



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 13.1a

Meeting Date: October 19, 2023

Subject: Approval/Ratification of Grants, Entitlements, and Other Income Agreements
Approval/Ratification of Other Agreements
Approval of Bid Awards
Approval of Declared Surplus Materials and Equipment
Change Notices
Notices of Completion

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Business Services

Recommendation: Recommend approval of items submitted.

Background/Rationale:

Financial Considerations: See attached.

LCAP Goal(s): College, Career and Life Ready Graduates; Safe, Emotionally Healthy, Engaged Students; Family and Community Empowerment; Operational Excellence

Documents Attached:

1. Grants, Entitlements, and Other Income Agreements
2. Expenditure and Other Agreements
3. Approval of Declared Surplus Materials and Equipment
4. Change Notices – Facilities Projects

Estimated Time of Presentation: N/A

Submitted by: Janea Marking, Chief Business Officer

Tina Alvarez Bevens, Contract Analyst

Approved by: Lisa Allen, Interim Superintendent

GRANTS, ENTITLEMENTS AND OTHER INCOME AGREEMENTS – REVENUE

<u>Contractor</u>	<u>New Grant</u>	<u>Amount</u>
<u>CAREER AND COLLEGE DEPARTMENT</u>		
California Department of Education A24-00039	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$14,807 No Match
Period: 7/1/23-9/30/25. Description Special Education Alternate Dispute Resolution Grant on the 2023-24 Individuals with Disabilities Education Act Part B, Section 611. One-time grant award of \$14,807.		
<u>CAREER AND COLLEGE DEPARTMENT</u>		
California Department of Education A24-00037	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$76,500 No Match
Period: 7/1/23-6/30/25. Description Law and Social Justice Academy (9036) at C.K. McClatchy High School.		
<u>FOSTER YOUTH SERVICES DEPARTMENT</u>		
California Department of Education A24-00040	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$427,474 No Match
Period: 7/1/23-6/30/26. Description: Fiscal year 2023-24 Tobacco-Use Prevention Education (TUPE) for Grades Six through Twelve, Tier 2 grant. Funding will be distributed for each fiscal year until June 20, 2026.		

EXPENDITURE AND OTHER AGREEMENTS

Restricted Funds

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>FACILITIES DEPARTMENT</u>		
George Van Dusen dba Phoenix Construction SA24-00370	10/19/23 – 10/31/25: Inspector and construction administration services for the Oak Ridge Elementary School New Construction project. Phoenix Construction was selected for this project from the District's pool of DSA-Inspector of Record through a Request for Qualification process on October 31, 2022.	\$429,660 Measure H Funds
New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<u>SPECIAL EDUCATION DEPARTMENT</u>		
Collaborative Learning Solutions SA24-00133	Approve consultative support across the Academic Office in alignment with SCUSD Strategic Priority of MTSS. Through an equity lens, CLS will provide consultative support to the Academic Office conducting an internal evaluation of the district's tiered system of support using the Integrated Framework for Improvement, Consultation support in the following areas: discipline data audit and adjustments related to the BPSB settlement, significant disproportionality (development, implementation and monitoring the (CIM for CCEIS plan), implementation of	\$225,000 Special Education-IDEA Early Intervention Services Funds
New Contract: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

BPSB settlement action, work with a district team to establish a set of universal discipline guidelines that will assist school leadership with responses to student misbehavior that are grounded in restoration and skill acquisition, Restorative Practices training, support an evaluation of the specialized programs serving students with disabilities identified as having significant emotional and behavioral disorders (EBD). The goal of this evaluation is to analyze the current program structures, practices and procedures through the lens of the C5 framework to determine areas of strength and to identify growth opportunities for increasing the effectiveness of the programs, and the implementation of an Equity Community of Practice (ECOP).

COUNSELING SERVICES DEPARTMENT

Accelerate Education Inc SA24-00255	Renewal agreement services for Accelerate Credit Recovery Program. 1500 seats with instruction for the 23-24 school year. Each seat is one (1) enrolled student with up to 4 credit recovery courses at any point in time within the year. Includes content, hosting, support and instruction from California certified teachers. Includes Biology/ Chemistry/ Physics virtual labs	\$269,000 LCFF Funds
New Contract: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		\$75,750 A-G Learning Loss Mitigation Funds
		Total Contract Amount: \$344,750

APPROVAL OF DECLARED SURPLUS MATERIALS AND EQUIPMENT

SITE/DEPT	ITEM
Tahoe ES California MS A.Warren McClaskey Adult Transportation Services	<p>BACKGROUND: The Education Code regulates the procedures by which a school district can dispose of personal property. Education Code section 17546 provides that the governing board may, by unanimous vote, dispose of items valued at \$2,500 or less by private sale without advertising, by selling the items at public auction, or if the board finds that the property is of insufficient value to defray the costs of arranging a sale, the property may be donated to a charitable organization deemed appropriate by the board, or it may be disposed of in the local public dump. The District has held previous auctions, but they have generally cost more than they have netted for the District.</p>
ITEMS	
Computers (44 each) Laptops (11 each) Chromebooks (119 each) Printers (13 each) Monitors (44 each) Projectors (10 each) Printing Press (1 each) Keyboards (50 each) Misc. Items (64 each)	<p>STATUS: The District has determined these items are not repairable nor usable.</p> <p>RECOMMENDATION: It is recommended that the Board of Education approve the salvage of the listed items per Education Code section 17546</p>
TOTAL VALUE	
\$0.00	
DISPOSAL METHOD	
E-Waste Recycle	

CHANGE NOTICES – FACILITIES PROJECTS

The following change notice is submitted for approval.

Project: Oak Ridge Elementary School New Construction

Recommendation: John F. Otto dba Otto Construction was awarded preconstruction services at the April 13, 2023 Board of Education Meeting to authorize staff to pursue a lease-leaseback contract with John F. Otto dba Otto Construction. This request for proposal (RFP) was publicly advertised on January 11, 2023, January 12, 2023, and January 18, 2023. Amendment No. 1 is to increase Pre-construction services for the assistance of the elevator design and submittal to the Division of State Architect (DSA); and the guaranteed maximum price (GMP) for Increment 1 in accordance with DSA approved plans and specifications dated May 26, 2023. Once plans are finalized, approved by Division of State Architect and the guaranteed maximum price (GMP) for Increments 2 and 3 are established, the construction contract will be submitted to the Board for approval.

Original Pre-Construction Amount: \$72,120; Measure H Funds

Approve Amendment No. 1 was awarded at the September 7, 2023 Board of Education Meeting for revised Pre-Construction Amount: \$77,720; including \$5,600 for the assistance of the elevator design; Measure H Funds

Approve Amendment No. 1 was awarded at the September 7, 2023 Board of Education Meeting for Inc 1 Construction Amount of \$8,387,644 funded with Measure H Funds for the construction of Increment 1 at Oak Ridge Elementary School in accordance with DSA approved plans and specifications dated May 26, 2023.

Amendment No. 2 is to increase Pre-construction services in the amount of \$120,096, including \$42,376 for the assistance of the shade structure design and submittal to the DSA for the Increment 2 Building package. Once plans are finalized, approved by DSA and the GMP for Increments 2 and 3 are established, the construction contract will be submitted to the Board for approval.

New Total Contract Amount: \$8,507,740 (\$120,096 + \$8,387,644); Measure H Funds

The cost of construction is currently estimated at \$55,500,000.

Grant Award Notification

GRANTEE NAME AND ADDRESS Sacramento City Unified School District Jorge Aguilar, Superintendent P.O. Box 246870 Sacramento, CA 95824-6870			CDE GRANT NUMBER			
			FY	PCA	Vendor Number	Suffix
			23	13007	67439	01
Attention Jorge Aguilar, Superintendent			STANDARDIZED ACCOUNT CODE STRUCTURE			COUNTY
Program Office Sacramento City Unified SELPA, 3412			Resource Code	Revenue Object Code	34	
Telephone 916-643-9000			3395	8182	INDEX	
Name of Grant Program 2023-24 Special Education Alternate Dispute Resolution					0663	
GRANT DETAILS	Original/Prior Amendments	Amendment Amount	Total	Amend. No.	Award Starting Date	Award Ending Date
	\$14,807		\$14,807		07/1/2023	9/30/2025
CFDA Number	Federal Grant Number	Federal Grant Name			Federal Agency	
84.027A	H027A230116	Individuals with Disabilities Education Act Part B, Section 611			United States Department of Education	

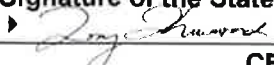
I am pleased to inform you that you have been funded for the Special Education Alternate Dispute Resolution Grant.

This award is made contingent upon the availability of funds. If the Legislature takes action to reduce or defer the funding upon which this award is based, this award will be amended accordingly.

Please return the original, signed Grant Award Notification (AO-400) to:


Samantha Roan, Education Programs Consultant
 California Department of Education
 Focused Monitoring and Technical Assistance Unit V
 1430 N Street, Suite 2401
 Sacramento, CA 95814-5901

Please scan and email a signed copy of the Grant Award Notification (AO-400) to ADR@cde.ca.gov.

California Department of Education Contact Samantha Roan		Job Title Education Programs Consultant
E-mail Address sroan@cde.ca.gov		Telephone 916-327-3674
Signature of the State Superintendent of Public Instruction or Designee 		Date September 5, 2023

CERTIFICATION OF ACCEPTANCE OF GRANT REQUIREMENTS

On behalf of the grantee named above, I accept this grant award. I have read the applicable certifications, assurances, terms, and conditions identified on the grant application (for grants with an application process) or in this document or both; and I agree to comply with all requirements as a condition of funding.

Printed Name of Authorized Agent Jesse Castillo		Title Asst Superintendent of Business Services
E-mail Address jesse-m-castillo@scusd.edu		Telephone (916) 643-9055
Signature 		Date 10/2/23

RECEIVED

SEP 25 2023

Grant Award Notification

GRANTEE NAME AND ADDRESS Mr. Jorge Aguilar, Superintendent Sacramento City Unified School District P.O. Box 246870 Sacramento, CA 95824-6870	CDE GRANT NUMBER			
	FY	PCA	Vendor Number	Suffix
	2023	25220	67439	01
Attention Mr. Jorge Aguilar, Superintendent	STANDARDIZED ACCOUNT CODE STRUCTURE		COUNTY	
Program Office Accounting Office, Categorical Programs	Resource Code	Revenue Object Code	34	
Telephone 916-643-9000	6385	8590	INDEX	

Name of Grant Program
 California Partnership Academies Program: Career Technical Education Initiative (CTEI) 0615

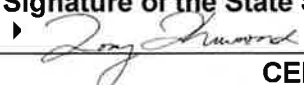
GRANT DETAILS	Original/Prior Amendments	Amendment Amount	Total	Amend. No.	Award Starting Date	Award Ending Date
	\$76,500		\$76,500		7/01/2023	6/30/2025
CFDA Number	Federal Grant Number	Federal Grant Name		Federal Agency		

I am pleased to inform you that you have been funded for the Criminal Justice Academy (9036) at C.K. McClatchy High School.

This award is made contingent upon the availability of funds. If the Legislature takes action to reduce or defer the funding upon which this award is based, this award will be amended accordingly.


Please return the original, signed Grant Award Notification (AO-400) to:

Alicia Aguirre, Associate Governmental Program Analyst
 Career and College Transition Division
 California Department of Education
 1430 N Street, Suite 4202
 Sacramento, CA 95814-5901

California Department of Education Contact Maria Burright	Job Title Education Administrator
E-mail Address CPAcademies@cde.ca.gov	Telephone 916-319-0891
Signature of the State Superintendent of Public Instruction or Designee 	Date September 1, 2023

CERTIFICATION OF ACCEPTANCE OF GRANT REQUIREMENTS

On behalf of the grantee named above, I accept this grant award. I have read the applicable certifications, assurances, terms, and conditions identified on the grant application (for grants with an application process) or in this document or both, and I agree to comply with all requirements as a condition of funding.

Printed Name of Authorized Agent Jesse Castillo	Title Assistant Superintendent	RECEIVED SEP 20 2023
E-mail Address jesse-m-castillo@scusd.edu	Telephone (916) 643-9055	
Signature 	Date	

Grant Award Notification

GRANTEE NAME AND ADDRESS Mr. Jorge Aguilar, Superintendent Sacramento City Unified School District PO BOX 246870 Sacramento, CA 95824			CDE GRANT NUMBER			
			FY See Page 2	PCA See Page 2	Vendor Number 67439	Suffix 05
Attention Aliya Holmes, Coordinator II			STANDARDIZED ACCOUNT CODE STRUCTURE			COUNTY
Program Office Foster Youth Services/Student Support & Health Services			Resource Code 6695	Revenue Object Code 8590	34	
Telephone 916-643-7991						INDEX
Name of Grant Program Tobacco-Use Prevention Education for Grades Six through Twelve, Tier 2						0160
GRANT DETAILS	Original/Prior Amendments	Amendment Amount	Total	Amend. No.	Award Starting Date	Award Ending Date
	\$427,474.00		\$427,474.00		07/01/2023	06/30/2026
CFDA Number	Federal Grant Number	Federal Grant Name			Federal Agency	

I am pleased to inform you that you have been funded for the fiscal year 2023-24 Tobacco-Use Prevention Education for Grades Six through Twelve, Tier 2 Grant.

This award is made contingent upon the availability of funds. If the Legislature takes action to reduce or defer the funding upon which this award is based, then this award will be amended accordingly.

Please return the original, signed Grant Award Notification (AO-400) to:

Teressa Chan-Walters, Associate Governmental Program Analyst
 Whole Child Division/Tobacco-Use Prevention Education Office
 California Department of Education
 1430 N Street, Suite 6408
 Sacramento, CA 95814-5901

California Department of Education Contact Teressa Chan-Walters		Job Title Associate Governmental Program Analyst	
E-mail Address Tchanwalters@cde.ca.gov		Telephone 9163190195	
Signature of the State Superintendent of Public Instruction or Designee ▶ 		Date September 29, 2023	
CERTIFICATION OF ACCEPTANCE OF GRANT REQUIREMENTS			
<i>On behalf of the grantee named above, I accept this grant award. I have read the applicable certifications, assurances, terms, and conditions identified on the grant application (for grants with an application process) or in this document or both; and I agree to comply with all requirements as a condition of funding.</i>			
Printed Name of Authorized Agent Jesse Castillo		Title Assistant Superintendent	
E-mail Address jesse-m-castillo@scusd.edu		Telephone (916) 643-9055	
Signature ▶ 		Date 10/9/23	



Inspector Agreement

THIS INSPECTOR AGREEMENT ("Agreement") is entered into as of October 19, 2023 by and between the Sacramento City Unified School District, a California public school district (the "DISTRICT") and Phoenix Construction, an Independent Contractor, hereinafter referred to as "INSPECTOR". District and Inspector are each a "Party" and together are the "Parties" to this Agreement.

RECITALS:

A. DISTRICT intends to construct Oak Ridge Elementary School New Construction, hereinafter the "Project".

B. Education Code section 17311 and Title 24 of the California Code of Regulations (hereinafter "Title 24") require DISTRICT to provide for competent, adequate and continuous inspection for each construction project by a project inspector satisfactory to the Architect or Structural Engineer in general responsible charge of observation of the work of construction.

C. DISTRICT desires to retain INSPECTOR to provide inspection services on the Project. INSPECTOR shall have all of the duties and responsibilities of an inspector, as set forth in Education Code section 17309 et seq. Title 24 of the California Code of Regulations, including sections 4-336 and 4-342.

D. Government Code section 53060 authorizes DISTRICT to contract with persons to furnish special services and advice to District in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required.

E. INSPECTOR is at least 25 years of age, has had at least three years prior experience in inspection or construction work on building projects of a type similar to the projects for which INSPECTOR is proposed as the inspector, has a thorough knowledge of building materials, is able to read and interpret plans and specifications and has been approved as a project inspector by the Structural Safety Section, Division of the State Architect (hereinafter "DSA").

F. DISTRICT desires to contract with INSPECTOR to provide inspection services to DISTRICT on the terms and conditions set forth below, and INSPECTOR desires the same. INSPECTOR acknowledges that District is required to obtain DSA approval prior to using INSPECTOR'S services on the project. INSPECTOR agrees to do all acts necessary to timely obtain DSA approval.

In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: DUTIES OF THE INSPECTOR

The duties of the INSPECTOR shall include the duties of the inspector set forth in Education Code sections 17309 et seq., and Title 24 of the California Code of Regulations, and future amendments thereto, including the duties set forth below.

A. General. INSPECTOR shall provide competent, adequate, and continuous inspection during construction or alteration satisfactory to the Project Manager, Architect and DSA. INSPECTOR shall act under the direction of the Architect, or Structural Engineer if applicable, as

the Board of Education of DISTRICT may direct. While performing the services contemplated by this Agreement, INSPECTOR agrees to comply with all applicable laws and regulations.

B. Continuous Inspection Services. In fulfilling Inspector's responsibilities, INSPECTOR shall represent DISTRICT as the inspector on the Project job site. INSPECTOR shall have personal knowledge, obtained by his personal and continuous inspection of the work of construction at all stages of its progress, that the requirements of the approved plans and specifications are being completely executed.

Continuous inspection means complete inspection of every part of the work to insure a workmanlike job is constructed in conformity with the contract documents, all applicable requirements of the DSA and all applicable federal and state laws and local ordinances.

Work such as concrete work or brick work which can be inspected only as it is placed will require the constant presence of INSPECTOR. Other types of work which can be completely inspected after the work is installed may be carried on while INSPECTOR is not present. In any case, INSPECTOR must personally inspect every part of the work. In no event shall INSPECTOR have or assume any duties which will prevent INSPECTOR from continuous inspection of the work of construction in all stages of its progress at the site where INSPECTOR is responsible for inspection.

C. Personal Knowledge. INSPECTOR may obtain personal knowledge of the work of construction, either on site or off site, performed under the inspection of a special inspector or inspector, if any (Section 4-333 of Title 24), from the reporting of others on testing or inspection of materials and workmanship for compliance with the plans, specifications and applicable standards. The exercise of reasonable diligence to obtain the facts shall be required.

D. Relations With Architect Or Engineer. INSPECTOR shall work under the general direction of the Architect or Structural Engineer. All inconsistencies or seeming errors in the plans and specifications shall be reported promptly to the Architect or Structural Engineer for interpretation and instructions. In no case, however, shall the instruction for the Architect or Structural Engineer be construed to cause work to be done which is not in conformity with the approved plans, specifications and change orders.

E. Job File. INSPECTOR shall keep a file of approved plans and specifications (including all approved addenda or change orders) on the job at all times, and shall immediately return any unapproved documents to the Architect or Structural Engineer for proper action. INSPECTOR shall have and maintain on the job at all times all codes and documents referred to in the plans and specifications.

F. Semimonthly Reports. INSPECTOR shall keep the Architect or Structural Engineer thoroughly informed as to the progress of the work by making semimonthly reports in writing as required by Section 4-337 of Title 24, signed by the INSPECTOR. A copy of each such report shall be sent to the DISTRICT's Director of Facilities, or designee, and to DSA. Failure to comply with Section 4-337 is cause for DSA to withdraw approval of INSPECTOR.

G. Notifications to Division of the State Architect. INSPECTOR shall notify the DSA (1) when work is started on the Project or restarted if previously suspended per no. 4 below, (2) at least 48 hours in advance of the time when foundation trenches will be complete, ready for footing forms, (3) at least 48 hours in advance of the first pour of foundation concrete and 24 hours in

advance of any subsequent and significant concrete pour, and (4) when all work is suspended for a period of more than two weeks.

H. Construction Procedure Records. INSPECTOR shall keep a record of certain phases of construction procedure including but not limited to the following: (1) the time and date of placing concrete and the time and date of removal of forms in each portion of the structure; (2) identification marks of welders, lists of defective welds, manner of correction of defects, and other matters regarding welding operations; (3) penetration under the last ten (10) blows for each pile when piles are driven for foundations. All such records of construction procedure shall be kept on the job until completion of the work, and shall be made a part of the permanent school records.

I. Deviations. INSPECTOR shall notify the contractor, in writing, of any deviations from the approved plans and specifications, which are not immediately corrected by the contractor when brought to contractor's attention. Copies of such notices shall be forwarded immediately to the District and Architect or Structural Engineer, and to the DSA. INSPECTOR shall safeguard the interest of the District in the construction of the project.

Failure on the part of INSPECTOR to notify the contractor of the deviations from the approved plans and specifications shall in no way relieve the contractor of any responsibility to complete the work covered by contractor's contract in accordance with the approved plans and specifications and all laws and regulations.

J. Verified Reports. From time to time, as the work of construction or alteration progresses, INSPECTOR shall prepare and submit to the DSA verified reports, signed by the Architect or Structural Engineer and INSPECTOR, upon forms prescribed by the DSA, based upon INSPECTOR'S personal knowledge (as defined in Education Code section 17309 that the work during the period covered by the report has been performed and materials have been used and installed, in every material respect, in compliance with the approved plans and specifications, setting forth such detailed statements of fact as are required by the DSA in accordance with Section 4-336 of Title 24. INSPECTOR shall also prepare and deliver to the DSA detailed statements of fact regarding materials, operations and other matters related to the work of construction when requested.

K. No Authority To Contract. INSPECTOR shall have no authority to contract on behalf of DISTRICT.

L. If not already set forth herein, INSPECTOR must:

- a. Be familiar with the plans, specifications, change orders, and the contractor's operations during all phases of the project.
- b. Observe, check and measure items used in the project for compliance with the plans, specifications, change orders, and technical instructions from the Architect.
- c. Maintain a daily report/log describing the general work performed by the contractor, noting problems, rejections of materials or work and unusual events. The report/log shall be filled daily, tersely and factually. The report/log shall reflect the contractor's activities each day. This and all other reports shall be timely and properly completed. All reports and records created or maintained by INSPECTOR shall be uploaded to the District's construction management program, e-Builder, and shall be District's sole property.
- d. Supervise on-site testing and ensure that all required tests are performed by a competent testing laboratory, contractor or engineer as specified in the Contract

Documents. Check and report to the Project Manager and the Architect laboratory tests indicating defective materials or other problems. Check billings from testing laboratories to see that billings reflect only tests actually requested and performed. Maintain a daily log of inspection by testing lab.

- e. Make sure that the required record drawings are accurately marked up as required.
- f. Report to the Project Manager and the Architect verbally and in writing: (1) poor performance by the contractor; (2) acts prejudicial to the District's interest; and, (3) work performed or materials used which are not in conformance with the Contract Documents.
- g. Assist the Project Manager and the Architect in the final inspection and project acceptance phase.
- h. Upon request, provide the District with a written report regarding contractor's performance on the Project.
- i. Maintain an effective working relationship with the contractor, District personnel and Architect.
- j. Be tactful, firm and fair in insisting that contractor adhere to the Contract Documents.
- k. Attempt to foresee methods or materials which will not be acceptable and immediately bring these facts to the contractor's attention in order to avoid removal of work already in place.
- l. Attempt to anticipate the contractor's problems and review with the Project Manager anticipated schedules and work involved prior to the commencement of a new trade on the job.
- m. Attempt to foresee the need for all required tests and inspections.
- n. When notified by contractor, arrange for all tests and inspections which are required by the Contract Documents, arrange for prompt notification of the Architect of the results of the tests and inspections, and record Architect's approval or rejection.
- o. Refuse to allow any related work to be installed until shop drawings have received final approval from the Architect.
- p. Ensure that Architect's verbal instructions during field inspections are written in the Daily Report/Log for that day or in the Field Instruction Sheet.
- q. Be responsible for slump tests and for taking concrete test cylinders for each concrete pour and marking them for identification. Inspector shall make arrangements for transportation and storage of test materials.
- r. Receive samples which are required to be furnished at the job site; record date received and from whom; notify Architect of their readiness for examination, record Architect's approval or rejection; and maintain custody of approved samples.
- s. Inspect all materials immediately upon their delivery to the site to ensure that they comply with the Contract Documents and are in a good and acceptable condition. Exert extreme care to ensure that no communications to the contractor or contractor's agents are misinterpreted as changes in the scope of the work.
- t. Assist in the completion and submission of DSA close out documents as required by DSA.
- u. INSPECTOR may be required to utilize construction program management software, such as, but not limited to, e-Builder™.

M. Restrictions on the Inspector's Authority. In the performance of the duties required by this Agreement, the INSPECTOR exercises limited authority. The INSPECTOR shall not:

- a. Authorize deviations from the Contract Documents;
- b. Avoid conducting any required tests;
- c. Enter the area of responsibility of the contractor's field superintendent;

- d. Expedite the job for the contractor;
- e. Advise on, or issue directions relative to, any aspect of the building technique or sequence unless a specific technique or sequence is called for in the specifications;
- f. Approve shop drawings or samples;
- g. Authorize or advise the District to occupy the project, in the whole or in part, prior to final acceptance of the project;
- h. Interfere in contractor/subcontractor relationships.

ARTICLE 2: VIOLATIONS OF THE FIELD ACT

Failure, refusal or neglect on the part of INSPECTOR to notify the contractor of any work which does not comply with the requirements of the approved plans and specifications, or failure, refusal or neglect to report immediately, in writing, any such violation to the Architect or Structural Engineer, to DISTRICT's Director of Facilities, and to the DSA shall constitute a violation of the Field Act and shall be cause for the DSA to take action which may result in the withdrawal of the INSPECTOR'S approval.

In accordance with Education Code section 17312, any person who violates the Field Act (Education Code sections 17280 through 17313), or makes any false statement in any verified report or affidavit required pursuant to that Act is guilty of a felony.

ARTICLE 3: TERM

The term of this Agreement shall commence on October 19, 2023 and shall terminate upon completion and acceptance by the Board of Education of DISTRICT of the construction project(s) for which INSPECTOR was retained, unless earlier terminated as provided in the Agreement.

ARTICLE 4: COMPENSATION

DISTRICT agrees to pay INSPECTOR for services rendered and accepted by DISTRICT at the rate of \$110 per hour for DSA Class 1; \$105 per hour for DSA Class 2; and \$100 per hour for Class 3. Total compensation shall not exceed **Four Hundred Twenty-Nine Thousand Six Hundred Sixty Dollars (\$429,660)** for this Agreement. INSPECTOR will be paid for hours worked (not a lump sum), and shall record all hours worked in a daily log which shall be submitted to the District on a weekly basis.

Payment will be made within 30 days upon submission of periodic invoices to: Anthony Lea, Manager of Facilities, Planning and Construction, Sacramento City Unified School District, 5735 47th Avenue, Sacramento, CA 95824. Invoices must show the number of hours worked, the Agreement number, the project name and location and must contain the INSPECTOR'S original signature on all copies. INSPECTOR'S failure to maintain required records or to properly submit invoices may result in non-payment to INSPECTOR.

INSPECTOR agrees that if the construction schedule is interrupted for an unusual period of time, INSPECTOR shall not charge unreasonably for services rendered during the period of interruption.

ARTICLE 5. TERMINATION

Either party may terminate this Agreement, without cause, at any time by giving the other party thirty (30) days written notice of termination. The effective date of termination shall occur thirty (30) days after the day on which the party terminating this Agreement personally delivers written

notice of termination to the other party or mails such notice of termination in accordance with paragraph 9 of this Agreement.

ARTICLE 6: INDEPENDENT CONTRACTOR

A. It is agreed that the relationship between DISTRICT and INSPECTOR is one of independent contractor and that no relationship of employer-employee or agency exists between the parties hereto.

B. All persons employed by INSPECTOR or acting at the direction of the INSPECTOR to assist INSPECTOR in rendering the services to be provided under this Agreement shall be entirely and exclusively employees and agents of the INSPECTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharge, or any other terms of employment or requirements of law, shall be determined by INSPECTOR, and DISTRICT shall have no right or authority over such persons or the terms of such employment. INSPECTOR shall comply with any applicable prevailing wage laws.

C. INSPECTOR hereby indemnifies, holds harmless and agrees to defend DISTRICT, its Board members, officers, directors, agents and employees from any contention by a third party that an employer-employee or agency relationship exists between DISTRICT and INSPECTOR, its agents and employees by reason of this Agreement.

D. INSPECTOR and his/her/its employees and agents performing services related to this Agreement are not agents or employees of DISTRICT and are not entitled to participate in any DISTRICT pension plans, retirement, health and welfare programs or any similar programs or benefits as a result of performing such services.

E. INSPECTOR and his/her/its agents and employees performing services related to this Agreement are not employees of DISTRICT for federal or state tax purposes or for any other purpose. DISTRICT shall have no obligation to pay wages to such persons or to withhold payroll taxes from compensation paid to such persons for services under this Agreement. INSPECTOR shall be solely responsible for payment of wages, if any, and employer's payroll tax liability related thereto. INSPECTOR agrees to indemnify, defend and hold the District, its Board members, agents, officers and employees harmless from any liability which INSPECTOR may incur to the Federal or State governments as a consequence of this Agreement. All payments to INSPECTOR shall be reported to the appropriate State and Federal tax authorities as required.

F. It is further understood and agreed by the parties hereto that in the performance of INSPECTOR's obligations under this Agreement, INSPECTOR is subject to the control or direction of DISTRICT merely as to the designation of tasks to be performed, and results to be accomplished by the services agreed to be rendered and performed under this Agreement, and not as to the means and methods for accomplishing the result.

G. If in the performance of this Agreement any third persons are employed by DISTRICT, such persons shall be entirely and exclusively under the direction, supervision and control of DISTRICT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by DISTRICT, and INSPECTOR shall have no right or authority over such persons or the terms of such employment. Nothing contained in the Agreement shall be deemed to create any contractual relationship between the INSPECTOR and the Architect or contractor, nor shall anything

contained in this Agreement be deemed to give any third party any claim or right of action against the District, the Architect or the INSPECTOR which does not otherwise exist.

ARTICLE 7: FINGERPRINTING REQUIREMENTS

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering to determine that they have not been convicted of a serious or violent felony. If the DISTRICT determines that more than limited contact with students will occur during the performance of these services by INSPECTOR, INSPECTOR will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to DISTRICT.

DISTRICT has determined that INSPECTOR'S services will result in limited contact with pupils. INSPECTOR is required to comply with the conditions listed in Exhibit A, Contractor's certification of compliance with District fingerprinting and security requirements. If INSPECTOR is unwilling to comply, INSPECTOR'S employees may not enter any school site until INSPECTOR provides certification of fingerprinting clearance by the DOJ for employees providing services. These requirements apply to self-employed inspectors.

ARTICLE 8: INDEMNIFICATION AND EXCULPATION

INSPECTOR shall indemnify, hold DISTRICT and its Board members, agents, employees and officers harmless from and defend DISTRICT against all claims, demands, actions or liability for injury or damage, including attorney's fees and costs, to persons or property arising out of the negligent acts or omissions of the INSPECTOR in connection with this Agreement; however, the INSPECTOR shall not be obligated under this Agreement to indemnify the DISTRICT, its agents, Contractors, Architects, or others involved in the Project to the extent that the damage is caused by the active or sole negligence of willful misconduct of the DISTRICT or its agents or servants, other than the INSPECTOR.

ARTICLE 9: INSURANCE

INSPECTOR shall maintain comprehensive general liability insurance during the life of this Agreement and shall provide the DISTRICT with a current certificate of insurance evidencing its general liability insurance coverage in a sum not less than \$2,000,000 per occurrence, and such certificate or policy shall name the District as an additional insured. INSPECTOR shall carry workers' compensation coverage for INSPECTOR's employees rendering services to DISTRICT under this Agreement. DISTRICT assumes no liability for workers' compensation or for loss, damage or injury to persons or property in the performance of the services rendered by INSPECTOR under this Agreement. The insurance shall protect the INSPECTOR from the claims set forth below that may arise out of or result from the INSPECTOR'S performance of services or failure to perform services under this Agreement:

- a. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;
- b. Claims for damages because of bodily injury, occupational sickness or disease or death of Inspector's employees, agents or invitees;
- c. Claims for damages because of bodily injury or death of any person;
- d. Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the Inspector or (2) by any other person



- e. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use therefrom; or
- f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The Inspector’s comprehensive general and automobile liability insurance shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:	Property Damage:
\$2,000,000 Each Occurrence	\$2,000,000 Each Occurrence
\$2,000,000 Aggregate	\$2,000,000 Aggregate

Comprehensive Automobile Liability

Bodily Injury:	Property Damage:
\$2,000,000 Each Person/Occurrence	\$2,000,000 Each Occurrence

ARTICLE 10: NOTICE

All notices or other communications that one party may be required to desire to give to the other party under this Agreement shall be in writing and shall be served personally or by certified or by first class or overnight mail, postage prepaid, addressed as follows or to such other address as either party may provide to the other party in writing:

DISTRICT:

Sacramento City Unified School District
Attn: Tina Alvarez Bevens, Contracts
5735 47th Avenue
Sacramento, CA 95824

INSPECTOR:

George VanDusen
dba Phoenix Construction
8677 Kingdale Avenue
Orangevale CA 95662

ARTICLE 11: NONASSIGNABILITY

INSPECTOR is specially trained and competent to render the services to be provided under this Agreement. INSPECTOR shall not assign or subcontract all or any part of this Agreement or obligation of INSPECTOR under this Agreement or any interest therein, without the prior written consent of DISTRICT.

ARTICLE 12: CONFLICT OF INTEREST

A. INSPECTOR shall abide by and be subject to all applicable DISTRICT policies, regulations, statutes or other laws regarding conflict of interest.

B. INSPECTOR shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Inspector shall not hire any employee of the United States government to perform any service covered by this Agreement.

C. INSPECTOR affirms to the best of its/his/her knowledge, there exists no actual or potential conflict of interest between Inspector’s family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District’s attention in writing.



ARTICLE 13: MODIFICATION IN WRITING

This Agreement may not be modified, changed, or supplemented, nor may any modifications under this Agreement be waived, except by written instruments signed by both parties.

ARTICLE 14: NONDISCRIMINATION

It is the policy of the District that in connection with all services performed under Agreement, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 15: CALIFORNIA LAW

This Agreement shall be construed in accordance with and governed by the laws and decisions of the State of California.

ARTICLE 16: BINDING EFFECT

This Agreement shall be binding upon DISTRICT and INSPECTOR, their heirs, executors, administrators, successors and assigns.

ARTICLE 17: SEVERABILITY

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby, and each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18: COUNTERPARTS

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile or original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE 19: INTERPRETATION

The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

ARTICLE 20: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

Executed on the day and year first above written.



**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

PHOENIX CONSTRUCTION

By: _____
Jesse Castillo
Assistant Superintendent

By: _____
George VanDusen

Date

Date



EXHIBIT A

CONTRACTOR CERTIFICATION

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that its employees providing that service who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the Agreement. The school district may determine, under the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement. The District has also determined that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Contractor employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Contractor employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all of its employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, Contractor cannot adhere to the conditions stated above, Contractor shall so inform the District and shall assign only those employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement.

Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title



PHOENIX CONSTRUCTION

8677 Kingdale Avenue
Orangevale, CA 95662
(916) 539-2512

Contr. Lic. #268157 / DSA Class 1 Project Inspector #6380
www.phoenixconstruction.com / phoenixconstruction@prodigy.net

PROPOSAL FOR INSPECTION SERVICES

Sacramento City Unified School District

September 14, 2023

RE: Project: Oak Ridge Elementary School Campus Replacement
Address: 4501 Martin Luther King Jr. Blvd, Sacramento, CA 95820
DSA App#: 02-120987 File#: 34-53

This Proposal is made and entered into by and between the Sacramento City Unified School District [SCUSD] and George V. VanDusen, dba Phoenix Construction [Inspector]. The Inspector is a registered school construction Project Inspector (DSA Class 1 #6380), as the term is defined by Education Code Section(s) 17311, 81141, & 81143, and has agreed to provide such services. SCUSD hereby hires the Inspector and/or his Associates as an independent Contractor and as a professional expert to provide inspection services for the “OAK RIDGE ELEMENTARY SCHOOL CAMPUS REPLACEMENT” project at 4501 Martin Luther King Jr. Blvd, Sacramento, CA 95820

SCOPE OF WORK:

Inspector will provide professional construction inspection services as a representative of the Authority Having Jurisdiction (AHJ) for the Oak Ridge Elementary School Campus Replacement project, as the Inspector of Record (IOR), and in accordance with the plans and specifications thereof, and the provisions defined in the Division of the State Architect IR A-8 “PROJECT INSPECTOR DUTIES AND PERFORMANCE”, as well as the California Code of Regulations Title 24, Part 1 of the California Administrative Code. Note that the Inspector is not a Safety Inspector and is not an enforcement agent for any jurisdictional safety agency. As such, the Inspector will not be responsible for safety compliance.

COMPENSATION:

The Inspector shall be compensated by the SCUSD at a rate of \$110.00 per hour, for up to 3906 hrs. [approx. 30 months], for a total fee of \$429,660.00. All payment applications are to be approved by SCUSD and unbilled funds are to remain with SCUSD. The Inspector is an Independent Contractor and as such, payments are to be made without deductions. For the purpose of IRS 1099-NEC distributions, the Inspector Tax ID is 94-2171356.

DSA APPROVAL:

The Inspector shall be responsible for completion of, and submitting to the Architect, the required DSA verification of qualifications, and complying with all duties defined in the aforementioned Code of Regulations and Administrative Code (Title 24, Part 1). The Inspector will be responsible for the posting and submittal of all the inspector required forms that will be required by the SCUSD, DSA (“BOX”), and the Architect & Engineer. Note: Non-DSA projects require a DSA-999 Verified Report at the completion of the project, to be filed with DSA.

TERMINATION (failure to perform):

Upon failure to perform by either party, this agreement and engagement of services may be terminated by either party upon thirty (30) days’ written notice.

Signed: _____ Date: _____
Sacramento City Unified School District

Signed: _____ Date: 09/14/2023
George V. VanDusen, DSA #6380



Sacramento City Unified School District

Contract for Services:

Significant Disproportionality Implementation Support

August 2023



GENERAL PROVISIONS

1. Contract

This Contract is entered into this **23rd** day of **August, 2023**, between **Sacramento City Unified School District** (hereinafter referred to as "LEA") and Collaborative Learning Solutions, LLC (hereinafter referred to as "CONTRACTOR") for the purpose of providing consultation, coaching, and/or professional learning to LEA. CONTRACTOR and LEA may be referred to individual or collectively as "The Parties".

2. Compliance with Laws, Statutes, Regulations, LEA Policies and Procedures

During the term of this contract unless otherwise agreed, CONTRACTOR shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules, policies, and regulations. CONTRACTOR shall also comply with all LEA policies and procedures unless, taking into consideration all of the surrounding facts and circumstances, a policy or policies or a portion of a policy does not reasonably apply to CONTRACTOR. CONTRACTOR will verify TB and LiveScan status of all employees.

3. Term of Contract

The term ("Term") of this CONTRACT shall commence on **August 23, 2023** and shall end on **June 30, 2024**.

4. Contract Execution

LEA and CONTRACTOR are responsible for the full execution of this contract upon formal approval by both parties. No contract work shall be requested by LEA or completed by CONTRACTOR without a fully executed contract in place.

Contracts not fully executed within 45 days of LEA approval shall be subject to review and possible revision of fees for contracted services.

ADMINISTRATION OF CONTRACT

5. Notices

All notices required to be given pursuant to the terms hereof shall be in writing and may be delivered in person or by certified or registered mail, postage prepaid.

If mailed or delivered by hand, notice shall be effective as of the date of receipt by addressee. All notices mailed to LEA shall be addressed to the person and address as indicated on the Notice page of this Contract. Notices to CONTRACTOR shall be addressed as indicated on Notice page of this Contract.

6. Modifications and Amendments Required to Conform to Administrative Guidelines

This Contract may be modified or amended by the LEA to conform to administrative and statutory guidelines issued by any state, federal or local governmental agency. The LEA shall provide the CONTRACTOR thirty (30) days notice of any such changes or modifications made to conform to



administrative or statutory guidelines and a copy of the statute or regulation upon which the modification or changes are based.

7. Contract Termination

Either party may terminate this Contract with or without a material breach by the other party.

To terminate because of a material breach by the other party, the terminating party shall give the other party written notice specifying the material breach in detail. Unless such material breach is cured to the reasonable satisfaction of the terminating party, this Contract shall end on the thirtieth (30th) day after the breaching party's receipt of such written notice.

To terminate the Contract without a material breach, either party shall give the other party written notice of termination which shall end this contract on the sixtieth (60th) after the other party's receipt of such notice.

Upon termination of this Contract without notice of a material breach, CONTRACTOR shall be entitled to additional financial payments to offset financial losses. And as such LEA shall be responsible for making additional financial payments to CONTRACTOR upon early contract termination. To support this contract the CONTRACTOR has hired personnel and allocated staff time to fulfill all contractual obligations. LEA shall be invoiced for 50% of remaining unbilled balance at the time of contract cancellation without a material breach.

In the event of a prepayment of funding by the LEA, the LEA shall forfeit any and all prepaid funds if early contract termination is requested without notice of a material breach.

8. Cancellation/Postponement of Service Days

LEA and CONTRACTOR agree to honor and fulfill scheduled consulting, coaching, and professional development days as mutually agreed upon in advance. In most cases the scheduling of service days will require preparation, schedule coordination, and at times travel time and related travel expenses.

Cancellation or postponement of service days must be communicated in writing to all related parties a minimum of 24 hours in advance. If LEA cancels or postpones a service day less than 24 hours in advance the LEA shall agree to pay for this day at the CONTRACTORS current daily rate plus any related travel expenses incurred which CONTRACTOR is unable to cancel.

9. Delays or Rollovers into the Next School Year

Without an agreed and signed amendment extending the time for performance of this Contract, the Contract shall conclude on the end date stated in Paragraph 3, above, with any unbilled/remaining balance due to the CONTRACTOR. LEA extension requests for a Contract delay or rollover into the next school year for any reason, shall be considered by CONTRACTOR on a case-by-case basis taking into account CONTRACTOR's overhead obligations, staffing, and other obligations. In no case will the CONTRACTOR roll over more than ten percent (10%) of the service days provided in this Contract. Additionally CONTRACTOR will not rollover performance of the Contract's terms for more than seventy (70) calendar days beyond the end date stated in Paragraph 3.



10. Insurance

CONTRACTOR shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with performance under this Contract by CONTRACTOR, its agents, representatives, or employees.

A. Insurance coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the state in which services are performed and Employer's Liability Insurance with limits of \$2,000,000/\$2,000,000/\$2,000,000.

B. CONTRACTOR shall maintain limits of insurance no less than:

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury and property damage, personal injury and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit (\$2,000,000).
2. Automobile Liability: \$2,000,000 combined single limit.
3. Professional Liability/errors and omissions coverages: \$2,000,000 per occurrence/\$2,000,000 aggregate.

C. Insurance is to be placed with insurers admitted by the State of California and with a current A.M. Best's rating of no less than A-: VII, unless otherwise acceptable to the LEA.

If LEA or CONTRACTOR determines that change in insurance coverage obligations under this section is necessary, either party may reopen negotiations to modify the insurance obligations through an amendment to this Contract.

11. Indemnification and Hold Harmless

LEA shall indemnify and hold CONTRACTOR and its Board Members, administrators, employees, agents, attorneys, and subcontractors ("CONTRACTOR Indemnities") harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this Contract or its performance, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it (excluding CONTRACTOR and/or any CONTRACTOR Indemnities).

LEA represents that it is self-insured in compliance with the laws of the state of California, that the self-insurance covers LEA employees acting within the course and scope of their respective duties and that its self-insurance covers LEA's indemnification obligations under this Contract.



12. Non-Discrimination

CONTRACTOR shall not unlawfully discriminate on the basis of race, religion, sex, national origin, age, sexual orientation, or disability in employment or operation of its programs.

COMPENSATION

13. Terms and Payment Schedule

Total Contract Amount: \$225,000.

This rate is inclusive of preparation and travel.

The total cost amount includes all consultation, coaching, and professional development services outlined in Section 19.

The LEA shall pay to CONTRACTOR the Contract Amount on the following schedule:

10% Payable upon Contract Execution: \$22,500. The amount payable upon contract execution shall be invoiced NET 30.

Balance payable as follows:

Oct 1, 2023: \$101,250
Jan 1, 2024: \$50,625
Mar 1, 2024: \$50,625

CONTRACTOR will invoice the LEA in accordance with the payment schedule for amounts due. All related invoices shall be NET 30.

CONTRACTOR'S hourly rate is \$625 which equates to a daily rate of \$5,000. This is an all-inclusive rate to include travel, per diem, etc.



14. Independent Contractor

CONTRACTOR'S relationship with LEA will be that of an independent contractor, and nothing in this Agreement will be construed to create an employer-employee, joint venture, partnership, agency or other relationship between LEA and CONTRACTOR. CONTRACTOR has no authority to act on behalf of or to enter into any contract, or to incur any liability on behalf of LEA. LEA agrees that during the term of this Agreement, or any extension or renewal thereof, CONTRACTOR may be engaged by other persons, firms or corporations; provided, however, that the provisions of this Agreement will be strictly observed by CONTRACTOR with respect to such other persons, firms or corporations. CONTRACTOR is solely responsible for all taxes related to the services hereunder including, but not limited to, payments to or taxes for its employees or subcontractors, withholdings and other similar U.S. or international statutory obligations including, without limitation, Workers Compensation Insurance, Social Security, federal, state or any other employee payroll taxes. In the performance of all services hereunder, CONTRACTOR will comply with all applicable laws and regulations.

15. Representations and Warranties

Each Party represents and warrants to the other Party as follows:

That the individual(s) signing this Agreement on behalf of the respective Party has the full right, power, and authority to bind the respective Party to this Agreement.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THERE SHALL BE NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING ANY AND ALL SERVICES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT (INCLUDING BUT NOT LIMITED TO COPYRIGHT INFRINGEMENT BY LEA TO THIRD PARTIES), MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING OR PERFORMANCE UNDER THIS AGREEMENT

The Parties shall use all reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and make effective the services contemplated by this Agreement.

CONTRACTOR shall provide the Services identified in Section 19 in a timely and professional manner and LEA agrees to cooperate and provide information, personnel or documents to CONTRACTOR upon reasonable request and in a timely fashion that enables CONTRACTOR to complete those services identified in Exhibit A.

The Parties represent that no works will infringe on the copyright, patent, trademarks, publicity, privacy, trade secrets or other intellectual property rights of any third party.

16. Limitation on Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY (INCLUDING STRICT LIABILITY) FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING FOR LOSS OF PROFITS, REVENUE, DATA, USE, OR FOR INTERRUPTED COMMUNICATIONS, INCURRED BY



EITHER PARTY IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS ON LIABILITY SHALL NOT APPLY WITH RESPECT TO A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION HEREOF.

17. Confidential Information

"Confidential Information" shall include all information delivered by one Party to the other Party during the Term of this Agreement including, but not limited to, any and all methods, processes, strategies, plans, formulas, software, programs, sales and marketing information, technical and financial information, data, know-how, documentation and other information disclosed after the Effective Date, whether disclosed visually, orally, or in writing, and whether or not tangibly recorded, by one Party ("the Disclosing Party") to the other Party ("the Receiving Party"). Except as otherwise provided in this Agreement, each Party considers any and all Confidential Information to be proprietary, and all of the Disclosing Party's Confidential Information shall at all times, and throughout the world, remain the property of the Disclosing Party, exclusively, and all applicable intellectual property rights in Disclosing Party's Confidential Information shall remain the property of the Disclosing Party, exclusively. Upon termination of this Agreement, the Receiving Party shall return to the Disclosing Party all tangible materials and copies thereof containing Confidential Information received from the Disclosing Party.

The Receiving Party agrees to restrict disclosure of the Disclosing Party's Confidential Information to those persons involved who have a "need to know". The Receiving Party and any persons involved on the Receiving Party's behalf: (i) shall maintain the confidentiality of the Disclosing Party's Confidential Information; (ii) shall not disclose such Confidential Information to any third party; and (iii) shall only use such Confidential Information for purposes of performing this Agreement. The Receiving Party agrees to handle the Disclosing Party's Confidential Information with the same degree of care that the Receiving Party applies to its own Confidential Information of similar type, but in no event less than reasonable care.

The obligation to protect the Disclosing Party's Confidential Information and the liability for unauthorized disclosure or use of such information shall not apply with respect to information that: (1) is independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information; (2) is known, or that becomes known to the general public without breach of this Agreement; (3) was known to the Receiving Party without confidential limitation at the time of disclosure by the Disclosing Party, as evidenced by documentation in the Receiving Party's possession; (4) is approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization; (5) is disclosed in response to a valid order to a court, regulatory agents, or other governmental body in the United States or any political subdivision thereof, but only to the extent and for the purposes stated in such order; provided, however, that the Receiving Party shall first notify the Disclosing Party in writing of the order and cooperate with the Disclosing Party if it desires to seek an appropriate protective order; or (6) is received rightfully and without restriction from a third party.

The parties hereto acknowledge that LEA possesses and will possess non-public information that has been created, discovered or developed by, or has otherwise become known to, LEA (including, without limitation, information created, discovered, developed or made known to CONTRACTOR arising specifically out of its retention as a CONTRACTOR by LEA), and/or in



which property rights have been assigned or otherwise conveyed or disclosed to LEA, which information has commercial value in the business in which LEA is engaged or intends to engage. All of the aforementioned information is hereinafter called "Confidential Information". By way of illustration, but not limitation, Confidential Information includes trademarks, patents, patent applications, trade secrets, research results, processes, formulae, data and know-how, improvements, designs, prototypes, inventions, techniques, technology (whether patentable or not), marketing plans, business plans, strategies, forecasts and customer lists and customer information of LEA. Confidential Information also includes any information which LEA has received from a third party which LEA is obligated to treat as confidential or proprietary.

Excepts as required by law, at all times CONTRACTOR and CONTRACTOR's employees and agents will keep in confidence and trust all Confidential Information and will not disclose, sell, use, lecture on, or publish any Confidential Information without the prior written consent of LEA, except as may be necessary in the ordinary course of performing his, her or its duties as a CONTRACTOR of LEA, and except that CONTRACTOR may disclose such information to his, her or its attorneys, agents and other business representatives as required by law. CONTRACTOR will also use his, her or its good faith efforts to ensure that his, her or its employees and CONTRACTORS also are aware of and comply with these obligations of non-disclosure and non-use.

18. Contract Dispute Resolution

Any disputes or disagreements between LEA and CONTRACTOR regarding implementation or interpretation of this Contract, or otherwise relating to this Contract, that are not informally voluntarily resolved shall be addressed and/or resolved as set forth in this section of the Contract. The provision in this section of the Contract shall apply to all disputes and disagreements related to events that occur and/or injuries that are incurred and/or commence during the term of this Contract, even if the party claiming injury first discovers the events and/or injuries giving rise to the disagreement or dispute or first notifies the other party of the disagreement or dispute, after expiration of this Contract. For purposes of this section of the Contract, the term "injury" shall include monetary and/or non-monetary injuries.

The party claiming injury as a result of the facts underlying the dispute or disagreement shall first attempt to resolve the dispute directly between senior level representatives of the parties. If LEA is the party claiming injury, LEA shall notify CONTRACTOR's senior level representative of the existence of a disagreement or dispute and attempt to resolve the matter informally. If CONTRACTOR is the party claiming injury, CONTRACTOR shall notify the LEA's senior level representative of the existence of a disagreement or dispute and attempt to resolve the matter informally.

If a dispute arises under this Contract that the Parties herein cannot resolve, said dispute will be resolved as follows: the parties shall first make a good faith effort to resolve the dispute through mediation within 60 days of the notice of dispute, or pending the Parties' mediator's first date of availability. The mediation shall be conducted in California and unless the parties mutually agree that the mediation will be held remotely, the mediation will be held in a single physical location in Riverside County California.

Neither Party may submit the claim to arbitration until fifteen (15) days after the mediation session between the parties or ninety (90) days after the matter has been first referred to mediation, whichever is the first to occur. If the parties do not resolve the dispute by mediation within the



period described above, either Party shall refer the dispute for resolution by binding Arbitration. If the Parties cannot mutually agree on a single Arbitrator, each party will provide the name one (1) potential Arbitrator. Thereafter, the Parties proffered two potential Arbitrators will then select a third neutral Arbitrator as the sole "Final Arbitrator". The determination of the choice of the Final Arbitrator will be final and binding on the parties. The parties agree to equally share the costs of any mediation and/or binding arbitration.

The arbitration shall be conducted in California and administered by the American Arbitration Association in accordance with its Commercial Rules and, unless the parties mutually agree that the arbitration will be held remotely, the arbitration will be held in a single physical location in Riverside County California. The arbitrator shall have the authority to determine an appropriate remedy in connection with any matter brought before the arbitrator, including sanctions or interlocutory relief with respect to discovery, provided that such remedy must be of a nature which a court could award if the matter had been litigated in a court of competent jurisdiction. The decision of the arbitrator shall be final and binding on all parties. Judgment upon the award rendered by the arbitrator, including any interlocutory relief or sanctions granted or issued by the arbitrator with respect to matters related to discovery, may be entered in any court having jurisdiction thereof.

If any legal action or proceeding arising out of or relating to this Contract is brought by either party to this Contract, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, their reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

In the event a Party refuses to participate in this Contract Dispute Resolution Process identified herein, the Parties hereby agree and consent to the exclusive jurisdiction of Courts of the State of California, County of Riverside.

WORK TO BE PERFORMED

19. Scope of Work/Services

Services to be rendered to LEA by the CONTRACTOR as described below:

Appreciative Inquiry

CLS consultants will conduct an internal evaluation of the district's tiered system of support using the Integrated Framework for Improvement. This framework focuses primarily on the district structures developed to support schools with the implementation of a fully integrated multi-tiered support system (MTSS). A report highlighting strengths and opportunities for growth will be provided along with an executive summary and slide deck for presenting the findings to stakeholders.

Investment: \$25,000

Academic Office Leadership Team (AOLT) Consultation

Consultation and coaching for the Academic Office leadership team focused on the integration of multiple initiatives across the district. Sessions include an annual planning day to establish measurable annual goals for the team and quarterly meetings to set quarterly priorities and evaluate the previous quarter's performance. Consultation also includes meetings with the Chief Academic Officer and members of the leadership team regarding compliance with special education monitoring activities and the recent settlement agreement.



Investment: \$35,000

District Consultation

Consultation support in the following areas: discipline data audit and adjustments related to the BPSB settlement, significant disproportionality (development, implementation and monitoring the CIM for CCEIS plan), implementation of BPSB settlement action, district leadership team consultation for establishing a district-wide integrated framework for MTSS. (10 days)

Investment: \$50,000

Restorative Discipline Guidelines

CLS Consultants will work with a district team to establish a set of universal discipline guidelines that will assist school leadership with responses to student misbehavior that are grounded in restoration and skill acquisition. The guidelines will also provide guidance on the use of removals and exclusionary responses (i.e. suspensions).

Investment: \$25,000

Restorative Practices Training

Restorative practice is a social science that studies how to build social capital and achieve social discipline through participatory learning and decision making. Restorative practices change the way we look at traditional behavior management by promoting the power of relationship and community building, rather than the power of punishment as a motivator. Restorative practices provide a framework and structure for responding to challenging behavior through authentic dialogue, self-reflection, empathy and accountability. CLS Consultants will provide two days of foundational Restorative Practices Training for the district team working to develop a set of Restorative Discipline Guidelines.

Investment: \$10,000

Evaluation of in-district EBD programs

CLS Consultants will conduct an evaluation of the specialized programs serving students with disabilities identified as having significant emotional and behavioral disorders (EBD). The goal of this evaluation is to analyze the current program structures, practices and procedures through the lens of the C5 framework to determine areas of strength and to identify growth opportunities for increasing the effectiveness of the programs.

Investment: \$35,000

Equity Community of Practice (ECOP)

The Equity Community of Practice (ECoP) strategy focuses on identifying root causes of inequities in the educational system and developing change ideas to ensure the highest outcomes for ALL students. Through this strategy affinity groups of stakeholders (i.e. parents and/or caregivers) are trained to analyze quantitative and qualitative data, identify potential root causes, develop change ideas on how to mitigate disparate outcomes, and monitor implementation data. (3 groups)

Investment: \$45,000

Note: Any service/support hours that exceed the hours allocated above, as well as service/support hours that are requested or necessary after June 30, 2024, will be billed in addition to the contract amount at the CONTRACTOR'S published hourly rate specified in Section 13.



20. Miscellaneous:

Venue and Governing Law

The laws of the State of California shall govern the terms and conditions of this Contract. For purposes of mediating, arbitrating, or litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this Contract, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California.

Force Majeure.

Each Party shall be relieved from performance of any obligation under this Agreement if and while such non-performance is caused, directly or indirectly, by war (declared or undeclared), insurrection, civil disturbance, orders, rules, regulations or decrees of any competent government authority, strikes, labor shortages, pandemic and/or public-health crisis, fire, flood, earthquake, storm, failure of Internet access service, power outage, act of God, or any other event beyond the reasonable control of such Party.

Severability.

Each provision in this Agreement is independent and severable from the others, and no provision will be rendered unenforceable because any other provision is found by a proper authority to be invalid or unenforceable in whole or in part. If any provision of this Agreement is found by such an authority to be invalid or unenforceable in whole or in part, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision and the intent of the parties, within the limits of applicable law.

Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; such counterparts shall together constitute one and the same document. For all purposes, a signature by fax, by email of a PDF file, or by DocuSign shall be treated as an original signature.

Assignment.

This Agreement will be binding upon the Parties, and inure to the benefit of, the parties hereto and their respective heirs, successors, assigns, and personal representatives. This Agreement may not be assigned by the parties without the prior written consent, which consent may be withheld, at the Parties sole and absolute discretion.

Entire Agreement.

This Agreement, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements have been made by any party, or anyone acting on behalf



of any party, that are not embodied in this Agreement with respect to the subject matter hereof.

In Witness Whereof, the Parties acknowledge and agree to be bound to the terms of this Agreement as of the Effective Date.

Sacramento City Unified School District

Collaborative Learning Solutions, LLC

Authorized Signature Jesse Castillo
Asst Superintendent

Date _____

[Handwritten Signature]
Authorized Signature

Date 10-2-23

NOTICES

Notices to LEA shall be addressed to:

Invoices to LEA shall be addressed to:

Name

Name

LEA

LEA

Address

Address

City State Zip

City State Zip

Phone FAX

Phone FAX

Email

Email



Notices to CONTRACTOR shall be addressed to:

Regina Hartman
Name

Collaborative Learning Solutions, LLC
CONTRACTOR

27475 Ynez Rd., Ste. 774
Address

Temecula	CA	92591
City	State	Zip

888-267-6096
Phone FAX

rhartman@clsteam.net
Email

**Master Services and License Agreement
Between
Sacramento City USD
and
Accelerate Education**

Sacramento City USD ("**Customer**") and Accelerate Education Incorporated, a Nevada corporation ("Accelerate") enter into this Master Services and License Agreement (the "**Agreement**") as of the 1st day of July, 2022.

1) Products and Services

Subject to the terms and conditions set forth in this Agreement, Accelerate agrees to provide the products and perform the services described in the attached Exhibits. Accelerate reserves the right, from time to time, to add, change or discontinue any of its products or services.

2) Title to Licensed Materials

Customer acknowledges and agrees that Accelerate shall retain all right, title and interest in and to the all products licensed to Customer hereunder, including without limitation all content, curriculum, delivery systems, documentation, including releases and code bases, and any Accelerate Intellectual Property (defined below) incorporated therein, which Accelerate may from time to time provide to Customer hereunder (collectively, the "**Licensed Materials**"), and which Customer and Accelerate agree shall be listed in Exhibit A, which is incorporated herein by this reference. Nothing herein transfers or conveys to Customer any ownership right, title or interest in or to the Licensed Materials or to any copy thereof.

"Accelerate Intellectual Property" includes everything which Accelerate makes, conceives, develops, discovers, reduces to practice or fixes in a tangible medium of expression, alone or with others, pursuant to the terms of this Agreement, including without limitation any courses created by Accelerate, and all intellectual property that Accelerate has or will develop, including without limitation, developments, concepts, ideas, procedures, and original works of authorship, including but not limited to interim work product, outlines, modifications and derivative works, and all similar matters, whether or not copyrightable, and also includes all records and expressions of those matters.

3) Grant of License

License Terms. Accelerate hereby grants Customer a non-transferable, non-exclusive license during the Term to access and use the Licensed Materials listed in Exhibit A during the Term of this Agreement for Customer's internal business purposes, provided Customer complies with the other restrictions in this Section 3).

Copies of the Licensed Materials created or transferred pursuant to this Agreement are licensed, not sold, and Customer receives no title to or ownership of any copy or of the Licensed Materials themselves. Furthermore, Customer receives no rights to the Licensed Materials other than those specifically granted in this Section 3. Without limiting the generality of the foregoing, Customer receives no right to and shall not: (a) modify, create derivative works from, distribute, publicly display, or publicly perform the Licensed Materials; (b) sublicense or otherwise transfer any of the rights granted in this Section 3 except as expressly provided herein; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the Licensed Materials; or (d) use the Licensed Materials for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Licensed Materials, including without limitation as software-as-a-service. Accelerate grants the license in this Section 3 under copyright and also, solely to the extent necessary to exercise such rights, under patent and any other intellectual property rights. Customer shall use its best efforts to prevent any improper use of the Licensed Materials or any violation of Accelerate's rights in the Accelerate Intellectual Property. Customer shall not remove any proprietary, copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Licensed Materials.

4) Term and Termination

Term. The initial term of this Agreement ("Initial Term") shall commence on the date of the Agreement and shall continue until June 30, 2023. At the end of the Initial Term, this Agreement will automatically renew for succeeding 12-month periods (each, a "Renewal Term") unless either party notifies the other in writing at least thirty (30) days prior to the end of the then current Term that it does not intend to renew.

Termination. Either party may terminate this Agreement on written notice if the other party materially breaches any term or condition of this Agreement and fails to cure such breach within ten (10) days in after the date of written notice to cure.

Effect of Termination. Upon termination of this Agreement, the licenses granted in Section 3 will terminate, Customer shall cease all use of the Licensed Materials and delete all copies in its possession or control, and each party shall promptly return any property of the other's. The following provisions will survive termination of this Agreement: (a) any obligation of Customer to pay for Licensed Materials or services rendered before termination; (b) Sections 10 (Confidentiality), 6 (Data Use Restrictions), 13 (Indemnity), 10 (Disclaimer/Limited Liability), and 14 (Dispute Resolution and Arbitration); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

5) Fees, Invoices; Late Fees; Interest

Current pricing for the Licensed Materials is set forth in Exhibit B, which is attached hereto, and incorporated herein by this reference.

If Customer is hosting Licensed Materials, such Customer will provide Accelerate with enrollment reports on a monthly basis throughout the term of this Agreement (each, an "Enrollment Report") which included Student Identifier, Course Title, Start Date, End Date, Status (Active, Completed, Withdrawn, etc.). Accelerate shall invoice Customer for Licensed Materials in Exhibit A.

Customer shall pay all invoices within thirty (30) days of the date of the invoice. In the event that any invoice for fees is not paid in full within 30 days of the invoice date, Customer shall pay an additional late payment fee equal to 2.0% of the unpaid amount, plus simple interest on the balance owing at the rate of 18% per annum beginning 60 days after the date of the invoice as well as any costs incurred by Accelerate in collecting the unpaid amount.

6) Data Management and Privacy

Data Ownership and License. Customer hereby grants Accelerate a limited license to reproduce and otherwise manage Customer Data (defined below) during the Term in accordance with this Agreement. ("Customer Data" means all information processed or stored in accordance with this Agreement by Customer or on Customer's behalf. Customer Data includes, without limitation, personal information and other information provided by Customer's customers, students, employees, and other users and by other third parties, other information generated through use of the Licensed Materials by or on Customer's behalf, and copies of all such information rendered onto paper or other non-electronic media).

Use and Disclosure. Accelerate may access and use Customer Data solely as necessary to provide the Licensed Materials to Customer, and unless it receives Customer's prior written consent, Accelerate: (1) shall not access or use Customer Data for any purpose other than to perform its obligations under this Agreement; and (2) shall not "sell" any Customer Data, as such term is defined under the California Consumer Privacy Act of 2018 and any regulations promulgated thereunder, each as amended from time to time. Notwithstanding the foregoing sentence, Accelerate may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Accelerate shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

Aggregate/Anonymized Data. Notwithstanding the foregoing paragraph (Use and Disclosure), Customer hereby authorizes Accelerate: (1) to Anonymize (as defined below) Customer Data and to combine it with data from other customers into a new aggregate dataset; and (2) to use such Anonymized or aggregated Customer Data for any legal business purpose, including without limitation for distribution to third parties. ("Anonymize" refers to removal of personal information and any information reasonably likely to identify a company or other business entity.)

7) Accelerate Representations and Warranties

Delivery. Accelerate represents and warrants that (a) it has full power and authority to enter into, and to perform its obligations under, this Agreement; (b) it has all registrations, licenses and approvals necessary to conduct its business and to enter into and perform its obligations under this Agreement.

Functionality. Accelerate represents and warrants that it will use its best efforts to make the Licensed Materials function in a manner satisfactory to Customer and as outlined in this Agreement, and according to published documentation; however, the parties acknowledge that the technology employed has limitations beyond the control of Accelerate.

FERPA. Accelerate warrants to Customer that it will not make available or distribute any student information in violation of the Family Educational Rights and Privacy Act ("The Buckley Amendment" or "FERPA").

8) Customer Warranties and Representations

Customer represents and warrants that (a) it has full power and authority to enter into, and to perform its obligations under, this Agreement; (b) it has all registrations, licenses and approvals necessary to conduct its business and to enter into and perform its obligations under this Agreement.

Customer represents and warrants that it will not knowingly infringe any patent, copyright, trademark or trade secret or other proprietary right of Accelerate or any third-party.

Customer represents and warrants that: (a) it has and will collect any and all Customer Data (defined below) in compliance with all applicable laws, including without limitation laws on privacy, security, and disclosure of personal information; and (b) it has and will obtain such consents as are required by applicable law for Accelerate to access and process the Customer Data as authorized by to this Agreement.

Customer further represents and warrants that it shall have in force valid agreements with any of its employees, subcontractors or other third parties who may have access to the Licensed Materials sufficient to ensure such parties' compliance with the terms of this Agreement regarding the use and protection of the Licensed Materials. Notwithstanding the generality of the foregoing, Customer shall comply with its obligations in Exhibit C attached hereto, which is incorporated herein by this reference.

9) Disclaimer; Limited Liability

ASIDE FROM THE EXPRESS WARRANTIES PROVIDED HEREIN, THE LICENSED MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, QUALITY, PERFORMANCE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. ACCELERATE'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE FOR DIRECT DAMAGES AND SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO ACCELERATE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITS OF LIABILITY IN THE PRECEDING SENTENCE ARE CUMULATIVE AND NOT PER-INCIDENT. ACCELERATE WILL NOT BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF PROFITS, OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, WHETHER

FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE EVEN IF ACCELERATE IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE AND EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

10) Confidentiality

Each party agrees that during the existence of this Agreement and for two (2) years thereafter it will hold in strictest confidence, and will not use or disclose to any third party, any Confidential Information of the other party. The term "Confidential Information" shall mean all non-public information, whether business or technical in nature that the other party designates as being confidential, or which under the circumstances of disclosure ought to be treated as confidential. For clarity, and without limiting the generality of the foregoing, Licensed Materials are the Confidential Information of Accelerate. If any party has any questions as to what comprises Confidential Information of the other party, it agrees to consult with such other party prior to any disclosure. Confidential Information shall not include information that was known to the receiving party prior to disclosure, information that is independently developed by the receiving party who had no access to the other party's Confidential Information, or information that becomes publicly available through no fault of the receiving party. Furthermore, Accelerate has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer provides to Accelerate, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Accelerate's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Provider's products or services. Feedback does not include any suggestion or idea to the extent that it solely addresses Customer's products or services.) The restrictions on disclosure imposed by this Section shall not apply to information that is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving party.

11) Notice

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon receipt.

Notice to Customer. Unless hereinafter changed by written notice, any notice to Accelerate or Customer, other than invoices and notice with respect to invoices, shall be delivered or mailed to:

Sacramento City USD	Accelerate Education
5735 47 th Ave	3655 W Anthem Way Suite A-109237
Sacramento, CA 95824	Anthem, AZ 85086
Tel: 916-643-7400	Tel: 866-705-5575
Fax:	Fax: 866-716-0880

12) Force Majeure

Neither party shall be considered to be in default as a result of its delay or failure to perform its obligations herein when such delay or failure arises out of causes beyond the reasonable control of the party.

13) Indemnification

Accelerate Indemnity: Accelerate shall defend and indemnify Customer against any third party claim, suit, or proceeding ("Claim") arising out of, related to, or alleging infringement or misappropriation of a third party's patent, copyright, trade secret, or other intellectual property right as a result of Customer's authorized use of the Licensed Materials (an "Infringement Claim"). However, Infringement Claims do not include, and Accelerate's obligations in the preceding sentence do not apply to, any claim, suit, or proceeding to the extent that it arises out of, relates to, or alleges:

- (v) Customer's breach of this Agreement;
- (ii) revisions to the Licensed Materials made without Accelerate's written consent;
- (iii) Customer's failure to incorporate updates or upgrades that would have avoided the alleged infringement or misappropriation, provided Accelerate offered such updates and upgrades without compensation not otherwise required by this Agreement;
- (iv) Accelerate's creation or modification of the Licensed Materials in compliance with specifications furnished by Customer; or
- (v) use of the Licensed Materials in combination with hardware, software, or other products or services not provided by Accelerate.

Customer Indemnity: Customer shall defend and indemnify Accelerate and Accelerate's officers, directors, employees, shareholders, parents, subsidiaries, successors and assigns against any Claim arising out of, related to, or alleging Customer's breach of its representations, warranties, or obligations under this Agreement.

Procedures for Claims. The indemnified party shall provide prompt notice of any indemnified Claim and reasonably cooperate with indemnitor's defense. Indemnitor will control the defense of any indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided: (i) if the indemnitor fails to assume the defense on time to avoid prejudicing the defense, the indemnified party may defend the indemnified Claim, without loss of rights pursuant to this Section 13, until indemnitor assumes the defense; and (ii) indemnified party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligation. Indemnitor's obligations will be excused if either of the following materially prejudices the defense: (A) indemnified party's failure to provide prompt notice of the indemnified Claim; or (B) indemnified party's failure reasonably to cooperate in the defense.

14) Dispute Resolution & Arbitration

Except for any claims seeking injunctive relief, in the event of any dispute, claim or controversy arising out of or relating to this Agreement or the breach thereof (a "Dispute"), the parties shall first attempt to resolve the Dispute, without formal proceedings, through a telephone conference between Accelerate's CEO or other designated representative and Customer's CEO or other designated representative. If the parties are unable to resolve the Dispute within ten (10) business days of receipt of a written notice from the other that details the Dispute, then upon notice by either party to the other, the Dispute shall be finally determined and settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Unless otherwise agreed by the parties, the arbitration panel shall consist of one arbitrator chosen in accordance with the AAA. Any such arbitrator shall be knowledgeable in the subject area in which the Dispute arises. Each party shall be entitled to representation by counsel, to appear and present written and oral evidence and argument and to cross-examine witnesses presented by the other party. The arbitration award shall be in writing and the arbitrator shall provide written reasons for the award. The award of the arbitrator shall be final and binding on the parties hereto and may be enforced in any court of competent jurisdiction. The prevailing party in any action or proceeding to enforce its rights hereunder shall be entitled to recover reasonable attorneys' fees and other reasonable costs, including fees of the arbitrator and the AAA, incurred in the action or proceedings. This Agreement shall be governed by the laws of the State of Arizona. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law.

15) Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and affiliates.

16) Entire Agreement; Assignment

This Agreement (including the Exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. Neither party may assign this Agreement, in whole or in part, without the other party's written consent; provided, however, that either party may assign this Agreement without such consent in connection with any merger, consolidation, any sale of all or substantially all of such party's assets.

17) Amendment

Except as expressly provided in Section 5), this Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party.

18) Severability

If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired; provided, however, that the parties will attempt to agree upon a valid and enforceable provision which shall be a reasonable substitute for each invalid provision or unenforceable provision in light of the tenor of this Agreement and, upon so agreeing, shall incorporate such substitute provision into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first above written.

Accelerate Education

By: _____
Michael Axtman, President/CEO

Sacramento City USD

DocuSigned by:
By: Rose Ramos
Printed Name: Rose Ramos
Title: CBO

**Exhibit A
Licensed Materials**



Credit Recovery Course Catalog

<p>Language Arts</p> <p>Language Arts 9 A&B* Language Arts 10 A&B* Language Arts 11 A&B* Language Arts 12 A&B*</p>	<p>Electives</p> <p>Art Appreciation Art History Character Education Child Development Marine Science Paleontology Renewable Energy Psychology Sociology Space Exploration Media & Communication Medicine Study Skills & Strategies Theater Studies</p>
<p>Mathematics</p> <p>Algebra 1 A&B* Algebra 2 A&B* Geometry A&B* Integrated Math 1 A&B* Integrated Math 2 A&B* Integrated Math 3 A&B* Consumer Math A&B Pre-Algebra A&B Pre-Calculus A&B</p>	<p>World Languages</p> <p>Spanish 1 A&B Spanish 2 A&B Spanish 3 A&B French 1 A&B French 2 A&B German 1 A&B German 2 A&B</p>
<p>Science</p> <p>Biology A&B* Chemistry A&B* Physics A&B* Earth Science A&B* Physical Science A&B*</p>	<p>Health and P.E.</p> <p>Health Physical Education</p>
<p>Social Studies</p> <p>American Government* American History A&B* World History A&B* Economics* Civics* World Geography & Cultures A&B*</p>	

School Year 2022-2023

*Course has an Optional Adaptive Assessment Model

Exhibit B Pricing and Payment Schedule

1500	Credit Recovery Seat with Instruction	User Seat License is one enrolled student with up to 4 Credit Recovery courses at any point in time within the year. Includes Content, Hosting, Support, and Instruction from CA Cert HQ Teachers. Bio/Chem/Physics included virtual labs. Invoicing would occur July 2022.	\$179.90	\$269,850.00
0	Credit Recovery Summer Seat with Instruction	Summer Session User Seat License is one enrolled student with up to 4 Credit Recovery courses at any point in time within the summer school session. Price is per Seat. Includes Content, Hosting, Support, and Instruction.	\$88.00	\$0.00

Additional Information

- | |
|---|
| <ul style="list-style-type: none"> - Once a student completes or drops from a Seat, License is open for another student - Actual Seat usage above the initial pre-purchased amount will be invoiced periodically during the year - Physical Materials not Included - IDEAL Learning Library if hosted by AE - CMS Edit for Full Time Seats if hosted by AE - School branded login page and logo within LMS included for Full Time Seats |
|---|

Subtotal	\$269,850.00
Tax	\$0.00
Total	\$269,850.00

Detailed catalogs and course descriptions of the Licensed Materials listed on this quote can be accessed at www.Accelerate.Education within the catalogs section of the web site.

**Exhibit C to
Master Services and License Agreement between
Customer and Accelerate Education**

This Exhibit is part of the Agreement between Customer and Accelerate with respect to additional responsibilities as provided herein. Except as otherwise defined in this Exhibit, all capitalized terms shall have the meanings given to them in the Agreement.

Customer shall ensure that all authorized users of the fitness courses licensed to Customer by Accelerate (“Fitness Courses”) agree in writing to be bound by and to comply with the consent and release terms of use (“Terms of Use”) set forth below, and the code of conduct (“Code of Conduct”) set forth below, if any. If an authorized user is a minor, Customer shall require that the Terms of Use and Code of Conduct (if any) be executed by the parent or other legal guardian of each such minor, granting the parent’s permission for such minor to access and use the Fitness Courses, acknowledging the risks of participation in the Fitness Courses and releasing Accelerate and its licensors from all liability related to such participation. Customer shall provide Accelerate with a copy of each and all of the signed consents. The Terms of Use shall be worded in substantially the same manner as provided below.

Terms of Use

The following waiver must be signed by any authorized user over the age of 18 or by the parents of any authorized users who are under the age of 18.

1. I understand that my participation, or the participation of my child (if applicable), in Fitness Courses involves risks of serious injury or death, and for myself, and for my heirs, legal representatives, and successors in interest, I fully assume all of the risks of such participation, including, but not limited to, the following: dangers arising from equipment failure and inadequate safety equipment, health risks of extreme or rigorous physical activity, pre-existing medical conditions, and risks arising from the negligence of Accelerate Education Inc., its licensors and their respective principals, instructors, employees, and heirs (the “Releasees”). Further, for myself, and for my heirs, legal representatives, and successors in interest, I hereby release the Releasees, and agree to defend, indemnify and hold the harmless the Releasees, from and against any and all claims, losses, damages, costs, liabilities and expenses of whatever kind or character, on account of any actual or alleged loss, injury or damage (including, but not limited to, any loss, injury or damage arising from the Releasee’s own negligence) to any person or to any property arising out of or in connection with my participation in the Fitness Courses.

2. Accelerate Education Inc. grants you, the participant in the Fitness Courses, the right to use the Fitness Courses solely as necessary for the purpose of participating in such Fitness Courses through your educational institution. Your participation in such Fitness Courses is made possible only by license agreement between Accelerate Education Inc. and your educational institution. You are not acquiring any right, title or interest of any nature whatsoever in the Fitness Courses, or any part thereof, or any logo or trade name by your participation in such Fitness Courses. Further, you hereby agree that you will not use or copy any part of the Fitness Courses for any reason whatsoever, except as necessary to participate in such Fitness Courses through your educational institution. All Fitness Courses are protected by copyright and other laws.

Signed: _____

Print Name: _____

Date: _____

IN WITNESS WHEREOF, the parties have executed this Exhibit to be effective as of the effective date of the Agreement.

Accelerate Education


By: _____

Printed Name: Michael Axtman

Title: President / CEO

Customer

DocuSigned by:

By:  _____
CC6FE7C204D7402...

Rose Ramos

Printed Name: _____

Title: Chief Business Officer

**AMENDMENT NO. 2 TO FACILITIES LEASE
BY AND BETWEEN
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT AND
John F. Otto dba Otto Construction**

This Amendment No. 2 to the Facilities Lease ("Second Amendment") is made and entered into this **19th day of October 2023** ("Effective Date") by and between the Sacramento City Unified School District ("District") and **John F. Otto dba Otto Construction** ("Developer") (collectively, the "Parties") as follows:

RECITALS

WHEREAS, the Parties entered into a Facilities Lease, dated **April 11, 2023**, pertaining to the **Oak Ridge Elementary School New Construction** ("Project") at Oak Ridge Elementary School, located at 4501 Martin Luther King Jr. Blvd., Sacramento, CA, ("Project Site"); and

NOW, THEREFORE, the Parties agree as follows:

Section I. Second Amendment of Facilities Lease.

1. **Page 15, Section 10.5 Compensation to John F. Otto dba Otto Construction for Preconstruction Services** is amended to read: "District agrees to reimburse John F. Otto dba Otto Construction in the total amount not to exceed ~~Seventy Two Thousand One Hundred Twenty DOLLARS (\$72,120)~~ ~~Seventy seven thousand Seven hundred Twenty DOLLARS (\$77,720)~~ **One hundred twenty thousand Ninety-six DOLLARS (\$120,096)**, for the performance of services contemplated by this Agreement."

Section II. All Other Provisions Reaffirmed.

All other provisions of the Facilities Lease shall remain in full force and effect and are hereby reaffirmed. If there is any conflict between this Second Amendment and any provision of the Facilities Lease or any prior amendment thereto, the provisions of this Second Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to the Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2023

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT

By: _____

Name: Jesse Castillo

Title: Assistant Superintendent

Dated: October 9th, 2023

JOHN F. OTTO DBA
OTTO CONSTRUCTION

By: 

Name: Allison Otto

Title: President



September 26, 2023

Chris Ralston
Sacramento City Unified School District
425 1st Avenue
Sacramento, CA 95818

RE: SCUSD Oak Ridge Elementary School New Campus – Preconstruction Amendment 2

Chris:

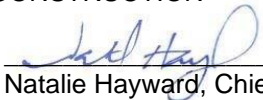
We are pleased to present our Preconstruction Amendment 2 at the value of **\$42,376** for the SCUSD Oak Ridge Elementary School New Campus project. This preconstruction amendment is for the design of the shade structures.

The GMP consists of the following:

- A. Original Preconstruction Value.....72,120
- B. Modular Elevator Preconstruction – Amendment 1.....5,600
- C. Current Preconstruction Value.....77,720
- D. Shade Structure Preconstruction - Amendment 242,376

Total Revised Preconstruction\$120,096

Sincerely,
OTTO CONSTRUCTION

By: 
Natalie Hayward, Chief Estimator

1717 Second Street
Sacramento CA 95811
TEL 916.441.6870
FAX 916.441.6138

www.ottoconstruction.com
CA Lic #178809
DIR #1000005395



EXHIBIT 4 BID FORM

PROJECT Sacramento City Unified School District
Oak Ridge Elementary School

TRADE Shade Structure

GENERAL INFORMATION

Firm Name	<u>Southern Hemisphere Shades, Inc.</u>
Firm Address	<u>PO Box 255008 Sacramento, CA 95865</u>
Name of Contact Person	<u>Andrew Koekemoer</u>
Telephone Number	<u>916.348.1391</u>
Fax Number	_____
E-mail	<u>andrew@buildshade.com</u>
CA License #	_____
DIR #	_____
Union Affiliation	_____

EXHIBIT 1 - PROJECT DOCUMENTS (FOR REFERENCE ONLY)

Do you acknowledge and agree to the terms and conditions of the project documents provided? (Oak Ridge Elementary School Campus Replacement - Increment 1 DSA Approved Drawings by Nacht & Lewis Architects dated 5/31/23, Oak Ridge Elementary School Campus Replacement - Increment 1 DSA Approved Specifications by Nacht & Lewis Architects dated 5/31/23, Oak Ridge Elementary School Campus Replacement - Increment 2 50% CD by Nacht & Lewis Architects dated 6/20/23, Oak Ridge Elementary School Improvements Geotechnical Engineering Report by Terracon dated 2/13/23)

Yes () No, If No attach exceptions

EXHIBIT 2 - SHADE STRUCTURE LOCATIONS REFERENCE DOCUMENTS

Do you acknowledge and agree to the terms and conditions of the Shade Structure Locations Reference Documents?

Yes () No, If No attach exceptions

EXHIBIT 3 - PROJECT LABOR AGREEMENT

Do you acknowledge and agree to the terms and conditions of the Project Labor Agreement document included in the RFP package?

() Yes No, If No attach exceptions N/A Material purchase only

ACKNOWLEDGEMENT

This project is subject to Skilled and Trained Workforce requirements pursuant to Public Contract Code §2600. Do you acknowledge and agree to meeting these requirements?

() Yes No, If No attach exceptions N/A Material purchase only

EXHIBIT 5 - SAMPLE SUBCONTRACT

Do you acknowledge and agree to the terms and conditions of the Sample Subcontract?

() Yes No, If No attach exceptions N/A Material purchase only

EXHIBIT 6 - PRIME CONTRACT - FOR REFERENCE ONLY

Do you acknowledge and agree to the terms and conditions of the Prime Contract?

() Yes No, If No attach exceptions N/A Material purchase only

ADDENDA: _____



Preconstruction & Design Total

\$42,376.00

Please provide a lump sum bid amount for preconstruction and design services.
During preconstruction, the Shade Structure Trade Partner is to provide the following design documents for incorporation into the Increment 2 drawings DSA Submittal set. These documents will be needed by 9/20/23. The design documents must include the following:
Custom Hip Shade Structure Drawings & Structural Calculations - (4) each 30' x 50'
DSA Approved Cantilever Shade Structure PC Drawings - (2) each 20' x 30'
DSA Approved Sail Shade Structure PC Drawings - (1) each 30' x 30'
Preconstruction services are to include responding to plan check comments and coordinate with Nacht & Lewis Architects as needed.

Construction Budget Total

\$381,392.00

Please provide a budget for construction (furnish & install).
DSA PC Cantilever Shade Structures - install March 2025
DSA PC Sail Shade Structures - install March 2025
Custom Hip Shade Structures - install July 2025

(furnishing, no construction)

DVBE COMMITMENT (in dollars)

\$0.00 (we can look for suppliers that are DVBE but can't guarantee it at the moment)

This project has a 3% DVBE participation goal. Please identify potential DVBE monies included in your construction budget.

Long Lead Items

None

Lower Tier Subcontractors

None

Please include a final scope letter on Company letterhead listing all clarifications, inclusions and exclusions.

CONTRACTING

The initial contract between Otto Construction and the Shade Structure Trade Partner will be written for the preconstruction/design amount. Pending DSA Approval of the drawings, and finalization of scope and pricing, an amendment or a separate contract will be written for the construction amount. It is the Shade Structure Trade Partner's responsibility to meet (or improve upon) the construction budget set forth and communicate potential scope creep to Otto Construction. If the construction budget is exceeded, Otto Construction reserves the right to re-bid this scope of work.

SCUSD Oak Ridge Elementary

This agreement including but not limited to Materials, and/or Installation, and/or Consultation Services is a Direct Owner Contract, ("Contract"), inclusive of the attached terms and conditions, is dated August 31, 2023, as between Southern Hemisphere Shades, Inc. ("Contractor") and Otto Construction Inc. ("Owner").

Description of the Project and Description of the Significant
Materials to be Used and Equipment to be Installed known as ("WORK")

OVERVIEW

Project Name	SCUSD Oak Ridge Elementary	Project Number	TBD
Quote Date	8.31.23	Quote Expiration	9.07.23
Construction Address	4501 Martin Luther King Jr. Sacramento, CA 95820	Shipping Address	4501 Martin Luther King Jr. Sacramento, CA 95820

OWNER AND BILLING

Purchaser	Otto Construction Inc.	Purchaser Address	1717 2 nd St. Sacramento, CA 95811
Purchaser Phone		Contact	Mararm Daood
Contact Phone	916.441.6870	Contact Email	mdaood@ottoconstruction.com
Market	School	Territory	Greater Sacramento

ADMINISTRATION

Product and Pre-Construction Development Exec.	Andrew Koekemoer, 916.730.3727 andrew@buildshade.com	Operations and Construction Development Exec.	Paul Koekemoer 916.317.1744 paul@buildshade.com
--	---	---	--



MODEL, DESIGN PRINCIPLES AND SPECIFICATIONS

Building Code	CBC 2022 - DSA	Wind Load	93mph
Snow Load	0 lb.	Construction Type	II
Fabric Type	Mesh	Foundation Type	Pier
Product Type	Shade Sails, Cantilever and custom large structure	Product Number	Custom
Product Qty.	Varies	Dwg. Number	TBD
Structure Dimensions	See Below	Structure Entry Height	16' Max. for structures
Qty. of Fabric Covers	Varies	Qty. of Steel Columns	Varies
Column Connection	Embed	Steel Finish Type	Painted
Hardware Type	Galvanized	Cable Type	Galvanized
Cable/Hardware Inc.	Yes	Anchor Rods Inc.	No

MODEL RENDERING (SIMILAR)

See PC plans

NOTES

Provide PC plans for cantilever and shade sail structure. In addition provide custom engineering for (4) large hip shade structures. Includes manufacturing of fabric structures with delivery. Structures to be...

- (4) 50' X 30' X 16' Max Joined Hip Structures
- (2) 30' X 20' X 15' Max Cantilevers
- (1) 30' X 30' X 16' Max. Shade Sails

Pricing includes steel fabrication, all necessary hardware, cable and fabric for complete assembly. Shipping and handling to job site included. Construction, permits, inspections, city and/or county fees are the responsibility of others. PLA not included with pricing.

DESIGN, ENGINEERING AND ANALYSIS

INCL.	EXCL.	ITEM	INCL.	EXCL.	ITEM
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Design and 3-D Modeling of Fabric Structure(s)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineering of Fabric Structure(s) or P.C. Plan
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fabric Attachment Design Services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fabric Patterning Services
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Engineering of Foundation(s) or P.C. Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Product Specifications
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Elevation Plans	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Site Plans
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Digitally Sealed Drawings or P.C. Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Digitally Sealed Structural Calculation Package or P.C. Plan
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Feasibility Analysis: Reactions, loads, and calculations for wall and/or other attachment points	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Feasibility Analysis: For anchor point structural integrity and substantiation of existing conditions

PLANNING, APPROVAL AND ADMINISTRATIVE

INCL.	EXCL.	ITEM	INCL.	EXCL.	ITEM
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Project Planning and Milestones	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Special Inspections in Shop and/or at Construction Site
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Project Management and Gantt Chart	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Soil Tests
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Project Permit Submission	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Survey Services
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Project Permit Fees and Inspection Costs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bonding including Payment and Performance
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Project Submission	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Prevailing Wage and Certified Payroll
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Project Fees and Inspection Costs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Union Wages and Certified Payroll

PRODUCT ASSEMBLY AND CONSTRUCTION

INCL.	EXCL.	ITEM	INCL.	EXCL.	ITEM
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction Specifications and Procedures	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Concrete Pump
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Demolition of Existing Structures	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Concrete Pump Access Required: Single mobilization period is (1) one day. Additional days subject to change order.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Asphalt and/or Concrete Cutting	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Standard Concrete Finish to Grade Level
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Asphalt and/or Concrete Disposal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Access Provided by Owner

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Electrical Access Provided by Owner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Drilling and Anchorage onto Existing Concrete Pad
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Skidsteer or Small Excavator Access Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Custom Foundation Cover Finish: Asphalt, poured in place rubber, artificial surface, and/or others
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Excavation: Single Mobilization	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Standard Construction Hours Assumed: 7:00AM - 4:00PM
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Excavation: Preliminary Hand Excavation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Steel Framing Assembly
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Excavation: Soil Piled	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hardware Assembly
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Excavation: Soil Removal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fabric Assembly
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Excavation: Soil Bin Dropbox	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cable Assembly
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Underground Obstacles Clause in Effect	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Grass Protection: Wood boards for driving equipment over.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Soil Assessment Clause in Effect	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Grass and Landscape Repair
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rebar Reinforcing as per Structural Drawings	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Assembly Warranty
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Concrete	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Product Warranty
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Concrete Truck Access Required: Single mobilization period is (1) one day. Additional days subject to change order.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Maintenance Manual

LARGE SCALE CONSTRUCTION, PRODUCT ADD ONS

INCL.	EXCL.	ITEM	INCL.	EXCL.	ITEM
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Heavy Equipment Access Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Construction Payment Software Costs
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Crane Access Required: Single mobilization period is (4) four hours. Additional hours subject to change order.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evening, Weekend or Overtime Work Hours
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Crane Signaler	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Apprentice Program Compliance
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Traffic Control	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Electrical Manholes: For use by others.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fencing or Barricades: metal, plastic or fabric	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Requirements for Special Safety Programs: Specific certifications, live scans, or drug screening
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Demolition of Underground Obstacles: For example utility lines, concrete, or asphalt.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Custom Travel: Additional required travel to and from job site.



<input checked="" type="checkbox"/>	<input type="checkbox"/>	Shipping and Handling	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sales Tax
-------------------------------------	--------------------------	-----------------------	-------------------------------------	--------------------------	-----------

The signatories to this Agreement consent to the following: (1) they have authority to sign on behalf of their respective parties, (2) have thoroughly read the details of this agreement including terms and conditions, attachments, and/or exhibits, and (3) will fulfill all details of their respective responsibilities.

Authorized Signator for Owner(S)

Authorized Signator for Contractor(S)

Dated: _____

Dated: _____

Signed: _____
Name

Signed: _____
Name

Print: _____
Name

Print: _____
Name

Title: _____

Title: _____

For: _____

For: _____

Owner's Authorized Representative:

Contractor's Authorized Representative:

Contact Info: _____

Contact Info: _____

TERMS AND CONDITIONS

- 1. QUALITY AND SCOPE OF WORK.** Contractor will furnish labor, materials, and equipment in accordance with the terms and conditions of this Contract to construct and complete the WORK in a competent and workmanlike manner, using new materials of the best of their kind, unless otherwise approved in a writing signed by Owner.
- 2. CONTRACT PRICE.** \$423,768.00 (including Downpayment, if any)
- 3. DOWNPAYMENT.** \$TBD
- 4. SCHEDULE OF PROGRESS PAYMENTS (MILESTONES).**

AMOUNT

\$TBD	Downpayment (Due on contract signing)
\$TBD	Performance and Material Payment (Due upon delivery of columns)
\$TBD	Performance and Material Payment (Due upon delivery of framing)
\$TBD	Performance and Material Payment (Due upon delivery of fabric)

All payments will be made within 14 days after billing. Overdue payments will bear interest at the rate of [percent] per month ([percent] per annum) from the date on which payment is due.

- 5. INSTALLATION.** Contractor will advise Owner of the scheduled construction start date. If the purchased products and/or services require Contractor access to the Owner's property, Contractor will be provided such access between 7:00 AM and 4:00 PM local time, and shall be allowed to perform WORK continuously throughout the duration of Project. Any after-hours, evening, weekend, or holiday work may be subject to a change order. The area shall be considered "closed" during the construction period and shall be clear of any obstacles. This includes automobiles, construction debris by others, Owner property, or any other items that may impede the construction process. Owners' installation site shall be accessible by driving automobiles for delivering construction equipment, materials, and other essentials by Contractor. Any exterior or interior adjacent valuables or furnishings, such as art, accents, furniture, etc. must be moved out of the installation work area before Contractor arrives for installation. We recommend removal in an area of thirty feet from the installation area. The Contractor cannot move back these same furnishings for liability reasons. Owner must provide sufficient access to the location of the installation on their property from a public right of way. Owner is responsible for providing any fencing, water, porta potties, sanitation, electrical, temporary power or other site condition requirements during the entire duration of construction, and if any are not provided, then the base agreement for installation shall be subject to a change order to reimburse Contractor for obtaining same. Moving of fencing, hoisting, or crane services shall be subject to a change order unless specified in the Scope of Work Inclusions and Exclusions. Owner may incur additional charges if utilities are not provided or noted in the Scope of Work Inclusions and Exclusions. An owner agent with layout decision authority shall meet the construction team at the project site on the scheduled start date. Owner agent shall verify the specific location where the Structure(s) is to be constructed. Contractor will not be responsible for relocating and/or repairing any underground lines, including but not limited to fiber optics, water, irrigation, sewer, electrical, gas, and unknown metal or concrete discovered during construction. Additional costs incurred due to underground obstacles, including utilities (routing, removal, or repair), hard rock conditions, asphalt, concrete, or any soil requiring supplemental equipment, will result in additional charges to cover delays in construction unless such conditions are communicated to Contractor prior to bid package being provided and documented in this contracts' Scope of Work Inclusions and Exclusions. To be incorporated into the Scope of Work, any underground obstacles must be detailed on as-built site-specific drawings and/or provided to Contractor in writing prior to manufacturing and construction. If soil is reused on-site or deposited into bins provided by others, such areas and/or bins shall be within (100) one hundred yards of installation area (to



be determined by closest material part of the structure to soil drop site).

6. SITE/USE REVIEW BY OWNER. The Owner shall determine that the purchased products and/or services are appropriate and safe for their application and location. The location of structure and it's safety in comparison to other objects is not the responsibility of Contractor, and Owner releases and waives any liability of Contractor for same. Contractor does not assume any liability for injuries, damages, or physical abrasion resulting from collisions by persons, moving objects, or any other item with the structure post(s), fabric, or any part of the product. For projects consisting of fabric replacement only Contractor does not intend nor assume responsibility for the structural integrity and capability of steel, foundations, and/or connection points to withstand new loads exerted by fabric, hardware, and any associated new work. Replacement fabric canopies do not certify that the existing structure meets building codes or local ordinances, nor do they represent their ability to withstand any specific environmental conditions. Owner takes full responsibility to determine the new fabric and structural loads from installed products do not exceed the tolerances of as-built conditions. The acceptance and liability of confirming the structure is safe and appropriate for being recovered including steel, foundations or any structural attachment is solely the responsibility of the owner. Contractor can provide third-party engineering structural packages for the Owner's review and/or assessment by a third-party vendor on the Owner's behalf. Any structural modifications to existing conditions shall be the Owner's responsibility.

7. EXISTING CONDITIONS. If existing conditions are to be used in any capacity including but not limited to concrete foundations, concrete pad, any existing concrete work, steel columns, beams, attachment locations, it is not the Contractor's responsibility to analyze and confirm these conditions are appropriate or safe. The Owner shall assume responsibility for completing such work at their discretion including but not limited to independent third-party inspections.

8. ATTACHMENTS. Owner acknowledges the following: (1) A notice concerning commercial general liability insurance is attached to this Contract; (2) a notice concerning workers' compensation insurance is attached to this Contract, (3) exemplar insurance certificates are attached to this Contract, (4) exemplar color selection forms are attached to this Contract and (5) an exemplar change order form is attached to this Contract.

9. LIST OF DOCUMENTS TO BE INCORPORATED INTO THE Contract.

Attachments 1-3.
Addendum 1 - Additional Terms, Conditions and Limited Warranty

Any other addendums to be noted above and incorporated as needed.

10. CONTRACT, PLANS, SPECIFICATIONS AND PERMITS. Included to this Contract as Scope of Work "WORK", Contractor has provided details showing the product, size, dimensions, and the construction and equipment specifications for the Project. The Project will be constructed according to such details and specifications. Contractor can obtain, and Owner will pay, the cost for all required building permits and any assessments and charges required by any government agency relating to the Project. See Section 36 of this Contract. Any required structural or construction adjustments per the responsible public agency shall be subject to a change order. The Contract, plans, and specifications are intended to supplement each other. In case of conflict, the specifications shall control over the plans, and the provisions of this Contract shall control both.

11. RELEASE OF MECHANICS' LIENS. Contractor shall, upon satisfactory payment being made for any portion of the WORK performed, prior to any further payment being made, furnish to Owner a full and unconditional release from any potential lien claimant

claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for that portion of the WORK for which payment has been made. This provision shall not apply if Contractor is required by Owner to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the Registrar of Contractors covering full performance and payment of the Contract. If Contractor furnishes these bonds, bond equivalents, or a joint control approved by the Registrar of Contractors, Contractor may accept payment prior to completion.

12. DEFENSE/INDEMNITY. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless the Contractor and its agents and employees, as well as any other party designated by project specifications from and against all liability, claims, damages, losses, expenses, or injuries to any person or to property, including injuries to Contractor's employees, and all expenses of investigating and defending against the same (a) arising from, or connected with the performance of, or failure to perform, the work or other obligations of this Contract, (b) caused or claimed to be caused by the independent negligence of the Contractor or the concurrent negligence of the Owner with the active or passive negligence of the Contractor, other direct contractors, subcontractors, or any other party designated by project specifications or their agents or employees. The defense and indemnity provisions set forth above shall not be limited by insurance requirements or any other provision of this Contract.

13. CHANGES. Any changes to an active Contract or Purchase Order must be agreed to by both parties and must be changed in writing prior to the beginning of the sun shade structure or other product installation. Owner must disclose to Contractor architectural changes or additions, prior to the beginning of the product production. Changes will not be made to active purchase orders after Contractor commenced sun shade structure or other custom product production unless Owner pays for the cost of associated with the signed copy of the requested changes via Change Order.

14. NOTE ABOUT EXTRA WORK AND CHANGE ORDERS. Extra Work and Change Orders become part of the Contract once the order is prepared in writing and signed by the parties prior to the commencement of work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the Contract, and the effect the order will have on the schedule of progress payments. The order will also describe the effect the order will have on the completion date. Owner may not require Contractor to perform extra or change order work without providing written authorization prior to the commencement of work covered by the new change order. Extra work or a change order is not enforceable against Owner unless the change order also identifies all of the foregoing in writing prior to the commencement of work covered by the new change order. Contractor's failure to comply with the requirements of this paragraph does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

15. ADDITIONAL EXTRA WORK AND CHANGE ORDER PROVISIONS. Should Owner, construction lender, or any public body/inspector direct any modification, addition, or deletion to the WORK covered by this Contract, the cost shall be added to or deducted from the Contract price. For the purpose of this paragraph, "cost" is defined as the cost of extra contractors, labor, materials, and equipment, plus fifteen percent (15%) of "cost" for overhead and profit. Owner is entitled to a Contract price reduction equal to Contractor's cost savings for Change Orders that result in credits, including a reduction in overhead and profit because of a credit Change Order. Contractor incurred material and labor expenses, including partial expenses, shall be compensatable by the Owner with such items becoming property of Owner. Expenses incurred by Contractor because of unusual or unanticipated subsurface ground conditions or because of other unanticipated and unknown conditions (including, but not limited to, removal of toxic waste, asbestos, or material containing asbestos or toxic waste) shall be paid for by Owner as Change Order work. Contractor shall not remove any hazardous materials including asbestos from the project site as Owner shall be responsible for obtaining a third-party organization to provide such work. Contractor shall promptly notify Owner of latent physical conditions at the site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. Owner agrees to extend the time to complete the Project in the event that Change Order work is required to a date reasonably sufficient to permit Contractor to perform such Change Order work.

16. CONTRACT PRICE ESCALATION. The Contract Price stated in the Contract and/or herein is subject to Escalation in price based on one or both of the following:

a. Contractor is entitled to a Change Order and payment or reimbursement for materials cost or equipment cost escalation in Contract's price for work in the event of any start-up delay, work stoppage or suspension ("Cessation Event") longer than sixty (60) consecutive days where such Cessation Event is not caused by the Contractor, or is otherwise the result of a Stop Work Notice issued by Owner due to Owner's failure to timely pay Contractor for their work per the terms of this Contract;

b. Contract shall be entitled to a Change Order and payment or reimbursement from Owner for cost Escalation in price of Work in the event there is any gross price increase in the actual cost for such materials or equipment necessary to perform work under Contract where such increase is greater than 5% occurring in a sixty (60) day period.

In the event there is an Escalation in price of materials or equipment subject to either a. or b. above, Contractor will document the basis for the Escalation and submit to Owner a Change Order consistent with the Contract Change Order/Extra Work provisions within fifteen (15) business days of the Contractor's discovery of such a price change condition, and Owner shall not unreasonably delay, dispute or withhold approval and payment.

The parties acknowledge that there is a recent history of extreme price fluctuations and inflation for construction materials as of the date of this Contract, which is anticipated to continue throughout the progress of construction. To the extent Owner and Contractor would approve and elect to purchase materials or contract for equipment early, upon fifteen (15) days written notice of their election, Owner shall timely pay Contractor all necessary deposit monies to obtain a price and quantity lock, or otherwise Owner will reimburse Contractor, to the extent such finance instruments have been selected and approved by Owner and may be available, the costs to obtain futures at their own expense to cover changes in price for materials or equipment subject to this Contract.

17. CONTRACT TIME ESCALATION. In estimating and evaluating Contract Price and Contract Time, Contractor is relying on a 30-day lead time for all material or equipment product deliveries. To the extent any Contract Price Escalation event as referenced in this Contract occurs and is related to an increase in time necessary for Contractor to perform work; or otherwise any material or equipment necessary for the Work shall have a longer than expected lead time greater than 30 days to receive delivery, Owner shall approve and Contractor shall be entitled to a Change Order adjustment to Contract Time and the Schedule of Work for the amount of any days of delay beyond the initial 30 day threshold.

18. FORCE MAJEURE EVENTS. Except to the extent provided in this Contract, no Party shall be liable for any default or delay in the performance of its obligations under this Contract (i) if and to the extent such default or delay is caused, directly or indirectly, by acts of disease, terrorism, fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, or any other such similar cause beyond the reasonable control of such Party, and (ii) provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. Any such event or occurrence as described in this section shall be deemed a "Force Majeure Event."

19. ALLOWANCES. If the Contract price includes allowances, and the cost of performing work covered by the allowance is less than the allowance, then the Contract price shall be decreased accordingly. Unless otherwise provided by this Contract or requested by Owner in writing, Contractor shall use its own judgment in accomplishing work covered by an allowance. If Owner requests that work covered by an allowance be accomplished in such a way that the cost will exceed the allowance, Contractor shall comply with Owner's request, provided that Owner agrees, in writing, to pay for the additional cost as extra work. Owner may select the items covered by allowances, but Contractor

shall not be required to use materials, equipment, or labor to which Contractor has a reasonable objection. Owner shall promptly select all materials and equipment under an allowance to avoid delay in completion of the Project. Allowances shall cover the cost to Contractor for materials and equipment delivered to the Project site and all required taxes, less applicable trade discounts. Contractor's cost for unloading and handling at the Project site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract price and not in the allowance. Whenever costs are more than or less than allowances, the Contract price will be adjusted accordingly by a Change Order. The amount of such Change Order shall reflect that difference between actual costs and the allowances.

20. DELIVERY DATES. All delivery dates are estimated and subject to arrival of Owners requested components and fabrics, as well as possible back orders from Contractor vendors. Contractor reserves the right to amend estimated delivery dates. Due to global logistics, we make no representations or promises as to lead times for product availability or vendor delays.

21. CLEAN-UP. Upon completion of the WORK, Contractor will remove debris and surplus material from the Project site as per the Scope of Work Inclusions and Exclusions section of this Contract.

22. LABOR AND MATERIAL CHARGES. Contractor shall pay for labor, equipment, and material delivered to the job by Contractor and consumed in the Project, but is excused by Owner from this obligation for any labor, equipment and materials for which the Owner is in arrears in making progress payments to Contractor. Any equipment needs or shipping requirements not specified as per the Scope of Work Inclusions and Exclusions list shall be the responsibility of the Owner.

23. LIMITED WARRANTY. Contractor guarantees its installation of all materials and workmanship and agrees to replace, at his sole expense, to the satisfaction of Owner, any and all materials adjudged defective or improperly installed for a period of one year from completion and acceptance of the entire Project. Labor, shipping to Contractor and any expenses related to re-installation or repair shall be excluded when products are installed by others or outside the continental United States. Contractor warrants that all materials and equipment furnished by Contractor under this Contract shall be new and best of kind quality unless otherwise agreed to in writing by Owner. This guarantee shall not apply to damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear. In addition to the Product Limited Warranty included in Addendum 1, Contractor also represents that:

- A. Contractor warrants that all Contractor-supplied service and labor will be performed in a good and workmanlike manner.
- B. The warranty set forth in Addendum 1 will be the Owner's sole and exclusive warranty.
- C. Owner shall notify Contractor in writing detailing any defects for which a warranty claim is being made.
- D. No other warranty is implied.
- E. Warranty shall become void if payment is not received in full within (30) thirty days of completed assembly if installation is provided by Contractor, unless otherwise agreed to in writing by Company and Owner.
- F. Warranty shall become void if payment is not received in full within (30) thirty days of final invoice from Company when installation is not included, unless otherwise agreed to in writing by Company and Owner.
- G. In any event Contractor shall not be liable for special, consequential, indirect, or liquidated damages for any defect or warranty claims.
- H. Owner shall notify, in writing, any defect or warranty claims to Southern Hemisphere Shades, Inc. within 5 days of noticeable defect.
- I. Any act of vandalism (cutting, burning, etc.) is not covered by the stated warranty.
- J. Any acts of God (hurricanes, floods, tornadoes, earthquakes, etc.), including but not limited to snow, ice, or wind in excess of building code or engineered specifications, is not covered by the stated warranty.

- 24. DELAY.** Contractor shall be excused for any delay in completion of the Contract for any unanticipated cause outside of Contractor's control. Owner shall be responsible for any delay damages Contractor incurs as a result of an unreasonable and unexcused delay by Owner. Time for completion of the Project will be extended by Owner-caused delays. In addition, Owner shall be charged for additional equipment, labor, overhead and any other related charged due to Owner-caused delays or unforeseen conditions including concealed conditions. Contractor shall provide evidence of equipment rates, additional labor hours and overhead/profit shall be limited to 15% of accumulated equipment and labor charge.
- 25. RIGHT TO STOP WORK.** If Owner does not make timely payments in accordance with this Contract, Contractor shall have the right to stop or suspend WORK. Contractor may keep the job idle until all payments due are received. Failure by Owner to make payment within (60) sixty days of the due date shall constitute a material breach of this Contract.
- 26. ARBITRATION OF DISPUTES.** Any controversy arising out of or relating to the construction of the Project referred to in this Contract or regarding the interpretation of this Contract is subject to arbitration under California Law with the American Arbitration Association in accordance with the "Construction Industry Arbitration Rules and Mediation Procedures" in effect at the time of the demand for arbitration. As a condition precedent to arbitration, the parties must participate in mediation. The mediation shall be held in accordance with the "Construction Industry Arbitration Rules and Mediation Procedures" of the American Arbitration Association. Should any party refuse to fully participate or neglect to appear for mediation, they will be barred from maintaining a claim or set-off against the other in arbitration. Any party who refuses to appear or participate in the arbitration proceedings will be subject to default in accordance with the American Arbitration Association rules then existing. (30) Thirty days prior to the date set for the arbitration, the parties shall make a good faith exchange of any and all documents, photographs, videos, etc., relating to the controversy between them. The arbitrator, in his or her sole discretion, shall have the power to order additional discovery of any sort allowed under California Law. The arbitrator may also hire independent experts to assist the mediation process. Prior to settlement or award and subject to the "Attorneys' Fees" paragraph of this Contract, the costs of mediation and arbitration, including experts, shall be borne equally by the parties. Nothing in the foregoing should be interpreted to interfere with a Contractor or Subcontractor's right to sue to enforce mechanics lien rights and foreclose thereon, but the parties herein agree they will timely cooperate and seek an order from the court to stay any such proceeding in Superior Court to allow for the mediation and arbitration of all disputes which are subject to the jurisdiction of an arbitrator.
- 27. ATTORNEYS' FEES.** If either party becomes involved in litigation or arbitration arising out of this Contract or the performance thereof, the court or arbitrator in such litigation or arbitration, or in a separate suit, shall award costs and expenses, including expert witness fees and reasonable attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court or arbitrator will not be bound by any fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.
- 28. AMBIGUITY.** In the event that the language of this Contract is determined to be ambiguous, the Contract shall be construed as having been jointly drafted by the parties to it and not interpreted against either one as the drafter of the Contract.
- 29. MUTUAL RESPONSIBILITY.** Contractor shall afford Owner and any contractors working directly or indirectly for Owner reasonable opportunity for introduction and storage of materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs in accordance with this Contract. If part of Contractor's WORK depends on proper execution or results upon construction or operation by Owner or another contractor, Contractor shall before proceeding with that portion of the WORK, promptly report to Owner any apparent discrepancies that would render it unsuitable for such proper execution and results.

30. DAMAGE TO PROJECT AND INSURANCE. Owner has the right, but not the obligation, to procure appropriate insurance, including Builders All Risk insurance to cover losses during course of construction, including vandalism, and malicious mischief, at Owner's own cost. Notwithstanding any such insurance procured by Owner, if the Project is destroyed or damaged by an accident, disaster, or calamity, such as fire, storm, flood, landslide, subsidence or earthquake, or by theft or vandalism, any work done by Contractor in rebuilding or restoring the Project shall be paid for by Owner as extra work, unless such destruction or damage was caused by Contractor or any of his employees, subcontractors or material suppliers, in which case Contractor shall perform such work at its sole expense. Contractor will maintain in full force and effect, a general liability and workers' compensation insurance policy which cover the WORK and Contractor's employees. Contractor is not obligated to procure any additional insurance coverage exceeding its current policies in effect. Owner shall obtain and pay for insurance against injury to his own employees and persons under Owner's direction and persons on the job site at Owner's invitation. The insurance required by this provision shall remain in effect for as long as the Contractor has an insurable interest in the property and until the Project is completed. If the Project is destroyed or damaged by any insurable cause, then any work done by Contractor in rebuilding or restoring the Project shall be paid for by Owner as extra work.

31. PROJECT SAFETY. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the Contract. In the event that Contractor encounters on site conditions that Contractor reasonably believes to be harmful in any way, including hazardous materials, asbestos, and PCBs that have not been rendered harmless, Contractor shall promptly notify Owner of such condition and immediately suspend work in the affected area. Work shall not resume unless and until such condition has been remedied to the satisfaction of Contractor. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to (1) persons authorized to be on the Project site; (2) the materials and equipment of, and work performed by, Contractor, other contractors, and Owner; and (3) property adjacent to the Project site such as trees, shrubs, lawns, sidewalks, and roads. Any Contractor requirements for special or specific safety programs or certifications, live scans, or drug screening, not currently held by contractor may be subject to a change order.

32. SUPERVISION. Contractor shall supervise and direct the WORK using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the WORK, unless otherwise agreed to by the parties. Contractor shall be responsible for examining portions of the WORK already performed under the Contract to determine that such portions are in proper condition to receive subsequent WORK. Supervision may be transferred to a Subcontractor as determined by the Contractor. Any "inspections" required by local, government, city or special requirements to be completed by a third party shall be the Owners responsibility.

33. SUBCONTRACTORS. Owner acknowledges that Contractor has the right to subcontract any portion of the WORK contemplated hereunder. In the event that Contractor does subcontract a portion of the WORK to a subcontractor, Contractor agrees to have such subcontractor be contractually obligated to Contractor in the same or substantial manner as Contractor is obligated to Owner hereunder. Contractor does not assume any liability whatsoever for Subcontractors or any WORK completed by others.

34. TERMINATION. If work is stopped for a period of (30) thirty days for any reason other than the fault of Contractor or one of its subcontractors, or if there is a material breach of the Contract by Owner, Contractor shall have the right to elect to terminate the Contract. Owner may terminate the Contract at any time for any reason upon (7) seven days written notice to Contractor. Upon termination, Contractor shall be entitled only to payment for all work performed, materials acquired for project, overhead, profit, and equipment provided through the date of termination. If the Contract is terminated by Owner, Contractor's one-year guarantee obligation shall commence on the date that Owner sends notification to Contractor of cancellation.

35. NOTICE TO CURE. As a condition precedent before any action or arbitration can be brought by Owner against Contractor or any of Contractor's subcontractors for any alleged construction defect, default under this Contract, or any other claim for damages, Owner must

provide written notice to Contractor and an opportunity to cure. The written notice must specifically identify the nature and location of any claimed construction defects, and/or defaults under the Contract. Owner must provide Contractor with the written notice within (30) thirty calendar days of discovery of the alleged defect or default, or any and all claims against Contractor for said defects and/or defaults are forever waived and barred. Owner must permit Contractor (5) five business days from the date that written notice from Owner to Contractor is actually received by Contractor, to begin curing or addressing the alleged defects and/or defaults. Within the (5) five day period, Contractor must either complete the corrections, or provide Owner with a written schedule for completion within a reasonable period of time. In the absence of Contractor's compliance with the above, Owner can employ any legal means to effect repairs and bring a claim against Contractor. Owner is exempt from the requirement of allowing Contractor an opportunity to cure, but not the requirement of notice, for emergency repairs. An emergency repair is one which is reasonably believed to be necessary to prevent personal injuries, or the loss or destruction of property in excess of \$2,500.00.

36. SITE PLANS, PERMITS & FEES. Unless documented in express Scope of Work herein, Inclusions/Exclusions summary, stamped structural drawings, stamped calculation packages, site plans, structure and/or product location approval by local or governing agencies, fabric attachment onto existing conditions analysis, existing framework inspection, local or governing permits, permit fees, inspections including city, local ordinance, California Division of the State Architect (DSA), governmental or special, surveying or otherwise approval by the governing agency are expressly excluded from this agreement. The Contractor does not represent, warrant, or guarantee in any way the items noted in this section or any other approval for construction will be obtained by the Contractor unless indicated in the Scope of Work.

37. FINAL DESIGN/APPLICATION. Contractor will not be responsible for the cost of a new sun shade structure or other product, or other collateral expenses, should the customer not be satisfied due to appearance of the final design and/or other variations beyond Contractor control. Seam patterning is determined based on the most economical solution.

38. STORAGE FEES. If Owner fails to take delivery of any Product on any mutually agreed upon scheduled delivery date within (30) thirty days of product arrival, Contractor shall store such Product and Owner shall be invoiced on the first day of each month following such scheduled delivery for reasonable administration and storage costs of 1.5% of contract total.

39. EXCLUSION FOR CONCEALED CONDITIONS. The Contractor will contact dig alert prior to the delivery and installation, and the Owner is obligated to have any underground latent conditions marked where there will be any digging at the installation location. If during the course of delivery and installation of any product, any latent conditions or underground that has not been marked by the Owner or communicated via as-built drawings then the Owner promises to indemnify, defend, hold harmless, waives and releases Contractor from any loss liability or damages associated with the installation. Concealed conditions include but are not limited to underground lines such as fiber optics, water, irrigation, sewer, electrical, gas, and unknown underground metal, asphalt, concrete or any other unknown obstacle not identified when this contract was established. If any concealed conditions are found during the construction process Contractor shall notify the Owner immediately upon such determination. Contractor shall continue WORK in other areas where practical to maintain project schedule. Contractor reserves the right to determine this practicality of continuation at their discretion. If concealed conditions are discovered Contractor will provide a subsequent change order to the Owner for authorization prior to continuation in the impacted area. Contractor has provided this contract based upon observations in the field, plans provided by Owner, or dimensioning software provided by others. As such Contractor cannot be found liable for discovering or damaging any unforeseen conditions including but limited to utility lines or any other unknown obstacle in which case the Owner shall bear the full responsibility. Additional construction equipment, labor, materials and/or means for progressing with excavation, steel placement, concrete installation may require a change order to be authorized and amended into this agreement prior to continuation of such services. Price quotes assume drilled pier footings unless specified otherwise in the Scope of Work Inclusions and Exclusions. Adjustments to the drilled pier foundation style including but not limited to spread footings, moving footing locations, bolting to existing foundations or any other third-party engineered approved



method may incur a change order for additional costs which shall be the Owners responsibility. Excavation conditions assume "standard soil" that does not contain sand, water, river rock, caliche, embedded rock, limestone, rocks larger than (5") five inches in diameter or heavier than (5) five pounds, other "hard rock conditions" or any other environment in which supplemental labor, equipment, material and/or third-party engineering services, including letters of approval, are required unless specified in the Scope of Work Inclusions and Exclusions.

40. CONFIDENTIALITY. Contractor agrees to hold all information in relation to this project as private and non-disclosure. We will not disclose your contractual terms without prior approval from the client mentioned in this agreement.

41. NO THIRD-PARTY BENEFICIARIES. This contract establishes no third-party assignments, rights, commitments or obligations between Contractor and any other organization, company or person, including any Owner who is not also an original purchaser of the materials and services provided by Contractor herein. The Contractor and Owner acknowledge and agree upon that there is no intention for any third-party beneficiary of the contract.

42. GOVERNING LAW. The Contractor and Owner authorize this contract to be interpreted and enforced in line with the laws of the State of California.

43. COMPLETE AGREEMENT / NO RELIANCE. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The terms of this Contract and its related exhibits and addendums supersede any representations in marketing materials or online web content. Owner hereby acknowledges that it has not relied upon any statements, claims or representations by Contractor, its representatives or distributors which are not expressly stipulated herein, including without limitation any statements, claims or representations as to the products, materials, services or warranties provided hereunder. This Contract can be modified only by a writing signed by both the Owner and Contractor.

44. PURCHASE ORDER. A subsequent Purchase Order may be initiated to authorize the acceptance of this agreement. The Purchase Order must expressly accept the terms and conditions of this agreement including this contracts reference number.

45. ADDITIONAL TERMS AND CONDITIONS. Additional terms and conditions are attached as Addendum "1" to this Contract. All such concurrently or later addendums executed by the Owner and Contractor referencing the within Contract are hereby incorporated herein by reference and made a part of this Contract.

PRELIMINARY NOTICE INFORMATION

The Project is owned by: _____
(Name or names that appear on the deed of trust to the Project)

The Owner's address is: _____
(Street Address) (City) (State) (Zip Code)

The construction lender for the Project is: _____
(Include name and branch location)

The construction lender's address is: _____
(Street Address) (City) (State) (Zip Code)

ATTACHMENTS 1-3

(1) Change Order Form

Sample Change Order Form is attached to this contract.

(2) Color Selection Forms

Sample Color Selection Forms are attached to this contract.

(3) Commercial General Liability Insurance (CGL) and Worker's Compensation Insurance

This Contractor carries commercial general liability insurance written by Nautilus Ins Co. Contractor is not obligated to procure any additional insurance coverage exceeding its current policies in effect. A copy of the Contractor's standard insurance is attached to this contract as Exhibit 3 for your review prior to acceptance of the Contractor's proposal.

Mark One:

- This Contractor has no employees and is exempt from workers' compensation requirements.
- This Contractor carries workers' compensation insurance for all employees.

Contractor is not obligated to procure any additional insurance coverage exceeding its current policies in effect. A copy of the Contractor's standard workers compensation insurance is attached to this contract as Exhibit 4 for your review prior to acceptance of the Contractor's proposal.



Project Address: _____
(Street) (City) (State) (Zip)

Project Description: _____

Project name: _____ Project number: _____
Project contract date: _____ Contact: _____
Phone: _____ Email: _____

The contract for the aforementioned project is hereby modified and amended as follows: (DESCRIBE CHANGES REQUESTED) _____

It is mutually agreed that the contract price is INCREASED/DECREASED (circle one) by \$_____, as a PAYABLE/DEDUCTIBLE (circle one) change order in accordance with the terms of our contract.

As a result of this change order, the progress payment schedule will be changed in the following manner: _____

As a result of this change order, the time for completion of the aforementioned contract is hereby EXTENDED/REDUCED (circle one) by an additional _____ days.



SOUTHERN
HEMISPHERE
SHADES, INC.

CHANGE ORDER

This change order is incorporated into and governed by the contract for the aforementioned Project and is incorporated therein.

Dated: _____

Submitted by Contractor:

By: _____

Contractor

Authorized Signer Name

Authorized Signer Title

Dated: _____

Approved by Owner:

By: _____

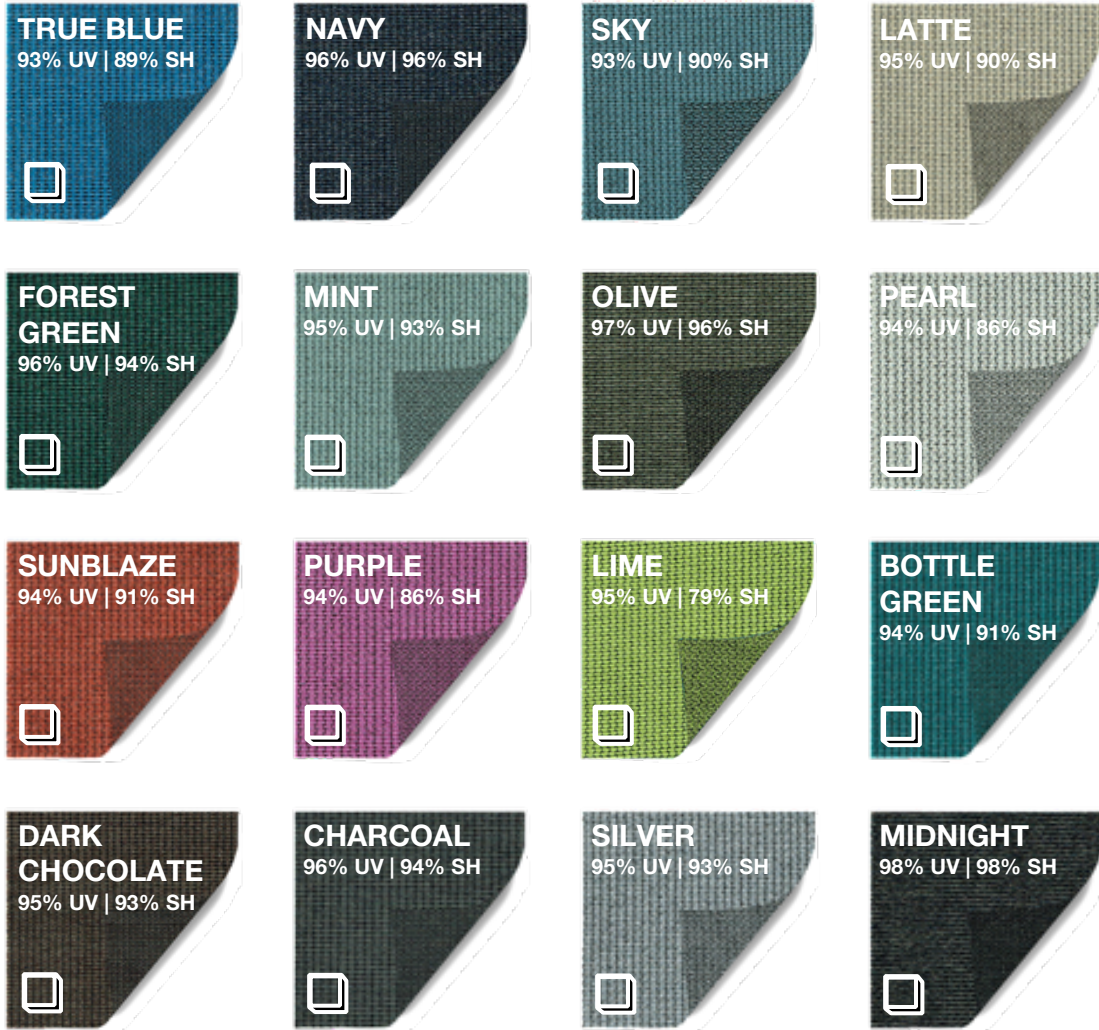
Authorized Signer Name

Authorized Signer Title



SOUTHERN
HEMISPHERE
SHADES, INC.

COLORS SOLACE FR MESH



Solace FR Mesh is the finished fabric coverings offered exclusively through Southern Hemisphere Shades, Inc. Solace FR Mesh fabric covers utilize raw materials that are certified by the California State Fire Marshall (CSFM), Division of State Architect (DSA), National Fire Protection Association (NFPA 701) and ASTM International (ASTM E-84). Please note due to variations in the material this is printed on or device being viewed with the colors depicted here may vary slightly from the finished product. UV stands for Ultraviolet Radiation and the percentage of rays blocked from the sun, which are known to damage the skin including the potential of skin cancer. SH stands for shade factor which is the amount of shade we see underneath the covering during a sunny day. Essentially it's the amount of visible light that is stopped. As example the color Midnight stops more visible light than Pearl.





SOUTHERN
HEMISPHERE
SHADES, INC.

COLORS STEEL

HYPER BLUE SW 6965 <input type="checkbox"/>	LOYAL BLUE SW 6510 <input type="checkbox"/>	DYNAMIC BLUE SW 6958 <input type="checkbox"/>	REAL RED SW 6868 <input type="checkbox"/>
DECISIVE YELLOW SW 6902 <input type="checkbox"/>	AFRICAN VIOLET SW 6982 <input type="checkbox"/>	LUCKY GREEN SW 6926 <input type="checkbox"/>	NIFTY TURQUOISE SW 6941 <input type="checkbox"/>
BEIGE SW 2859 <input type="checkbox"/>	BLONDE SW 6128 <input type="checkbox"/>	CELERY SW 6421 <input type="checkbox"/>	JADE DRAGON SW 9129 <input type="checkbox"/>
EXTRA WHITE SW 7006 <input type="checkbox"/>	REFUGE SW 6228 <input type="checkbox"/>	VINTAGE VESSEL SW 9050 <input type="checkbox"/>	MONORAIL SILVER SW 7663 <input type="checkbox"/>
THUNDER GRAY SW 7645 <input type="checkbox"/>	BLACK MAGIC SW 6991 <input type="checkbox"/>	COBBLE BROWN SW 6082 <input type="checkbox"/>	TERRA COTTA SW 2803 <input type="checkbox"/>

Please mark your color choice and initial at the bottom of the page. Due to variations in the material this is printed on or device being viewed with the colors depicted here may vary slightly from the finished product.



Please complete the information below and include with the following documents...

1. Fabric Color Section: Colors Solace FR Mesh document with choice selected.
2. Steel Color Selection: Colors Steel document with choice selected.

Project Address: _____
 (Street) (City) (State) (Zip)

Project name: _____ Project number: _____
 Project contract date: _____ Contact: _____
 Phone: _____ Email: _____

Dated: _____

Dated: _____

Submitted by Contractor:

Approved by Owner:

By: _____

By: _____

Contractor

Authorized Signer Name

Authorized Signer Name

Authorized Signer Title

Authorized Signer Title



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bill Hoge Insurance Agency 729 Sunrise Ave, #502 Roseville CA 95661		CONTACT NAME: Bill Hoge Insurance Agency PHONE (A/C, No, Ext): 916-749-3702 FAX (A/C, No): 877-749-3707 E-MAIL ADDRESS: bill@hogeinsurance.com	
INSURED Southern Hemisphere Shades, Inc. 4212 Roseville Rd. Ste. G North Highlands 95865		INSURER(S) AFFORDING COVERAGE INSURER A: Atlantic Casualty Insurance Company INSURER B: FARMERS INS EXCH 21652 INSURER C: Evanston Insurance Company INSURER D: STATE COMPENSATION INS FUND 35076 INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		L358000204-1	04/09/2023	04/09/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PO AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		606763196	09/24/2022	09/24/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		EZXS3111872	04/09/2023	04/09/2024	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y N/A	926375722	11/05/2022	11/05/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Bill Hoge</i>
---------------------------	--