

AGREEMENT
FOR DESIGN-BUILD SERVICES

THIS AGREEMENT, made this _____ day of _____, 2018, by and between **INSERT NAME OF DESIGN-BUILD ENTITY** with its place of business at **INSERT DESIGN-BUILD ENTITY ADDRESS**, hereinafter called "Design-Build Entity", and EAST SIDE UNION HIGH SCHOOL DISTRICT, hereinafter called "District".

In consideration of the mutual covenants hereinafter set forth, Design-Build Entity and District agree as follows:

Article I. Work

1.1 Design-Build Entity shall provide, furnish, and perform all necessary planning, architectural, engineering, and design services procurement, permitting support services, construction, (except those to be provided by District, if any) and all necessary labor, and services (except that testing to be provided by the District) for a complete, operational, and fully functional Project, as further described in Section 01 10 00 Summary of Work. Except with regard to any material to be provided and/or installed by District, Design-Build Entity shall fully commission and turn over a complete, operational, and fully functional Project to District. Without limiting the generality of this Document 00 52 00, Design-Build Entity shall provide the following work and Services:

Design-Build Entity shall provide complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment and for the construction of the complete, operational, and fully functional Project and shall furnish the services of all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work, including the pertinent information for natural gas, water supply, and any other utilities, as required.

1.3 Design-Build Entity shall provide, install and complete as specified, and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing (except that testing to be provided by the District), utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including required permanent interconnection for electricity, and any other utilities, and demonstration of fully satisfactory operation of all systems and equipment.

1.4 Design-Build Entity shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, and fully functional Project. Design-Build Entity shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

1.5 Design-Build Entity shall obtain, at Design-Build Entity's expense, all governmental and private approvals, licenses, and permits required to complete the Work; provided, however, District will be responsible for paying the cost of all District-imposed fees. Design-Build Entity shall design and construct complete, operational, and fully functional Project in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

1.6 Design-Build Entity shall provide a warranty of the length identified in the Contract for this Project.

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- 1.7 No construction or alteration of any District facility under the Contract Documents shall commence prior to the receipt of the written approval of the plans and specifications, as to the safety of design and construction, from the District, and as required, from the Division of the State Architect.

Article II. District's Project Manager and Representatives

- 2.1 District may assign all or part of its rights, responsibilities and duties to a District Project Manager or other representative. District shall inform Design-Build Entity in writing of such assignment and the extent of its representative's authority.
- 2.2 All notices or demands to District under the Contract Documents shall be to District's Representative at:

**East Side Union High School District
Julio Lucas
Senior Manager of the Bond Program
830 North Capitol Avenue, San Jose, CA 95133
Telephone: 408-347-5102
lucasj@esuhsd.org**

or to such other person(s) and address(es) as District shall provide to Design-Build Entity.

Article III. Contract Time and Liquidated Damages

- 3.1 Design-Build Entity shall complete the Work within the dates _____ and within the Milestone Schedule in Exhibit A, hereby made part of this Agreement.

3.2 Liquidated Damages.

District and Design-Build Entity recognize that time is of the essence with regard to this Agreement and that District will suffer financial loss in the form of lost revenues, contract administration expenses (including project management and consultants' expenses), delay and loss of public use, if the Work is not completed within the time specified in paragraph 3.1 above plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Paragraph 1.15 of Document 00 71 00 (General Conditions), Design-Build Entity and District agree that because of the complexity of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by District caused by a delay in completion of the Work.

Accordingly, District and Design-Build Entity agree that Design-Build Entity shall pay the District liquidated damages in the event that Design-Build Entity fails to meet any agreed upon deadline in the manner described below:

- 3.2.1 If Design-Build Entity shall fail to achieve Substantial Completion of its Work by the date (or dates) specified in Appendix A regarding the achievement of identified Construction Milestones, Design-Build Entity shall pay District liquidated damages, at the daily rate of Two Thousand Dollars (\$2000) per day for each day Design-Build Entity exceeds the Substantial Completion Date; said amount accruing daily and continuing to accrue until Design-Build Entity achieves Substantial Completion of the portion of the Work subject to the agreed upon Milestone.

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3.2.2 If Design-Build Entity shall fail to achieve Final Completion of the Work by the date so specified in these Contract Documents, Design-Build Entity shall pay District liquidated damages, at the daily rate of One Thousand Dollars (\$1000) per day for each day Design-Build Entity exceeds the Final Completion Date; said amount accruing daily and continuing to accrue until Design-Build Entity achieves Final Completion of the Work in accordance with these Contract Documents.

These measures of liquidated damages shall apply cumulatively, if applicable, and shall be presumed to be, except as provided in Document 00 71 00 (General Conditions), paragraph 15.E the damages suffered by District resulting from delay in completion of the Project.

Article IV. Contract Sum

4.1 District shall pay the Design-Build Entity the Contract Sum of (insert contract amount in words) dollars (\$ insert contract amount in numerals) for completion of Work in accordance with the Contract Documents.

4.2 The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Design-Build Entity, its subcontractors, subconsultants, architects, engineers, and vendors or otherwise arising out of Design-Build Entity's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

Article V. Design-Build Entity's Representations and Warranties

Design-Build Entity makes the following representations and warranties:

5.1 Design-Build Entity has visited the Site and has observed the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, and all local conditions. The Design-Build Entity has reviewed all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity. The Design-Build Entity has reviewed all OSHA regulations and warrant that it intends to comply with regulations and employ safety processes and procedures to avoid injury to employees, subcontractors, district staff and all others occupying or visiting the site.

5.2 Design-Build Entity has performed its due diligence and fully understands the Scope of Work and the conditions associated with the Work. Design-Build Entity has made all reasonable efforts to obtain all reports, surveys or other documents reflecting exploration and testing of subsurface conditions; and has reviewed all known as-built drawings, drawings or reports showing physical conditions, including Underground Facilities, identified in the Request for Proposal; and has examined all Geotechnical Data and Existing Conditions, including those that may be apparent at the Site. The District has obtained and provided to the Design-Build Entity a Geotechnical Investigation of the proposed Project Site. The Design-Build Entity will utilize and rely upon information on subsurface conditions furnished by the District, unless specifically excluded in the Request for Proposal.

5.3 Design-Build Entity has obtained and reviewed all such examinations, investigations, explorations, tests, reports and studies referred to in Paragraph 5.2 of this Document 00 52 00 that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to

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the Site or that otherwise may affect the cost, progress, performance or furnishing of Work, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 71 00 (General Conditions).

- 5.4 Design-Build Entity has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Design-Build Entity has given District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents, as-built drawings and actual conditions and that the written resolution Addenda issued by District is acceptable to Design-Build Entity.
- 5.6 Design-Build Entity is duly organized, existing and in good standing under applicable state law, and is duly qualified and licensed (for every business, trade or profession) to conduct business in the State of California.
- 5.7 Design-Build Entity has duly authorized the execution, delivery and performance of this Agreement, the Contract Documents, and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design-Build Entity.
- 5.8 Prior to the District's Issuance of a Notice to Proceed with Construction, the Design-Build Entity will list all Subcontractors performing Work pursuant to the Subcontractor Listing requirements of California Public Contracting Code Section 4104 on Document 00 43 36 Subcontractors List Form and provide a copy thereof to District.

Article VI. Contract Documents

- 6.1 The Contract Documents consist of the following documents, including all changes, addenda and modifications thereto, which comprise the entire agreement between District and Design-Build Entity concerning the Work:

- Document 00 41 00 Design-Build Entity's Proposal, Dated:
- Document 00 43 25 (Substitution Request Form), Dated:
- Document 00 43 45 (Escrow Agreement for Security Deposit in Lieu of Retention), Dated:
- Document 00 45 23 Workers' Compensation Certification, Dated:
- Document 00 35 39.13 Disabled Veteran Business Enterprise Participation Certification, Dated:
- Document 00 45 52 Drug-Free Workplace Certification, Dated:
- Document 00 45 55 Hazardous Materials Certification, Dated:
- Document 00 45 58 Lead-Based Materials Certification, Dated:
- Document 00 45 61 Imported Materials Certification, Dated:
- Document 00 45 64 Criminal Background Investigation/Fingerprinting Certification, Dated:
- Document 00 45 67 Prevailing Wage and Related Labor Requirements Certification, Dated:
- Document 00 45 70 Tobacco-Free Environment Certification, Dated:
- Document 00 45 75 Certificate of Compliance for Project Labor Agreement, Dated:
- Document 00 50 00 (Notice(s) to Proceed with Design), Dated:
- Document 00 50 01 (Notice(s) to Proceed with Construction), Dated:
- Document 00 51 00 (Notice of Award), Dated:
- Document 00 52 00 (Agreement for Design-Build Services), Dated:
- Document 00 61 00 (Construction Performance Bond), Dated:
- Document 00 62 00 (Construction Labor and Material Payment Bond), Dated:
- Document 00 65 36 (Guaranty), Dated:
- Document 00 71 00 (General Conditions), Dated:

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Document 00 73 00 (Special Conditions), Dated:
Document 00 73 05 (Supplemental General Conditions – Hazardous Materials), Dated:
Document 00 73 05 (Supplemental General Conditions – Design Standards), Dated:
Document 00 73 17 (Insurance), Dated:
Division One General Requirements of the Contract
Final approved Construction Documents (as provided in Section 01 10 01 (Summary of Work – Programming and Design Services))

- 6.2 The documents submitted in the Proposal may include proposed revisions to the Scope of Work, in the form of Exceptions to the RFP, District Requested Alternates, Voluntary Alternates, or Clarifications. The District retains its right to accept Alternates subsequent to executing the Agreement in accordance with the terms set forth in the Request for Proposal.
- 6.3 There are no Contract Documents except those expressly listed in this Document 00 52 00, Article VI. Document 00 31 19 (Geotechnical Data and Existing Conditions), Document 00 21 26 (Hazardous Materials Surveys), and the information supplied through these documents, are not Contract Documents. Contract Documents may only be amended, modified or supplemented as provided in Document 00 71 00 General Conditions.

Article VII. Miscellaneous

- 7.1 Except where clearly defined in this Document 00 52 00, the terms used in this Agreement are defined in Document 00 71 00 General Conditions and Section 01 42 00 References and Definitions, and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance shall any individual person, signing this Agreement for or on behalf of District, or acting as an employee or representative of District, be deemed individually liable in any way under this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of District is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Design-Build Entity shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing requirements of California Public Contracting Code Section 4107.
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public contract or a subcontract to supply goods, services or materials pursuant to a public contract, the Design-Build Entity or subcontractor irrevocably offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act, (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Design-Build Entity, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations. This information is of public record and can be reviewed at the website of the California Department of Industrial Relations (www.dir.ca.gov/). Pursuant to Section 1861 of the Labor Code, Design-Build Entity represents that it is aware of the provisions of Section 3700 of the Labor Code which require

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every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design-Build Entity shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Santa Clara, State of California, and shall be governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court of the State of California for the County of Santa Clara. Design-Build Entity accepts the claims procedure in Document 00 71 00, Article 12, as established under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.
- 7.9 District shall have the right to review all phases of Design-Build Entity's design including, but not limited to, drawings, specifications, shop drawings, samples and submittals, as specified in the Contract Documents. Such review, approval and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of District's interests in monitoring and accepting the design as developed and issued by the Design-Build Entity, to the extent consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date noted below.

“District”

EAST SIDE UNION HIGH SCHOOL DISTRICT, a public entity

By: _____

Date

“Design-Build Entity”

Name of Design-Build Entity

By: _____

Title

Date

