the Vendor and the District to the other shall be effective only if in writing and transmitted to the other by Certified, Return Receipt Requested United States Mail with postage fully prepaid, overnight courier service requiring a written confirmation of receipt or messenger service requiring a written confirmation of receipt.

Notices delivered by United States Mail shall be effective the third (3rd) day after the postmark date; notices delivered by overnight courier service or messenger shall be effective upon delivery. Notice shall be addressed as follows:

If to District:

West Valley Mission Community College District
Director, General Services
14000 Fruitvale Avenue
Saratoga, CA 95070

If to Vendor

_____
_____
_____

15.8 **District Representative**. For purposes of this Purchase Order, the District Representative is Javier Castruita, telephone: (408) 741-2042, email: javier.castruita@wvm.edu.

15.9 **Entire Agreement**. This Purchase Order, the Vendor's Bid Proposal, Attachment A (Specifications), Attachment B (Diagrams) constitute the entire agreement and understanding of the District and the Vendor concerning the subject matter hereof. This Purchase Order may be amended only by written instrument duly executed on behalf of the District and the Vendor by their respective authorized employees. No other purported amendment hereof shall be valid or enforceable.

In witness hereof, the District and the Vendor have executed this Purchase Order as of the date set forth above.

District **West Valley-Mission** **Community College District**	**Vendor** **[Name]**
By: _____	By: _____
Title: _____	Title: _____

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