

## **AGREEMENT FOR PRECONSTRUCTION SERVICES**

This Agreement for Preconstruction Services ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between Imperial Community College District ("District") and \_\_\_\_\_ ("Developer") (together, "Parties") for the purpose of Developer performing certain preconstruction services for District's Public Safety Regional Training Center and Maintenance and Operations Facility ("Project")

### **RECITALS**

**WHEREAS**, the Project will be located at 380 E. Aten Rd., Imperial, CA 92251;

**WHEREAS**, District has retained Sanders Inc. ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") and to act as the Design Professional in General Responsible Charge for the Project;

**WHEREAS**, the Parties desire for Developer to provide certain preconstruction services based on the Plans and Specifications in preparation for the Project's development;

**WHEREAS**, Developer represents that it is properly licensed and has the expertise and experience to obtain pricing from subcontractors, develop construction schedules, identify and order long lead items, coordinate construction activities with the Architect, and perform the other development services set forth in this Agreement;

**WHEREAS**, District and Developer are interested in entering into lease agreements which include construction provisions and related exhibits for the development of the Project pursuant to Education Code section 81335 (collectively, the "Lease-Leaseback Contract") after Developer's performance of its duties as set forth in this Agreement;

**WHEREAS**, District is authorized by Government Code section 53060 to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

**WHEREAS**, Developer is specially trained, experienced, and competent to perform the services required by District, as needed on the basis set forth in this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

### **TERMS**

1. **Preconstruction Services.** Developer shall provide preconstruction services as further described in **Exhibit A**, attached hereto and incorporated herein by this reference ("Services"). The Parties acknowledge that, in performing the Services set forth in this Agreement, Developer is acting as a knowledgeable and experienced contractor and is not acting, and does not purport to act, as a design professional and is assuming no design responsibility under this Agreement.
2. **Term.** Developer shall commence providing Services under this Agreement on the date District issues the Notice to Proceed with **Preconstruction Services and will diligently perform as required and complete performance by March 30, 2024**, after which parties anticipate entering the Lease-Leaseback Contract for the Project. Any extension shall be subject to reasonable approval in writing by the Parties. The term of this

Agreement shall conclude upon approval of the Lease-Leaseback Contract by District's Board, or upon earlier termination of this Agreement by District per the Agreement's terms.

3. **Construction Services and Lease-Leaseback Contract.** Developer shall not commence any construction work for the Project under this Agreement. Following approval of the Plans and Specifications by the Division of the State Architect ("DSA"), completion of Developer's Services under this Agreement, and the Parties' agreement on the Guaranteed Maximum Price ("GMP") for the Project, the Parties anticipate entering the Lease-Leaseback Contract. District may then issue a Notice to Proceed with Construction and Developer shall commence construction work under the Lease-Leaseback Contract.
4. **Submittal of Documents.** Developer shall not commence the Services under this Agreement until Developer has submitted and District has approved the documents, certificate(s) and affidavit(s), and endorsement(s) of insurance required as indicated below:

<u>  X  </u>	Signed Agreement
<u>  X  </u>	Workers' Compensation Certification
<u>  X  </u>	Prevailing Wage Certification
<u>  X  </u>	Insurance Certificates and Endorsements
<u>  X  </u>	W-9 Form
<u>      </u>	Other: _____

5. **Compensation.** District agrees to reimburse Developer in the total amount not to exceed **[AMOUNT IN WORDS] DOLLARS (\$[AMOUNT IN NUMBERS])**, for the performance of services contemplated by this Agreement. Developer shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by District of a monthly billing statement showing completion of the tasks for that month on a line-item basis. In the event Developer and District continue with the Lease-Leaseback Contract for the development of the Project, this compensation for services rendered will be included as part of the GMP to be paid to Developer by District.

Developer shall be responsible for any and all costs and expenses incurred by Developer, including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project's Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Developer staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Developer in performance of the services contemplated by this Agreement.

6. **Ownership of Records.** It is mutually agreed that all materials prepared by Developer under this Agreement shall become the property of the District and Developer shall have no property right therein whatsoever. Developer hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement.
7. **Open Book Policy.** There will be an open book policy with Developer and its subcontractors. District shall have access to all subcontractor bids, value engineering back-up, contingency breakdown & tracking, and Developer fees.

## 8. Termination.

- 8.1. This Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Developer. In the event of such a termination by District, District shall pay Developer for all undisputed services performed and expenses incurred per this Agreement not to exceed the amount stated in Section 5 and supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Developer pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due Developer for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to completed work and work in process that would best serve District if a completed product was presented.
- 8.2. Immediately upon termination and upon written request, District shall be entitled to, and Developer shall deliver to the Developer, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by District in performing the Agreement.

9. **Independent Contractor.** Developer represents and warrants that Developer is an independent contractor or business entity that is: (i) free from the control and direction of District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Developer understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Developer shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Developer's employees.

10. **Disputes.** In the event of any demand by Developer for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by District under the Contract, (B) payment by District of money or damages arising from work done by, or on behalf of, Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Developer is not otherwise entitled to, or (C) an amount of payment disputed by District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Developer shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Developer's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Developer submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Developer and its subcontractors shall continue to perform the Work under the Contract and shall not cause a delay of the Work, including

the disputed work, during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of District.

**11. Indemnification.**

- 11.1. To the furthest extent permitted by California law, Developer shall indemnify and hold harmless District, its Governing Board, agents, representatives, officers, Developers, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Developer ("Claim"). Developer shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Developer's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto. District shall have the right to accept or reject any legal representation that Developer proposes to defend the indemnified parties.
- 11.2. Developer shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim, subject to section 11.1 above. Developer's obligation pursuant to this section includes reimbursing District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and Developer fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein, subject to section 11.1 above. Developer's obligation to indemnify shall not be restricted to insurance proceeds.
- 11.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Developer from amounts owing to Developer.

**12. Insurance.**

- 12.1. **Coverage.** Developer shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

<b>Type of Coverage</b>	<b>Minimum Requirement</b>
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

- 12.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Developer, District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the

Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by District.)

12.1.2. **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Developer shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

12.2. **Proof of Carriage of Insurance.** Developer shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to District and approved by District. Certificates and insurance policies shall include the following:

12.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

12.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

12.2.3. An endorsement stating that District and its Board of Trustees, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. An endorsement shall also state that Developer's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

12.2.4. All policies except the Workers' Compensation Insurance and Employer's Liability Insurance Policies shall be written on an occurrence form.

12.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to District.

13. **Compliance with Laws.** Developer shall observe and comply with all rules and regulations of the governing board of District and all federal, state, and local laws, ordinances and regulations. Developer shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Developer observes that any of the Services required by this Contract is at variance with any such laws, ordinance, rules or regulations, Developer shall notify District, in writing, and, at the sole option of District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Developer's receipt of a written termination notice from District. If Developer performs any Services that is in violation of

any laws, ordinances, rules or regulations, without first notifying District of the violation, Developer shall bear all costs arising therefrom.

13.1. **Labor Code Requirements:** Developer shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with District.

13.1.1. **Registration:** If applicable, before a public works contract can be awarded, Developer and its subcontractor(s) shall be registered with the Department of Industrial Relations in accordance with Labor Code section 1771.1. At least one week before commencing work, Developer shall provide to District the name and DIR registration number for Developer and any applicable subcontractor.

13.1.2. **Certified Payroll Records:** Developer and its subcontractor(s) shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records directly to the Department of Industrial Relations weekly or within ten (10) days of any request by District or the Department of Industrial Relations.

13.1.3. **Labor Compliance:** Developer shall perform the Services of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

14. **Certificates/Permits/Licenses/Registrations.** Developer and all Developer's employees or agents shall secure and maintain in force such certificates, permits, licenses, and registrations as are required by law in connection with the furnishing of Services pursuant to this Agreement.

15. **Audit.** Developer shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Developer transacted under this Agreement. Developer shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Developer shall permit District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that District shall give reasonable prior notice to Developer and shall conduct audit(s) during Developer's normal business hours, unless Developer otherwise consents.

16. **Anti-Discrimination.** It is the policy of District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore Developer agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, Developer agrees to require like compliance by all of its subcontractor(s).

17. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
18. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
19. **Confidentiality.** Developer and all Developer's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Developer understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
20. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows:

**District:**

Imperial Community College District  
 380 E. Aten Rd.  
 Imperial, CA 92251  
 ATTN: Cesar L. Vega  
 Vice President of Administrative Services

**Developer:**

[NAME]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ATTN: \_\_\_\_\_

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

21. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
22. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which District's administrative offices are located.
23. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

24. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
25. **Provisions Required By Law Deemed Inserted.** 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 therein.
26. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
27. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
28. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
29. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
30. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
31. **Counterparts.** This Agreement may be executed in one or more counterparts, and all counterparts together shall be construed as one document. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.
32. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURES ON NEXT PAGE]



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: \_\_\_\_\_, 2023

Dated: \_\_\_\_\_, 2023

**Imperial Community College District**

\_\_\_\_\_

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

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

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

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

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

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

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**Information regarding Developer:**

License No.: \_\_\_\_\_

\_\_\_\_\_:

Address: \_\_\_\_\_

Employer Identification and/or  
Social Security Number

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

- \_\_\_ Individual
- \_\_\_ Sole Proprietorship
- \_\_\_ Partnership
- \_\_\_ Limited Partnership
- \_\_\_ Corporation, State: \_\_\_\_\_
- \_\_\_ Limited Liability Company
- \_\_\_ Other: \_\_\_\_\_

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, District requires Developer to furnish the information requested in this section.**

**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES TO BE PERFORMED BY DEVELOPER**

Developer shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the Project, including but not limited to the following:

**1. General Services.**

- 1.1.** Developer shall attend meetings between the Architect, District, District site personnel, and any other applicable consultants of District as required to discuss the Project, including budget, scope and schedule.
- 1.2.** Developer shall assist the Architect with making formal presentations to the governing board of District. Such assistance is anticipated to include floor plans and elevations necessary for any architectural presentation.
- 1.3.** Developer shall prepare a rough schedule in a format acceptable to District, and update as necessary.
- 1.4.** Developer shall prepare and update the components of the GMP and shall be primarily responsible for ensuring that the Project can and is constructed for no more than that amount.
- 1.5.** While the Architect is anticipated to provide primary assistance, Developer shall assist District with City land use issues.
- 1.6.** Architect shall act as lead and Developer will assist District and Architect with DSA review, input, and timeframe for same.
- 1.7.** Architect shall act as lead and Developer will assist with review and comment upon geotechnical / soils investigation and report.
- 1.8.** Architect shall act as lead and Developer will assist with review and comment upon survey of the Site for the Project.
- 1.9.** When requested, Developer will prepare meeting minutes.
- 1.10.** Prepare schedule for preconstruction deliverables, subject to District's approval, and provide preconstruction deliverables within time frames of approved preconstruction schedule.

**2. Review of Design Documents.**

- 2.1.** Review Project design and budget with District and Architect based on the 100% Construction Documents submitted to DSA to:
  - 2.1.1.** Provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;
  - 2.1.2.** Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for

procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

**2.1.3.** Provide plan review.

**3. Value-engineering.** Prepare a value-engineering report for District review and approval that:

**3.1.** Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

**3.2.** Provides detailed estimate for proposed value-engineering items;

**3.3.** Defines methodology or approaches that maximize value; and

**3.4.** Identifies design choices that can be more economically delivered.

**4. Constructability Review.** Prepare detailed interdisciplinary constructability review within fourteen (14) days of receipt of the plans from District that:

**4.1.** Ensures construction documents are well coordinated and reviewed for errors;

**4.2.** Identifies to the extent known, construction deficiencies and areas of concern;

**4.3.** Back-checks design drawings for inclusion of modifications; and

**4.4.** Provides District with written confirmation that:

**4.4.1.** Requirements noted in the design documents prepared for the Project are consistent with and conform to District's Project requirements and design standards.

**4.4.2.** Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.

**4.5.** Confirm Modifications to Design Drawings. If District accepts Developer's comments, including the value-engineering and/or constructability review comments, review the design documents to confirm that those comments are properly incorporated into the final design documents.

**4.6.** In doing so, it is recognized that Developer is not acting in the capacity of a licensed design professional, and that Developer's examination is made in good faith to facilitate construction and does not create an affirmative responsibility of a design professional to detect errors, omissions or inconsistencies in the Contract Documents or to ascertain compliance with applicable laws, building codes or regulations. However, nothing in this provision shall abrogate

Developer's responsibilities for discovering and reporting any error, inconsistency, or omission pursuant to the Contract within Developer's standard of care including, without limitation, any applicable laws, ordinance, rules, or regulations.

## **5. Budget of Project Costs.**

**5.1.** At each stage of plan review indicated above, Developer will update and refine the budget of the GMP based on the most recent set of design documents. Developer shall also advise District and the Architect if it appears that the total construction costs may exceed the GMP established by District and shall make recommendations for corrective action. Developer will further provide input to District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

**5.2.** In each budget of the GMP, Developer shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the GMP shall include, at a minimum, the following information divided into at least the following categories for each site:

**5.2.1.** Overhead and profit;

**5.2.2.** Supervision;

**5.2.3.** General conditions;

**5.2.4.** Layout & Mobilization (not more than 1%);

**5.2.5.** Submittals, samples, shop drawings (not more than 3%);

**5.2.6.** Bonds and insurance (not more than 2%);

**5.2.7.** Close-out documentation (not less than 3%);

**5.2.8.** Demolition;

**5.2.9.** Installation;

**5.2.10.** Rough-in;

**5.2.11.** Finishes;

**5.2.12.** Testing;

**5.2.13.** Owner and Maintenance Manuals; and

**5.2.14.** Punchlist and District acceptance.

## **6. Construction Schedule and Phasing Plan**

Developer shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiple phases and interrelations of design, constructability review, and estimating. Developer shall also prepare a full construction schedule for the Project detailing the construction activities. Developer

shall further investigate, recommend and prepare a schedule for the purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

## **7. Construction Planning and Bidding**

- 7.1.** For all of Developer's activities relating to construction planning and bidding, Developer shall comply with all applicable legal requirements, including but not limited to those set forth in Education Code section 81335.
- 7.2.** Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Respondent may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.
- 7.3.** Attend meetings at the Site with the Architect and the design team as needed.
- 7.4.** Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.
- 7.5.** Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.
- 7.6.** Prepare and distribute specifications and drawings provided by District to facilitate bidding to Developer's subcontractors.
- 7.7.** Review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.
- 7.8.** Conduct pre-bid conferences. Coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.
- 7.9.** DSA approved plans shall be utilized to receive subcontractor bids and develop the GMP for the Lease-Leaseback Contract, including the requirement that Developer engage in competitive bidding for subcontractors for all scopes of work on the Project that constitute more than one half of one percent (0.5%) of the GMP. District representative shall be present during the receipt of bids from subcontractors.
- 7.10.** Each phase GMP shall be presented to District in the following manner within a three ring binder as well as electronically on an external memory device such as a CD, USB drive, or other comparable device:
  - 7.10.1.** Cover sheet, signed by Developer indicating the GMP dollar amount with a certification, indicating that the GMP is all inclusive per the plans, specifications and addenda (contract documents). Also include certification stating, "Developer hereby certifies that they have reviewed all subcontractor proposals and whether the subcontractor excluded portions of their scope Developer has included all costs for a complete GMP in accordance with plans, specifications and addenda."

- 7.10.2.** A bid tabulation sheet indicating the breakdown by subcontractor/trade along with the appropriate general condition amount, other fees (as submitted with the response to the RFQ/P).
- 7.10.3.** Behind the bid tabulation sheet should be a sheet that indicates what is included in the general conditions, which should match what was submitted in the response to the RFQ/P.
- 7.10.4.** Copies of all subcontractor bids received divided by trade that corresponds to the final spread sheet with a cover sheet indicating the scope and subcontractors that provided bids as well as those that were asked to bid, but did not submit a proposal. This sheet should have the dollar amounts for each subcontractor that provided a bid with the first column being the proposed subcontractor for that trade.
- 7.10.5.** Bids for that trade with the proposed subcontractor bid on top and the other subcontractor bids in descending order based on best value score.
- 7.10.6.** The minimum number of bona fide bids from contractors for a specific trade shall be as follows:
- 7.10.6.1.** Two (2) bids for subcontracts up to One Hundred Thousand Dollars (\$100,000);
- 7.10.6.2.** Three (3) bids for subcontracts over One Hundred Thousand Dollars (\$100,000).
- 7.10.7.** If Developer intends to propose to self-perform portion(s) of the construction of the Project, it must receive District's prior written approval. If approved, Developer must provide its pricing (its bid) to District twenty-four (24) hours prior to Developer's receipt of Subcontractor bids for those portion(s) of the Work.
- 7.10.7.1.** Regardless of the scope of work and not in any way reducing the number of Subcontractor bids based on the other requirements of the Contract Documents, the minimum number of bona fide bids from Subcontractors for scope(s) of Work that Developer is bidding to self-perform shall be Two (2) Bids, not including Developer's pricing/bid.
- 7.11.** Produce detailed construction CPM schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.
- 7.12.** Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.
- 7.13.** Any other services that are reasonable and necessary to control the budget and schedule. List those areas where subconsultants will be required and where the Respondent has in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project.

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

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

Name of Developer: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with District prior to performing any Services under this Agreement.)

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

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

Name of Developer: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_



### **Public Contract Code section 9204**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant 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. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to

the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

## **Public Contract Code sections 20104 – 20104.6**

### **§ 20104.**

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

### **§ 20104.2.**

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

#### **§ 20104.4.**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

#### **§ 20104.6.**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.