

## FORM AGREEMENT

**THIS AGREEMENT**, entered into this **18<sup>th</sup>** day of **January, 2018** in the County of El Dorado of the State of California, by and between the Mother Lode Union School District, hereinafter called the "District", and **BRCO Constructors, Inc.**, hereinafter called the "Trade Contractor".

**WITNESSETH** that the District and the Trade Contractor for the consideration stated herein agree as follows:

**ARTICLE I - SCOPE OF WORK:** The Trade Contractor shall furnish all labor, materials, equipment, tools, and utility and transportation services, and shall coordinate and sequence Trade Contractor's Work under the Direction of Construction Manager and District and in cooperation with other Trade Contractors on the Project to perform and complete all Work required in connection with **Bid Number 17-002 Package #001** for the **Improvements at Herbert Green MS** in strict accordance with the Contract Documents enumerated in Article 7 below. The Trade Contractor shall be liable to the District for any damages arising as a result of a failure to comply with that obligation, and the Trade Contractor shall not be excused with respect to any failure to so comply by an act or omission of the Construction Manager, Architect, Engineer, Inspector, Division of the State Architect (DSA), or representative of any of them, unless such act or omission actually prevents the Trade Contractor from fully complying with the Contract Documents and the Trade Contractor protests, in accordance with the requirements of the Contract Documents, that the act or omission is preventing the Trade Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the District office within seven (7) days of the date of occurrence of such act or omission preventing the Trade Contractor from fully complying with the Contract Documents.

**ARTICLE 2 - TIME OF COMPLETION:** The District may give notice to proceed within ninety (90) days of the award of the bid by the District. Once the Trade Contractor has received a notice to proceed, the Trade Contractor shall develop a Trade Contractor Baseline Schedule consistent with Outline Schedule of Work for Trade Contractor's Scope of Work and Trade Contractor's Work shall reach Substantial Completion (See Article 1.1.55) of the Work within **Two Hundred Fifty Nine (245)** calendar days from receipt of the Notice to Proceed. This shall be called Contract Time. (See Article 8.1.1). It is expressly understood that time is of the essence.

Trade Contractor has thoroughly studied the Project and has satisfied itself that the duration set forth for the Contract Time and the duration provided for Trade Contractor's Scope of Work for this Project is adequate for the timely and proper completion of the Project within each milestone set forth in the Outline Schedule and within the Contract Time. Further, Trade Contractor has included in the analysis of the time required for this Project, items set forth in General Conditions Section 8.3.2.12, Submittal Schedules, Rain Day Float, and Governmental Delay Float.

**ARTICLE 3 - LIQUIDATED DAMAGES:** It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Trade Contractor will pay the District the sum of **Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00)** per calendar day for each and every day of delay attributable to Trade Contractor's critical path delay to the Project Baseline Schedule that delays Key Milestones for delivery of Phases or cause delay to the Contract Time set forth in Article 2 of this Agreement as Liquidated Damages and not as a penalty or forfeiture. In the event Liquidated Damages are not paid, the Trade Contractor further agrees that the District may deduct such amount thereof from any

money due or that may become due Trade Contractor under the Contract (See Article 9.6 and 2.2 of the General Conditions).

**ARTICLE 4 - CONTRACT PRICE:** The District shall pay to the Trade Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, the sum of **ONE MILLION NINE HUNDRED EIGHTY-THREE THOUSAND DOLLARS (\$1,983,000)**, said sum being the total amount stipulated in the Bid Trade Contractor submitted. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by the Trade Contractor and the District, subject to the monetary limitations set forth in Public Contract Code Section 20118.4. In the event that the Trade Contractor proceeds with a Change in work without an agreement between the District and Trade Contractor regarding the cost of a Change Order, the Trade Contractor waives any Claim of additional compensation for such additional work.

**ARTICLE 5 - HOLD HARMLESS AGREEMENT:** Trade Contractor shall defend, indemnify and hold harmless District, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Trade Contractor shall protect and defend, at its own expense, District, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Trade Contractor agrees to and does hereby defend, indemnify and hold harmless District, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of (See Article 3.16).

(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Trade Contractor or any person, firm or corporation employed by Trade Contractor, either directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.

(c) Any dispute between Trade Contractor and Trade Contractor's subcontractors/supplies/Sureties, including, but not limited to, any failure or alleged failure of the Trade Contractor (or any person hired or employed directly or indirectly by Trade Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Trade Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified herein Article 5 and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

**ARTICLE 6 - PROVISIONS REQUIRED BY LAW:** Each and every provision of law and clause required to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction (See Article 1.2.1.5)

**ARTICLE 7 - COMPONENT PARTS OF THE CONTRACT:** The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Notice Calling for Bids
- Instructions to Bidders
- Designation of Subcontractors
- Non-Collusion Declaration
- Bid Guarantee Form
- Bid Bond
- Bid Form
- Trade Contractor's Certificate Regarding Worker's Compensation
- Acknowledgment of Bidding Practices Regarding Indemnity
- DVBE Participation Statement and Close-Out Forms
- Agreement Form
- District Option Assignment Agreement
- Payment Bond
- Performance Bond
- Dual Oblige Rider to Performance Bond
- Guarantee
- Escrow Agreement for Security Deposit In Lieu of Retention
- Workers' Compensation/Employers Liability Endorsement
- General Liability Endorsement
- Automobile Liability Endorsement
- Trade Contractor's Certificate Regarding Drug-Free Workplace
- Trade Contractor's Certificate Regarding Alcohol and Tobacco
- Trade Contractor's Certificate Regarding Background Checks
- General Conditions
- Supplementary and Special Conditions
- Outline Schedule
- Specifications
- All Addenda as Issued
- Drawings/Plans
- Substitution Request Form
- Asbestos and Lead Building Survey- September 21<sup>st</sup>, 2017
- Pavement Study- May 17<sup>th</sup>, 2017
- Geotech Study- October 12<sup>th</sup>, 2017

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

**ARTICLE 8 - PREVAILING WAGES:** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE) (See Article 13.7.2).

The following are hereby referenced and made a part of this Agreement and Trade Contractor stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)

**ARTICLE 9 - RECORD AUDIT:** In accordance with Government Code Section 8546.7 (and Davis Bacon, if applicable) and Article 13.11 of the General Conditions, records of both the District and the Trade Contractor shall be subject to examination and audit for a period of five (5) years after a Final Retention Payment or the Recording of a Notice of Completion, whichever occurs first.

**ARTICLE 10 - TRADE CONTRACTOR'S LICENSE:** The Trade Contractor must possess throughout the Project a Contractor's License applicable to the trades being performed issued by the State of California, which must be current and in good standing.

**ARTICLE 11 – ASSIGNMENT OF CONTRACT BY DISTRICT:** Trade Contractor agrees and acknowledges that the District may assign this Contract to a Construction Manager for the construction management at-risk delivery of the Project. Trade Contractor hereby agrees to an assignment of the Trade Contract by the District to a Construction Manager pursuant to the terms and conditions set forth in the District Option Assignment Agreement (the "Assignment Agreement") that is attached to and included in the Supplementary General Conditions. The Trade Contractor and Trade Contractor's Surety shall execute the Assignment Agreement and return it to the District within five (5) calendar days. Upon receipt, District shall submit the signed Assignment Agreement to the Construction Manager for execution and the assignment permitted under this Article shall be effective upon the execution of the Assignment Agreement by the Construction Manager. Failure of the Trade Contractor and/or its Surety to execute and return the Assignment Agreement to the District within five (5) calendar days of the District's written request shall render the Trade Contractor's bid non-responsive and the District award the Contract to the next lowest responsive responsible bidder, and the Trade Contractor will forfeit its bid security to the District.

**IN WITNESS WHEREOF,** this Agreement has been duly executed by the above named parties, on the day and year first above written.

Mother Lode Union School District

TRADE CONTRACTOR:

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

\_\_\_\_\_  
Typed or Printed Name

Superintendent

\_\_\_\_\_  
Title

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Printed Name

\_\_\_\_\_  
Title (Authorized Officers or Agents)

\_\_\_\_\_  
Signature

**(CORPORATE SEAL)**