

## NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT

### SHORT FORM MASTER CONSTRUCTION AGREEMENT FOR PROJECTS UNDER \$ 45,000.00

This Short Form Master Construction Agreement (“Agreement”) is made this \_\_\_th day of \_\_\_\_\_, 2014, by and between North Monterey County Unified School District (“District”) and \_\_\_\_\_ (“Contractor”). District and Contractor agree as follows:

1. Services. District will assign projects (each, a “Project”) to Contractor on an as needed basis during the term of this Agreement. Each Project shall be described by the District in a scope of work (“Scope of Work”), which shall be signed by both parties and attached hereto and incorporated herein as an exhibit, the first such exhibit being “Exhibit C”, and so on. Each Scope of Work for a Project shall include at least the following: (1) a description of the work to be performed; (2) the contract price (each, a “Contract Price”) for the Project; and (3) a Project schedule, including time for completion. Each Scope of Work shall be subject to ratification by the District’s governing board.
2. Contract Price. The Contract Price for any Project shall not exceed \$45,000. No Contract Price will be increased over the course of a Project except pursuant to a valid Change Request (see Section 7 below) and written consent by District. Pursuant to Public Contract Code section 22300, unless Contractor submits securities, District will retain 10% of all progress payments with respect to a Project until Contractor completes its work and the District accepts the completed Project. Contractor will submit billing invoices on a monthly basis for work completed in that month. All billing invoices shall be due and payable thirty (30) days after the date of the invoice.
3. Term. The term of this Agreement shall be one (1) year from the date of this Agreement, unless earlier terminated in accordance with the terms hereof.
4. Payment Bond. If the Contract Price for any Project exceeds \$25,000, within ten (10) business days of execution of the Scope of Work for such Project, Contractor will provide the District with a corporate surety bond, in a sum not less than 100 percent of the amount of the Contract Price, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract Price (“Payment Bond”). Contractor shall not proceed with any on-site construction activities with respect to a Project for which a Payment Bond is required until the Payment Bond for that Project has been secured and delivered to the District.
5. Contractor’s License; Workforce Qualifications. In accordance with section 3300 of the Public Contract Code, Contractor has a Class “\_\_\_\_\_” license which shall be maintained in good standing for the duration of the term of this Agreement. Contractor represents that it or its principals or employees assigned to a Project under this Agreement have or shall have in effect all licenses, credentials, permits and has otherwise all legal qualifications to perform such Project.

6. Liquidated Damages. Contractor agrees to complete each Project pursuant to the terms of this Agreement within the time for performance stated in the Scope of Work for such Project, unless Contractor receives a written extension of time for such Project from the District in accordance with section 7. Contractor's failure to complete a Project on time shall subject Contractor to liquidated damages. The actual occurrences of damages and the actual amount of damages which the District will suffer if a Project is not completed on time is dependent upon many circumstances and conditions and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages occasioned by delay. Damages which the District would suffer in the event of delay include loss of use of the Project, disruption of District and school activities, cost of administration and the loss suffered by the public by reason of delay. Accordingly, the parties agree that the amount herein set forth as liquidated damages shall be presumed to be the amount of damages actually sustained by the District due to Contractor's failure to complete the Project on time. The amount of liquidated damages to be paid by Contractor to the District for failure to complete a Project on time will be \$500.00 for each calendar day by which completion of the Project is delayed beyond the time for performance stated in the Scope of Work for such Project.

7. Change Orders. The Contractor and the District agree that changes to a Scope of Work for a Project shall become effective only when written in the form of a change order approved and signed by the District and the Contractor. It is specifically agreed that the District shall have the right to request any alterations, deviations, reductions, or additions to a Project, and the amount of the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the work will be done by the Contractor or by a subcontractor. Any proposed change order must include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Project.

8. Warranty Period. The Contractor shall promptly correct any work found not to be in conformance with a Scope of Work for one year after District's written acceptance of such work. Contractor shall correct the work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the work if District provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to District's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this section shall survive the termination or expiration of this Agreement and the acceptance of the work of any Project.

9. Indemnity. Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Education, and members of the Board of Education, from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to

attorney fees and costs including fees of consultants) of any kind, nature and description directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor or the Contractor's agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's use of any site, Contractor's work on any Project, Contractor's breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

10. Independent Contractor Status. While engaged in carrying out the terms and conditions of this Agreement, Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District.

11. Subcontractors. If Contractor shall subcontract any part of the work, Contractor shall be fully responsible to Owner for acts or omissions of Contractor's subcontractors. Pursuant to Public Contract Code section 6109, no contractor may perform work on a public works project with a subcontractor who is ineligible to perform work on the project pursuant to California Labor Code sections 1777.1 or 1777.7.

12. Prevailing Wage. 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 of 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 the Projects. 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 the rates are on file at District's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on any 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 Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

Contractor and any subcontractor under Contractor as a penalty to District shall forfeit not more than Fifty Dollars (\$50.00) 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 Contractor.

Contractor and each subcontractor shall keep or cause to be kept an accurate record for work on each 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 Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by District, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

13. 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 Contractor or a subcontractor doing or contracting to do any part of a Project 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 provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. 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 by each worker employed by them in connection with any Project. The records shall be kept open at all reasonable hours to inspection by representatives of District and the Division of Labor Law Enforcement. Contractor shall as a penalty to District forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by 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.

14. Apprentices. 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 exemption 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 Contractor for all apprenticeable occupations.

15. Insurance. Contractor shall secure and maintain for the term of this Agreement insurance for commercial general liability, automobile liability, and workers'

compensation. Upon execution of any Scope of Work, Contractor shall furnish to the District proof of insurance consistent with this section 15. The District reserves the right, in its reasonable discretion, to require Contractor to purchase additional insurance coverage, or higher limits, with respect to any Project.

16. Compliance with Law. Contractor and its employees, agents and subcontractors shall comply with applicable law regarding construction or maintenance activities at the District sites, including but not limited to the fingerprinting requirements of Education Code section 45125.2. All equipment and supplies furnished, and/or all work performed, shall meet all applicable safety regulations of the Division of Industrial Safety of the State of California, and Health & Safety code of the State of California.

17. Termination. The District may terminate this Agreement upon three (3) days written notice to Contractor. Contractor shall be entitled to compensation for work performed up to the date of the notice of termination.

18. Disputes. If a dispute arises between the Owner and the Contractor as to an interpretation of the Scope of Work or as to the quality or sufficiency of materials or workmanship, the decision of the Owner shall for the time being prevail, and the Contractor, without delaying the job, shall proceed as directed by the Owner without prejudice to a final determination of the dispute.

19. Claims Less than \$375,000. Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code sections 20104, et seq., including claim, response, informal meet and confer conference, non-binding mediation if a claim of over \$100,000 remains in dispute after the meet and confer conference, and Government Code claim. "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to this Agreement, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner.

The Contractor shall submit its claim of \$375,000 or less to the Owner in writing before payment is made. The Owner shall respond within the time provided by statute. If the Contractor disagrees with the response or the Owner fails to respond within the time permitted, the Contractor shall notify the Owner of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference. The Owner shall schedule a meet-and-confer conference within thirty (30) days of the demand. If not resolved at the meet-and-confer conference, then the claim shall be submitted to mediation. If the dispute is not resolved at mediation, the Contractor may initiate a civil action as set forth in Public Contract Code section 20104 et seq.

20. Assignment of Agreement. Contractor agrees not to assign, transfer or convey any rights accruing under this Agreement without the prior written consent of District.

21. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, venue shall be in the proper state or federal court located in Monterey County, California.

22. Notices. Communications hereunder shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

23. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon District and Contractor and their respective successors and assigns.

24. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or under unenforceable any other provision hereof.

25. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

26. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, representations or warranties, express or implied, not specified in this Agreement. Contractor, by the execution of this Agreement, acknowledges that Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first herein above written.

**NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_