

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement effective _____, 20____, is by and between Burbank Unified School District, Los Angeles County, California, hereinafter called the “Owner” and _____ hereinafter called the “Contractor.”

WITNESSETH: That the Contractor and Owner for the consideration hereinafter named agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor agrees to finish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for:

BID 2425-003 Aquatic Center Modernization and New Storage Building at Burbank High School (DSA 03-122682 & DSA 03-123187)

all in strict compliance with the plans, drawings and specifications therefore prepared by Burbank Unified School District and other contract documents relating thereto.

ARTICLE II. CONTRACT DOCUMENTS. The Contractor and the Owner agree that all of the documents listed in Article 1.1.1 of the General Conditions form the Contract Documents which form the contract.

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES. Time is of the essence in this contract, and the time of completion for this Project shall be **Two Hundred Ninety-Nine (299) calendar days** from the date established in the Owner’s Notice to Proceed. Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. For purposes of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of this agreement. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to: Loss of the use of the project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount herein set forth shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: Five Hundred Dollars (\$500.00) for each calendar day by which completion of the Project is delayed beyond the completion date.

If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Contractor incurred under

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this Article, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

ARTICLE IV. PAYMENT AND RETENTION. The Owner agrees to pay the Contractor in current funds _____ dollars (\$ _____) for services satisfactorily performed after receipt of properly documented and submitted applications for payment and to make payments on account thereof, as provided in the General Conditions.

The retention amount on this project is Five Percent (5%).

ARTICLE V. CHANGES. Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions.

ARTICLE VI. TERMINATION. The Owner or Contractor may terminate the Contract as provided in the General Conditions.

ARTICLE VII. PREVAILING WAGES. Pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of these rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual

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per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

Projects using state bond funds are subject to labor compliance monitoring and investigative activities by the Compliance Monitoring Unit (“CMU”) of the Division of Labor Standards Enforcement, Department of Industrial Relations of the State of California (“DIR”), in conformance with Labor Code sections 1771.55 and 1771.75, and subchapter 4.5 (commencing with section 16450) of title 8 of the California Code of Regulations. A pre-job conference shall be held with the Contractor and Subcontractors to discuss federal and state labor law requirements applicable to the Project. The Contractor and Subcontractors shall furnish certified payroll reports to CMU on a weekly basis, using either the format prescribed by section 16401 of title 8 of the California Code of Regulations, or using CMU’s electronic certified reporting system (“eCPR”). CMU may require the Contractor and Subcontractors to furnish certified payroll records to verify compliance with Chapter 1, Part 7 of Division 2 of the California Labor Code. CMU may also conduct on-site visits to each Project job site as described by 16451, subd. (d) of title 8 of the California Code of Regulations. Owner shall withhold contract payments when CMU issues Owner a notice to withhold such payments upon a finding by CMU that payroll records are delinquent or inadequate. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties may be assessed for failure to timely comply with a written request for certified payroll records. Further, upon a finding by CMU that Contractor is liable for unpaid wages or penalties, the Labor Commissioner may issue and serve a Civil Wage and Penalty Assessment.

Successful bidder(s) shall include the requirements of Labor Code Sections 1725.5 and 1771.1 in their contract with subcontractors and ensure that all subcontractors are registered with the Department of Industrial Relations, www.dir.ca.gov/Public-Works at the time of bid opening and maintain registration status for the duration of the Project. The successful bidder(s) and all subcontractors must be in compliance with SB 854 for the duration of the Project.

ARTICLE VIII. WORKING HOURS. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week any each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

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ARTICLE IX. APPRENTICES. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exception is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

ARTICLE X. DSA OVERSIGHT PROCESS. The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Owner's Inspector of Record/Project Inspector ("IOR") upon commencement and completion of each aspect of the Work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Work or Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful act or omissions. If inspected Work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

ARTICLE XI. INDEMNIFICATION AND INSURANCE. The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, and employees as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions and in the Insurance Requirements. The amount of general liability insurance shall be \$5,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit.

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ARTICLE XII. ENTIRE AGREEMENT. The Contract constitutes the entire agreement between the parties relating to the Project and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE XIII. EXECUTION OF OTHER DOCUMENTS. The parties to this Agreement 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 the Contract.

ARTICLE XIV. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XV. BINDING EFFECT. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

ARTICLE XVI. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM. If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. 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 Los Angeles, subject to transfer of venue under applicable State law.

ARTICLE XVII. AMENDMENTS. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

ARTICLE XVIII. ASSIGNMENT OF CONTRACT. The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

ARTICLE XIX. WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.



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Burbank Unified School District

Contractor

Street Address

City, State ZIP

Signature

Name

Title

CSLB License Number / Expiration

DIR Registration Number / Expiration

Signature

Name

Title

NOTE: Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners, and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.