

PURCHASE AND SALE AGREEMENT WITH A WAIVER & RELEASE

This Agreement for the Purchase and Sale of certain fire alarm equipment and Waiver and Release (the "Agreement") is made and entered into by and between the Rosemead School District (the "District") and [INSERT HIGHEST BIDDER = BUYER]. The Rosemead School District and [BUYER] may collectively be referred to as the "Parties."

RECITALS

WHEREAS, the District owns certain personal property, to wit, Honeywell "Fire Lite" Fire Alarm Equipment, including: 2 Fire Alarm Panels (Fire Lite MS 9600UDLS (E)); 11 Pull Stations (Fire Lite BG 12 LX); 40 Relays (Fire Lite CRF 300); 175 SD Detectors (Fire Lite SD 355 with B210 LP); 216 Heat Detectors (Fire Lite H 365HT with B21 OLP) (the "Equipment") as fully set forth in Exhibit "A" attached hereto; and

WHEREAS, the District has determined that the Equipment is unusable, obsolete or no longer needed by the District; and

WHEREAS, the District desires to sell the Equipment in accordance with Regulation 3720 of the Board Policy Manual and pursuant to the requirements of California Education Code 17545, whereby the Board of Trustees of the District may dispose of District personal property through a formal bidding process preceded by publishing notice for bids at least once a week for at least two weeks in a newspaper having a general circulation in the district and, if possible, published within the district.

WHEREAS, the District has complied with the above-stated Board policy [add detail re: two weeks of ads placed by District in the San Gabriel Valley Tribune and received bids from # of prospective buyers? Using Bid Form #21/22-0001]; and

WHEREAS, all bidders were duly made aware of the terms of the sale, including notice that all equipment, also known as devices, are being sold new "out of box" and were previously installed but not energized or tested; devices were removed and re-boxed; devices are being sold "as is" with no warranty; shipping terms are "FOB Rosemead" such that the District is not responsible for loss or damage during shipping; and

WHEREAS, as a result of the noticed bidding process, the highest qualified bid was timely submitted by [INSERT BUYER NAME] for the amount of [\$] as reflected by the completed bid sheet attached hereto as Exhibit "B"; and

WHEREAS, money received from the sale of personal property shall be, at the Board's discretion and in accordance with Board policy, either deposited in the District reserve or general fund or credited to the fund from which the original purchase was made.

NOW THEREFORE, in consideration of the mutual promises and covenants in this Agreement, and for other good and valuable consideration, the Parties mutually agree as follows:

1. Recitals. The preceding paragraphs of the Section entitled "RECITALS" are hereby incorporated herein by this reference and are expressly made as covenants of this Agreement. The foregoing recitals are true and correct.

2. **Fire Alarm Equipment List.** For purposes of this Agreement, “Equipment” means the Honeywell “Fire Lite” fire alarm equipment as listed in Exhibit “A” attached hereto and incorporated herein by this reference.

3. **Transfer and Conveyance.** The District agrees to convey and assign to [BUYER] all of the District’s rights, titles, and interest in the Equipment as listed in Exhibit A.

4. **Payment:** [What are the terms of payment?]

5. **No Warranties/ “As Is”.** The fire alarm devices that comprise the Equipment (as listed in Exhibit A) are new but “out of box” and previously installed but not energized or tested. The fire alarm devices that comprise the Equipment were removed and re-boxed (in “Silent Knight” boxes). Accordingly, the District conveys the Equipment in an “as is” condition with no warranty condition, and makes no guarantee, warranty, or representation, express or implied, as to quantity, kind, character, quality, condition, weight, size, or description of any property, its merchantability, its fitness for any use or purpose, or otherwise. [BUYER] agrees that full opportunity was given to inspect and examine the Equipment. The failure of [BUYER] to conduct any inspections shall not give rise to any claim against the District. [BUYER] agrees to assume any and all risks associated with use, possession and ownership of the Fire Equipment.

6. **Delivery.** Bidders located 200 miles or less from the District Office of the Rosemead School District shall be responsible for paying the cost of shipping the equipment, or alternatively, may pick up the equipment from the District. Bidders located more than 200 miles from the District Office shall be responsible for paying one half the cost of shipping the equipment. The Bidder agrees to the applicable terms and costs for shipping.

7. **Shipping.** The District is not responsible for loss or damage during shipping. The District will obtain insurance from the shipping company, if available, in the amount of \$500 per box. Insurance charges are considered a part of the shipping costs. If a claim needs to be made against the shipping company, purchaser shall be responsible for pursuing such claim.

8. **Subsequent Transfers.** [BUYER] shall not sell or otherwise transfer all or any portion of the Equipment without requiring the subsequent transferee to provide the District protection against liability from the transfer of property at least equivalent to what is provided to the District under this Agreement. In the event [BUYER] sells or transfers all or any portion of the Equipment contrary to the provisions of this paragraph, [BUYER] shall be liable for any act or omission of the subsequent transferee, and [BUYER] shall indemnify, defend and hold harmless the District hereunder to the same extent as if no such sale or transfer had taken place.

9. **General Indemnity.** To the fullest extent allowed by law, [BUYER] shall indemnify, defend, and hold harmless the District, its Board of Trustees, officers, agents, and employees from and against all claims, actions, damages, losses, and expenses (including but not limited to attorney fees) arising by any act or failure to act by [BUYER], anyone directly or indirectly employed by [BUYER], or anyone for whose acts or omissions may be liable, in connection with or in any way related to the donation, use, sale, purchase, dismantling, loading, removal and/or transporting of any the Equipment.

10. **General Release and Section 1542 Release.** [BUYER] for itself, its assigns, transferees, and successors, hereby waives and relinquishes all rights and benefits they may have

against the District, its Board of Trustees, officers, employees, and agents, in connection with the transfer of the Equipment hereunder.

This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

Section 1542. [Certain Claims Not Affected by General Release]

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

[BUYER] acknowledges that it has read and expressly waives the aforementioned provisions of California Civil Code Section 1542. [BUYER] expressly acknowledges that this Agreement is intended to release and extinguish, without limitation, all claims for losses of any sort or nature arising hereunder which [BUYER] does not know or suspect to exist.

11. Insurance. [BUYER] agrees to abide by the District's or any other governmental entity's insurance provisions, if any.

12. Choice of Law and Venue. This Agreement shall be interpreted under the laws of the State of California, both as to interpretation and performance, and shall be deemed to have been entered into in the State of California and will be construed and interpreted in accordance with the laws of that state. If there is ever a dispute over the terms of this Agreement, then the Parties hereto consent to the exclusive jurisdiction of the Superior Court of the State of California or the United States Federal District Court, both located in the County of Los Angeles.

13. Entire Agreement. This Agreement embodies the entire agreement of all the Parties hereto who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement; that they have not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement; and that no representation, inducement, promise, agreement or warranty not contained in this Agreement including, but not limited to, any purported settlements, modifications, waivers or terminations of this Agreement, shall be valid or binding, unless executed in writing by the Parties. This Agreement may be amended, and any provision herein waived, but only in writing, signed by the Party against whom such an amendment or waiver is sought to be enforced.

14. Construction. This Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity will not be construed for or against any Party based on attribution of drafting to any Party.

15. Signatory Authority. By signing this Agreement each signatory represents that he/she executed this Agreement in his/her authorized capacity on behalf of their respective entity. Each signatory further represents that they had authority to enter into this Agreement, and obtained all necessary approvals from its governing body, if necessary.

16. Section Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

17. Execution. This Agreement may be executed in counterparts, each of which will constitute as original, and all of which, taken together constitute an entire agreement, and that electronic or facsimile copies of any signatures will have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the date set forth opposite their respective signatures.

SO AGREED.

DATED: _____

Dr. Maria C. Rios, Assistant Superintendent
For the Rosemead School District
3907 Rosemead Blvd.
Rosemead CA 91170

DATED: _____

[BUYER]

Exhibit A
Fire Alarm Equipment List

Exhibit B
Bid Form

Exhibit C
Legal Ad for San Gabriel Valley Tribune