Panama-Buena Vista Union School District

KATIE RUSSELL, Ed.D.
District Superintendent

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BOARD OF TRUSTEES
Chad Blain
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CONSTRUCTION CONTRACT

THIS CONTRACT is between the PANAMA-BUENA VISTA UNION SCHOOL DISTRICT ("Owner")

Owner and _____ ("Contractor") agree as follows:

1. Project. Contractor shall perform everything required to be performed and shall provide and furnish all labor, materials, tools, equipment, and all utility and transportation services required for the construction of:

[insert brief project description here, including references to site drawings, specifications, etc. as necessary. Ex:, construction of item on school site, per Exhibit A.] ("Project")

All work to be performed and materials to be furnished shall be in conformity with any plans, drawings, specifications, bonds, insurance policies, conditions, and modifications thereof which, by this reference, are made a part of this Contract.

2. Contract Price. Subject to the terms and conditions of this Contract, Owner shall pay to Contractor for all work to be performed under this Contract the total sum of $_____.

3. Payments. Contractor shall be paid an amount equivalent to 95 percent of the Contract price upon acceptance of the Project by the Governing Board of Owner. Contractor shall be paid the remaining five percent of the Contract Price within 35 days following the recording of a "Notice of Completion."

From the payments specified above, Owner may make any deductions authorized or required by law or this Contract including, by way of example only, the following:

A. Liquidated and other damages described in paragraph 6.

B. Defective work not remedied.

C. Failure of Contractor to make proper payments to its subcontractor(s) or materialmen for materials or labor.

D. Damage to another contractor.

E. Other damages sustained by Owner.

4. Time for Performance. Time is of the essence for this Contract. Contractor shall commence work on the Project on the date stated in the Owner's "Notice to Proceed" and shall complete the Project within XXX calendar days after that.

5. Submission of Bonds and Certificates. Contractor shall not commence any work on the Project until Contractor has submitted to Owner all certificates and bonds required by this Contract. All bonds and certificates shall be submitted to Owner within ten days following execution of this Contract by Contractor.

6. Liquidated Damages. Pursuant to Government Code Section 53069.85, for each calendar day completion is delayed beyond the time allowed in this Contract, Contractor shall forfeit and pay to Owner the sum of $500.00, which shall be deducted from any payments due to or to become due to Contractor. Liquidated damages shall not be imposed because of any delays in completion of the Project work due to (1) unforeseeable causes beyond the control and without the fault or negligence of Contractor and (2) performing any extra work pursuant to paragraph 8 of this Contract.

In addition to any liquidated damages which may be assessed, if Contractor fails to complete the Project within the time period provided in the Contract documents, and if as a result Owner finds it necessary to incur any costs and expenses (for example, relating to the acquisition and use of facilities pending completion of the Project), Contractor shall pay all those costs and expenses incurred by Owner. These costs and expenses may include but are not limited to such items as rental payments, inspection fees, and additional architectural fees related to the acquisition of facilities. These costs and expenses may be retained by Owner from any payments otherwise due to Contractor.

7. Insurance. Contractor shall obtain insurance acceptable to Owner with a company or companies licensed to do business in the State of California and acceptable to Owner. Contractor shall maintain, at its own cost and expense during the term of this Contract, the following insurance:

A. Workers Compensation Insurance for all of Contractor's employees in amounts not less than that required by law. Pursuant to Labor Code Sections 3700 and 1860, et seq., Contractor shall submit to Owner an acceptable Workers Compensation certificate.

B. Public liability and property damage insurance with per occurrence limits of not less than $1,000,000.00 for death or personal injury and $1,000,000.00 for property damage.

The policy(ies) shall contain an endorsement naming Owner as an additional insured insofar as this Agreement is concerned, and provide that notice shall be given to Owner as least 30 days prior to cancellation or material change in the form of such policy(ies). Contractor shall furnish Owner with certificates of insurance containing the endorsements required under this section, and Owner shall have the right to inspect the original policy(ies) of such insurance upon request.

8. Extra Work. Contractor and Owner agree that changes in this Contract or in the work to be done under this Contract shall become effective only when written in the form of a supplemental contract or change order and approved and signed by Owner and Contractor.

9. Indemnification. Contractor shall indemnify and hold the Owner, its officers, agents, and employees free and harmless from any and all claims, losses, damages, liabilities, and expenses, including attorney's fees and costs, arising from the death or injury of any person or persons, or from the damage or destruction of any property, caused by or connected with the performance of this Contract by Contractor, Contractor’s agents, subcontractors, or employees.

10. Termination of Contract. Should Contractor commit any of the acts specified in this paragraph, Owner may, by giving seven day's written notice to Contractor, without prejudice to any other rights or remedies afforded Owner by law or by this Contract, terminate the services of Contractor under this Contract; take possession of the Project and the premises on which it is located; take possession of all materials, tools, and appliances located on the premises; and complete the Project by whatever method Owner may deem expedient. Contractor shall be deemed to have committed an act specified in this paragraph if Contractor:

A. Is adjudged a bankrupt;

B. Makes a general assignment for the benefit of creditors;

C. Refuses or fails to supply enough properly skilled workers or proper materials to complete the Project in the time specified in this Contract;

D. Fails to make prompt payment to subcontractors, workers, or materialmen for labor performed on or materials furnished to the Project;

E. Persistently disregards any laws or ordinances relating to the Project or its completion; or

F. Otherwise commits a substantial violation of any provision of this Contract.

11. Clean-up. Upon completion of the Project, Contractor shall remove all debris and surplus materials from the Project site.

12. Notices. Any and all notices or other matters required or permitted by this Contract or by law to be served on, given to, or delivered to either Owner or Contractor by the other party to this Contract shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or to a supervisorial employee of that party, or in lieu of personal service, when deposited in the United States mail, first class postage paid, addressed to the party at the address listed on the signature page of this Contract. Either party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this paragraph.

13. Assignment. This Contract is for the personal services of Contractor in performing the work described in paragraph 1 and Contractor may not assign this Contract, Contractor's right to monies becoming due under this Contract, or Contractor's duties under this Contract to any other person or entity without the written consent of Owner.

14. Guarantee. Contractor guarantees all project work for a period of one year after the acceptance of the work by Owner and shall repair or replace any or all work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials. This shall be in addition to any equipment or materials warranties as specified and/or required elsewhere.

15. Prevailing Wage Rates. Pursuant to the provisions of Article 2, commencing with Section 1770 of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract. The general rates of per diem wages are available at the Owner office. In the event that the listed or posted rates are in error, Contractor is responsible to pay those rates determined by the Director of Industrial Relations to be applicable, and Owner shall not be responsible for any damages arising from the error. It is the responsibility of Contractor to comply with all the provisions of the Labor Code Section 1776 dealing with prevailing wage monitoring, employee payroll records, Labor Code Section 1777.5 apprenticeship requirements, and related matters, and to ensure the compliance of its subcontractors.

16. Hours. Pursuant to the provisions of Article 3, commencing at Section 1810 of the Labor Code, Contractor shall pay the required rate of overtime for all hours worked in excess of eight hours per day and 40 hours per week.

17. Laws and Regulations. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the work required by this Contract.

18. Permits/Licenses. All necessary permits and licenses shall be secured and paid for by Contractor.

19. Substitutions. Contractor may request a substitution of any equivalent materials for those required by this Contract. If the substitution offered by Contractor is not in Owner’s opinion substantially equal to or better in every respect to that specified, Contractor shall furnish the material specified.

20. Utilities. Unless otherwise agreed by the parties in writing, all utilities including, but not limited to, electricity, water, gas, and telephone used on the Project shall be furnished and paid for by Contractor.

21. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted and this Contract shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either party the Contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract, and any later changes which do not materially and substantially alter the positions of the parties.

22. Contractor's License and DIR Registration. In order to perform the work required by this Agreement, Contractor must possess a valid, active license issued by the State of California, _____, which shall remain valid and active throughout the Project. For construction projects over $25,000 and maintenance projects over $15,000, Contractor must be registered with DIR as a public works contractor throughout the Project. Contractor registration is accomplished through the portal http://www.dir.ca.gov//dlse/dlsePublicWorks.html.

23. CLAIMS

A. Pursuant to Public Contract Code section 9204, CONTRACTOR shall make all claims for payment for 1) work done by or on behalf of contractor for which payment is not otherwise expressly provided for in the Contract, 2) damages allegedly sustained by reason of any acts or omissions of OWNER or its agents, 3) time extensions, 4) relief from damages or penalties for delay or, 5) an amount disputed by OWNER by registered mail or certified mail, return receipt requested. Such written claim shall be submitted, within 10 days after the claim has arisen, is discovered or reasonably should have been discovered. CONTRACTOR shall furnish reasonable documentation to support the claim.

IF CONTRACTOR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE CONCERNING THE SUBMISSION OF CLAIMS, ITS CLAIM(S) SHALL BE FORFEITED AND INVALIDATED.

B. In no event shall CONTRACTOR be permitted to reserve rights to make or pursue claims of any kind, whether for compensation in any form, or for time extensions, without the OWNER's express written consent. Any attempt to make such reservation or otherwise avoid the effect of this Article shall be void and of no force or effect whatsoever.

C. Any change order executed by CONTRACTOR with such reservation or other language of qualified acceptance shall be read and interpreted as though such language did not exist. No action by OWNER is required to invalidate such language, and no oral communication or other act or omission by OWNER or anyone acting on OWNER's behalf, except OWNER's express written consent, shall be construed as acquiescence in or consent to such reservation or other qualified acceptance language.

D. CONTRACTOR shall diligently proceed with performance of the Work, and OWNER shall continue to make payment of undisputed amounts, during any time period while claims are pending.

24. RESOLUTION OF CONSTRUCTION CLAIMS

A. Upon receipt of a claim, OWNER shall conduct a reasonable review of the claim, and, unless extended by mutual agreement of the parties, provide CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed within 45 days.

B. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after OWNER issues its written statement.

C. If a claim or any portion of the claim remains in dispute, OWNER shall provide CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any disputed portion of the claim, as identified by the CONTRACTOR in writing, shall be submitted to nonbinding mediation, with OWNER and CONTRACTOR sharing the associated costs equally. OWNER and CONTRACTOR shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

25. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to this Agreement and their respective successors and assigns. Nothing in this Agreement, whether express or implied, is intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action against any party to this Agreement.

26. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

27. Governing Law. The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of California, excluding its conflict of laws rules.

28. Safety/Inspection. Contractor shall at all times maintain proper facilities and provide safe access for inspection by Owner to all parts of the work, and to the shops where the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice of its readiness for inspection to Owner, or its representative, and without the approval of Owner. Should any such work be covered up without such notice, approval or consent, if required by Owner, or its representative, it must be uncovered for examination at the Contractor's expense.

29. Fingerprinting Workers. Contractor shall comply with the applicable requirements of Education Code sections 45125.1 and 45125.2 with respect to pupil safety and fingerprinting Contractor’s employees. Contractor shall also ensure that each of its subcontractors on the Project complies with the applicable requirements of section 45125.1 and 45125.2.

30. Hazardous Materials. This Contract does not include the removal, handling, or disturbance of any hazardous substances or materials encountered in the new construction or on the project grounds. If such substances or materials are encountered, work shall cease in that area and Owner shall be notified to take appropriate action for removal or otherwise abating the condition in accordance with current regulations applicable to Owner.

31. Ownership of Drawings. All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials, and other Project documents and copies of them furnished by Owner, are Owner’s property. They are not to be used in other work and are to be returned to Owner on request at completion of work.

32. Entire Agreement. This document, including any conditions, exhibits, schedules, plans, or specifications to which it refers, constitutes the final, complete, and exclusive statement of the terms of

the agreement between the parties pertaining to the construction project which is the subject of this Contract, and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Contract.

Executed at Bakersfield, Kern County, California.

PANAMA-BUENA VISTA UNION SCHOOL DISTRICT

By _____

Print Name: Katherine Gonzalez, CBO

Title: Assistant Superintendent, Business Services

Dated: _____

By _____

Representative of Contractor

Print Name: _____

Title: _____

Address _____

Contractor's License Number _____

Contract No. _____

Tax ID _____

DIR _____

Date: _____