



SANTA ANA UNIFIED SCHOOL DISTRICT
1601 East Chestnut Avenue
Santa Ana, California 92701-6322
(714) 480-5355

Project: Mitchell Child Development Center
Bid Package: Phase III – Administrative Building #A and Associated Site Work
DSA A#: 04-112171- & 04-111558

AGREEMENT

THIS AGREEMENT, dated the ____ day of _____, 20____, is entered into by and between SANTA ANA UNIFIED SCHOOL DISTRICT (hereinafter referred to as the "District"), and _____ (hereinafter referred to as the "Contractor").

The District and the Contractor, for the consideration stated herein, agree as follows:

Project Documents. References herein to the "complete contract" or the "Project Documents" shall mean not only this Agreement but also the "General Conditions" and all other "Project Documents" identified in Section 5 of the "Information for Bidders" issued by the District in connection with the above-referenced project (the "Project"). The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Without limiting the generality of the foregoing, all of the General Conditions are incorporated herein by this reference as though fully set forth in this Agreement.

Contractor's Performance of Work. The Contractor shall perform within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction for that certain project identified by the District as _____ and designated by the District as its Project No. _____. All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with the "Plans and Specifications" (as defined in the Information for Bidders) and all provisions of the complete contract. The Contractor shall be liable to the District for any damages arising as a result of a failure to fully comply with this obligation, and the Contractor shall not be excused with respect to any failure to so comply by any act or omission of the architect, engineer, and/or inspector assigned to the Project by the District (the "Architect", "Engineer" and "Inspector", respectively), or by the California Department of General Services' Division of the State Architect ("DSA"), or by any representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the requirements of the Project Documents, and unless the Contractor protests at the time of such alleged prevention that the act or omission is preventing the Contractor from fully complying with the Project Documents. Such protest shall not be effective unless reduced to writing and filed with the District within three (3) "Business Days" (defined as days on which the District is opened for business) of the date of occurrence of the act or omission preventing the Contractor from fully complying with the Project Documents.

Compensation to Contractor. The District shall pay to the Contractor, as full consideration for the faithful performance of this Agreement, and subject to any additions or deductions as provided in the Project Documents, the sum of _____ and _____ Cents (_____).

Commencement and Completion of Work. The work required to be performed by the Contractor under this Agreement shall start no later than the specified commencement date listed in the "Notice to Proceed" and shall be completed no later than _____.

Liquidated Damages. Time is of the essence. The Contractor acknowledges that the District will suffer damage if (a) the Contractor fails to complete (or cause its subcontractors to complete) any of the construction milestones identified in any approved Construction Schedule (as that term is defined in the General Conditions) by the deadline dates identified for such completion in the Construction Schedule (including without limitation any construction milestones or deadline dates contained in any submittal schedule, procurement schedule, commissioning schedule or close-out schedule), or (b) the work required of the Contractor under this Agreement is not completed by the time specified herein above. Since it is impractical and infeasible to determine the amount of actual damage, the parties hereto agree that in accordance with Government Code Section 53069.85, the Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of: **One Thousand Five Hundred Dollars (\$1,500.00)** for each consecutive calendar day of delay, from and including the date on which the delay began, through and including the day on which the delay ceased (and including all intervening weekend days and holidays), until the work that is the subject of the delay is completed and accepted. This amount shall be deducted from any payments due to or to become due to the Contractor. The Contractor and the Contractor's surety shall be liable for the amount thereof. Time extensions may be granted by the District as provided in Article 14 of the General Conditions.

Default by Contractor. If the Contractor fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, or fails to comply with any of the Project Documents, then the District's Board of Education, the District's Superintendent, or any designee of the Superintendent may deliver a written notice to the Contractor demanding that the Contractor cure such failure. If such failure is not cured within the time frame indicated in that notice and as indicated in the Project Documents, then the Contractor shall automatically be deemed to be in default of this Agreement without further notice from the District. Without limiting any other remedy available to the District pursuant to the Project Documents and/or applicable law, such default shall entitle the District to (a) exclude the Contractor from the Project premises (or any portion thereof in the District's discretion), (b) take possession of said premises (or portion thereof), together with all material and equipment thereon, and/or (c) complete all or any portion of the work contemplated by this Agreement, either by (i) furnishing the tools, equipment, labor or material necessary, or (ii) letting the unfinished portion of said work (or the portion taken over by the District) to another contractor, or (iii) a combination of those methods. The cost to the District of exercising any such remedy shall be a charge against the Contractor; the Contractor agrees to pay all such costs to the District upon the District's demand, and agrees that the District shall also have the right to deduct any or all such costs from any money due or becoming due to the Contractor from the District under this Agreement or any other

agreement. Any surety executing any bond included among the Project Documents or otherwise agreeing to perform the Contractor's obligations under this Agreement shall also be liable for payment of said costs incurred by the District in connection with the exercise of the remedies described above, if the Contractor fails to pay those costs as required hereby.

Indemnification, Defense and Hold Harmless. The Contractor shall indemnify, defend, and hold harmless the District, the Architect, the District's owner's representative assigned to the Project by the District, the District's project manager assigned to the Project, and the District's construction manager assigned to the Project, and each of their respective shareholders, governing board members, directors, officers, partners, members, managers, agents, employees, engineers, contractors, subcontractors, volunteers, or consultants (the "Indemnified Parties") from an against any and all actions, agreements, attorneys' fees, causes of action, claims, contracts, costs, covenants, damages, debts, demands, expenses, judgments, lawsuits, liabilities, liens, losses, obligations, orders, and rights of whatever kind or nature in law, equity or otherwise, which arise out of or are in any way connected with the bidder's (or any of its subcontractors', its consultants' or its independent contractors') performance of work under this Agreement (or any subcontract there under) or otherwise in connection with the Project, (collectively, the "Claims"), save and except such Claims that are determined by a court of competent jurisdiction to have arisen from the active negligence or willful misconduct of an Indemnified Party. Without limiting the generality of the foregoing, the Contractor will indemnify, defend and hold harmless the Indemnified Parties against Claims arising from or in any way connected to:

The negligence or willful misconduct of the Contractor or its shareholders, directors, officers, partners, members, managers, agents, employees, engineers, consultants, contractors, or subcontractors;

The death of or bodily injury to any person, regardless of whether that death or injury occurs at the Project site or on or off of any other District property;

Injury to property, loss of property, or theft of property, regardless of whether that injury, loss or theft occurs at the Project site or on or off of any other District property; or

Any other loss, damage or expense sustained by the Contractor.

The Contractor – at it's own expense, cost, and risk – shall defend at the District's request any and all Claims that may be brought or instituted against any of the Indemnifies Parties, and shall pay or satisfy any judgment that may be rendered against any of the Indemnified Parties in any action, suit or other proceedings as a result thereof.

Insurance. The Contractor shall, at its expense, purchase and keep in force throughout the term of this Agreement, policies of insurance which are issued by insurers meeting the qualifications established by Article 18 of the General Conditions and Section 00435 – Certificate of Insurance. Those policies shall provide the types of insurance required by Contract Documents. The Contractor and its insurer shall provide a completed Certificate of Insurance in the form attached as Section 00435 – Certificate of Insurance, and not an insurance company form.

Substitution of Securities for Moneys Withheld, or Payment to Escrow Holder of Retentions, Pursuant to Public Contract Code § 22300. Pursuant to Public Contract

Code Section 22300, and at the request and expense of the Contractor, securities equivalent to the amount of any monies withheld by the District to ensure the Contractor's performance under this Agreement shall be done in compliance with in the form of the Escrow Agreement for Security Deposits in Lieu of Retention – Section 00501.

Additional Requirements if Project Involves Trenches or Excavations. Pursuant to Public Contract Code Section 7104, if the Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, then the provisions of Section 7.7 of the General Conditions apply to this Agreement and are hereby incorporated herein by reference.

Resolution of Construction Claims. Public Contract Code Section 20104(c) requires that the provisions of Public Contract Code Sections 20104 through 20104.6, or a summary thereof, "be set forth in the plans and specifications for any work which may give rise to a claim under" those Code Sections. Such a summary is set forth at Article 19 of the General Conditions and is hereby deemed also to be set forth in its entirety in the Plans and Specifications.

Prevailing Wages. The Contractor and all Subcontractors under the Contractor shall pay all workers on all Work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code.

Stipulation Regarding Working Hours. Pursuant to Labor Code Section 1813, the Contractor hereby stipulates to the matters set forth in Section 9.5.3 of the General Conditions.

Stipulation Regarding Apprentices. Pursuant to Labor Code Section 1777.5(n), the Contractor hereby stipulates to the matters set forth in Section 9.4 of the General Conditions.

Assignment of Rights. In entering into this Agreement, the Contractor offers and agrees (as required by Public Contract Code Section 7103.5(b) and Government Code Section 4552) to assign to the District all rights, title and interest in and to all causes of action the Contractor may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business & Professions Code Sections 16700 et seq.) arising from purchases of goods, materials, or services by the Contractor for sale to the District pursuant to this Agreement. Such assignment shall be made and become effective at the time the District tenders final payment under this Agreement, without further acknowledgement by the Contractor or the District.

Examination and Audit by State Auditor. Pursuant to Government Code Section 8546.7, the District and the Contractor are each subject to the examination and audit of the State Auditor, at the District's request or as part of any audit of the District, for a period of three (3) years after final payment under this Agreement.

Authority to Execute and Perform Agreement. If the Contractor is a corporation, partnership, limited liability company or other legal entity, the persons signing this Agreement on the Contractor's behalf hereby represent and warrant that (a) the

Contractor is duly formed and in good standing in the state in which it was formed, (b) the Contractor is authorized to do business in California, and (c) the person signing this Agreement on the Contractor's behalf is authorized by the Contractor to act for and bind the Contractor to this Agreement and to obligate the Contractor to perform pursuant to the terms of this Agreement and the other Project Documents.

Incorporation of Provisions Required by Law. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party this Agreement shall forthwith be physically amended to make such insertion or correction.

Entire Agreement. The "complete contract" (that is, this Agreement and the other Project Documents) constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement and the other Project Documents can be modified only by an amendment in writing, signed by both parties and pursuant to action of the District's Board of Education.

Change Orders. The District represents to the Contractor that the resolution adopted by the District's Board of Education to approve the District's entry into this Agreement specifically authorizes the District's Associate Superintendent of Business Services, or his designee, to approve change orders under Article 16 of the General Conditions.

"Days" Means Calendar Days. All references to "Business Days" in any of the Project Documents is defined as days on which the District is opened for business. All other references to "days" in the Project Documents shall mean calendar days.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

"Contractor"
By: _____
Name: _____
Title: _____
Date: _____

"District"
Santa Ana Unified School District,
a political subdivision of the State of California
By: _____
Name: Orin L. Williams
Title: Assistant Superintendent Facilities
& Governmental Relations
Date: _____

NOTE: If the Contractor is a corporation, Contractor must attach a certified copy of the corporation's by-laws, or of the resolution of the Board of Directors of the corporation, authorizing the above person to execute this Agreement and the bonds required by the Contract Documents.

Attest:
By: _____
Name: _____
Title: _____
Date: _____