SCHOOL FACILITIES DIVISION

Adopted: December 4, 2008
Modified: November 4, 2009, June 23, 2010, July 11, 2012, October 9, 2013, April 6, 2016, December 8, 2016, October 4, 2017, July 11, 2018, January 8, 2020, May 6, 2020, May 4, 2022, April 5, 2023, November 6, 2024, May 6, 2026

TERMS AND CONDITIONS FOR ACCEPTANCE OF MONIES FROM BUILDING RENEWAL GRANT FUND

School District: Catalina Foothills Unified District

School: Orange Grove Middle School

BRG Project Number: PA-011144

Project Title: OG- Classroom 203 AC Unit Replacement

01. PURPOSE OF TERMS AND CONDITIONS

These Terms and Conditions apply to the distribution of monies by the School Facilities Division (SFD, or "Division") from the Building Renewal Grant Fund ("Fund") pursuant to Arizona Revised Statutes, ("A.R.S.") §41-5731, §41-5701, and §41-5702.

These monies are being awarded to the District for the purpose of maintaining the adequacy of existing school facilities owned by school districts that are required to meet the minimum adequacy standards for student capacity and that fall below the minimum school facility guidelines found in A.A.C. Title 7, sections R7-6-101 through R7-6-276. Districts are prohibited from using monies from the Fund awarded pursuant to these Terms and Conditions on any project that is in a building, or part of a building, that is being leased to another entity. All monies used must be in compliance with the statutory requirements found in A.R.S. §41-5731, A.A.C. Title 7 section R7-1-101 through R7-6-276, and the Building Renewal Grant Policy adopted on October 2, 2008 and as subsequently amended, as well as any applicable session law.

02. TERM OF TERMS AND CONDITIONS

The term of these Terms and Conditions shall begin on the initial date of the performance period and shall continue until the project is closed, pursuant to Paragraph 4.2. A project shall be complete within 12 months per A.R.S. §41-5731.

2.1 ABANDONMENT OF THE PROJECT OR PHASE GRANT

A Project may be considered to be abandoned if signed Terms and Conditions have not been submitted by the District within four months of the SFD's determination of BRG eligibility. A phase grant may be considered to be abandoned if a purchase order has not been accepted by the District and approved by the SFD within four months of the award, or if the phase grant has had no activity within a 6 month period. In such instances, the project or phase grant may be subject to administrative closeout and any monies awarded may be de-obligated from the project or phase grant and returned to the fund.

03. FINANCIAL CONDITIONS

The District will accept a grant from the Fund in accordance with all applicable state statutes and rules, and will expend the funds in compliance with all provisions of such statutes and rules, including but not limited to, the following:

a. Use of fiscal control and fund accounting procedures as prescribed in the Uniform System of Financial Records, which will ensure proper disbursement of, and accounting for, monies paid to the District from the Fund;

b. Compliance with the School District Procurement Rules adopted by the Arizona State Board of Education, and the USFR purchasing guidelines;

c. Compliance with all applicable state, federal, and local codes and laws related to buildings and building access, including permitting requirements of the Department of Environmental Quality for any construction project;

d. Compliance with any applicable federal, state and local health or safety requirements;

e. Compliance with any applicable School Facilities Division Performance Specifications;

f. The SFD will require Design Scope Development meetings with the District's SFD liaison, selected design professional, and the District before any funding is made available for a Construction phase grant. School district non-compliance with these Terms and Conditions may result in the delay of releasing phase grant applications for Procurement and/or Construction;

g. Professional services deliverables will be submitted to the SFD via activity reports before project and phase grant closeout to verify deliverables were successfully funded by the Building Renewal Grant Program.

h. Further requests for funds in the form of subsequent phases, change orders, supplemental funding requests, and other requests outside of the project scope as described in the Terms and Conditions may be deemed ineligible upon review by the SFD. These determinations are appealable as authorized in A.R.S.§ 41-5702 (A) (5) (i). Staff will provide guidance and technical assistance to the District in meeting program requirements. The final determination of the SFD or the Board are appealable agency actions as detailed in § 41-5702 (A)(5) (i) and subsection 8. of these Terms and Conditions.

i. Failure to comply with any term or condition required by this Agreement may result in a delay in the processing of payment applications and Grant Amendments (change orders).

3.1 UNIFORM SYSTEM OF FINANCIAL RECORDS

The District will maintain records as required by the Uniform System of Financial Records and provide access to those records to the SFD as necessary to perform its duties. The District will

cooperate with the SFD or the Auditor General or any of their authorized representatives when audits are conducted as authorized by law. This cooperation includes access without unreasonable restrictions to the District's records and personnel for the purpose of obtaining relevant information.

3.2 SURPLUS FUNDS

If the final cost of the Project or the phase grant is less than the amount awarded by the SFD, the SFD shall de-obligate the remaining monies from the project or phase grant at closeout.

3.3 GRANT AMENDMENTS (CHANGE ORDERS) / UNFORESEEN CONDITIONS

The District shall notify the SFD if any unforeseen conditions arise during project implementation. The SFD will direct the District on how to proceed. The Grant Amendment (Change Order) will indicate any changes to the contract value, contract schedule, and contract scope. No work shall proceed without a fully executed Grant Amendment (Change Order). Any work the school district approves prior to the executed Grant Amendment (Change Order) is the financial responsibility of the school district.

Pursuant to A.R.S. §41-5701.02.I.2., if a school district approves (If the District issues a purchase order or authorizes start of the work) work referenced in a change order before the SFD approves the Change Order, the school district is responsible for the cost and construction of the project ('The Project' is defined for the purposes of the Change Order as the work defined in the Change Order).

3.4 LOCAL FUNDS

If the District intends to contribute district cost share, the District shall provide to the SFD an itemized purchase order signed by a District representative authorized to make the expenditure. The District's purchase order shall clearly itemize the funding sources and the amounts being committed to each phase grant.

Elective upgrades to facilities, district administrative spaces, grade configuration updates of facilities, or program changes limited by "built as designed" plans are ineligible for BRG funds. Excluded spaces are ineligible for BRG funds except that the SFD will cover the first 10% of excluded space for a multi-building or campus-wide project for life/safety related systems. Examples include fire alarms, intercoms, and central plants.

3.5 DISBURSED FUNDS

Any work the school district approves prior to receiving an award notice or an approved Grant Amendment is the financial responsibility of the school district. The District shall return any disbursed monies to the SFD, and reimburse the Fund for monies spent without proper authorization from the SFD within thirty (30) days of being notified by the SFD.

3.6 FUTURE REPAIRS – THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT

To the extent allowed by law, if the District has contributed local funds to pay for an upgrade of

the Project beyond that required by the minimum school facilities guidelines; any increase in the cost of a future repair or replacement shall be paid for proportionally according to the original cost sharing.

04. REPORTING REQUIREMENTS

The District will make reports to the SFD as requested, and will cooperate with any evaluation of the grant and/or project as required by the SFD. All expenditures and projects are subject to audit. All construction and related contracts entered into by the District shall contain a clause that will permit the SFD and/or the District to audit the contract. Activity Reports are to be submitted at least quarterly in order to keep the SFD advised of the progress of the work being completed in the Phase Grant.

4.1 PUBLIC RECORD

Any application, report or plan, including school designs or architectural drawings relating to the funded Project in the possession of the District or its agents or designees is deemed a public record as defined by Arizona law.

4.2 FINANCIAL ACTIVITY / PHASE GRANT CLOSEOUT

The District shall complete a final review of financial activity in each phase grant before initiating phase grant closeout. The District shall submit a phase grant closeout upon receipt of the final phase grant payment.

The District shall maintain records for five years following the completion of the project, which show:

a. The amounts received from the Fund;

b. How the District spent the monies received from the Fund;

c. The total cost of the project and each phase grant;

d. The share of the total cost provided from other sources;

e. A list of all change orders that were approved and denied for each phase grant.

05. INSURANCE REQUIREMENTS

For all construction projects, the District agrees to secure insurance coverage for purposes of general liability, property damage and workers' compensation and secure performance and payment bonds. Projects as a result of weather-related or other insurable incidents shall be initiated by an insurance claim and partnerships shall be reported.

06. AUDIT OF RECORDS

Pursuant to A.R.S. §§ 35-214 and 35-215, the District shall retain and shall contractually require each subcontractor to retain all data, books and other records (“records”) relating to these Terms and Conditions for a period of five years after completion of these Terms and Conditions. All records shall be subject to inspection and audit by the State for five years after the termination of these Terms and Conditions.

07. AVAILABILITY OF FUNDS

Every payment obligation of the State under these Terms and Conditions is conditioned upon the availability of funds allocated for the payment of such obligations. If funds are not allocated and available for the continuance of the Project or phase grant, these Terms and Conditions may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

08. APPEALABLE AGENCY ACTION

Pursuant to 41-5702 (A)(5) (i) and subsection P, Building Renewal Grant requests are an appealable agency action.

SFD Staff shall notify a school district in writing that the proposed project does not meet eligibility criteria. The written notification shall include documentation to support the staff's determination that the proposed project does not meet the eligibility criteria. The SFD will send written notification to the school district after the final decision that the school district is not eligible. The school district may directly appeal the staff's determination of ineligibility to the director or designee. The school district may directly appeal the director's determination of ineligibility to the board.

A school district may appeal the denial of a request for monies or any other appealable Division action pursuant to title 41, chapter 6, article 10. For the purposes of this subsection, "appealable agency action" has the same meaning prescribed in section 41-1092.

8.1 RESOLUTION OF DISPUTES

The Parties to these Terms and Conditions agree to resolve all disputes arising out of or relating to these Terms and Conditions through arbitration, after exhausting applicable administrative review (pursuant to Title 41, Chapter 6, Article 10), to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

09. NON-DISCRIMINATION

The Parties shall comply with Executive Order 2023-01. However, Tribal Nations are exempt from the definition of employer for both Federal and State Civil Rights Act.

10. TERMINATION

Each party shall have the right to terminate this Agreement by notifying the other party in writing of the termination at least thirty (30) days prior to the effective date of said termination. If the Agreement is terminated by the SFD, the District shall be paid for all allowable costs incurred prior to the date of termination, and the cost determined appropriate by the SFD to de-mobilize the contractor from the work site, if applicable.

The payment of costs are subject to audit verification by the SFD or its duly authorized representative.

11. ASSIGNMENT AND DELEGATION

Neither party may assign any rights hereunder without the express, prior written consent of both parties.

12. CANCELLATION FOR CONFLICT OF INTEREST

The parties acknowledge that these Terms and Conditions are subject to the cancellation provisions set forth in A.R.S. §38-511.

13. ENTIRE AGREEMENT

These Terms and Conditions contain the entire understanding of the parties hereto. There are no representations or provisions other than those contained herein. Any amendment or modification of these Terms and Conditions shall be consistent with Section 1 of these Terms and Conditions.

14. APPLICABLE LAW

These Terms and Conditions shall be governed and interpreted by the laws of the State of Arizona.

15. THIRD-PARTY ANTITRUST VIOLATIONS

The District assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the District toward fulfillment of these Terms and Conditions.

16. PROGRAM REVIEW AND SITE VISITS

The SFD has the right to make site visits at reasonable intervals for purposes of review of Project accomplishments and management control systems and to provide technical assistance, if required. The District will provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience to the SFD in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

17. RIGHTS IN DATA, RIGHT TO USE, DUPLICATE AND DISCLOSE

The SFD may duplicate, use, and disclose in any manner and for any purpose whatsoever, within the limits established by Federal and State laws and regulations, all information relating to these Terms and Conditions.

The District agrees that any negotiations, agreements, and/or contracts between the District and Architect(s) for the design of the Project shall provide that the SFD retains the right to use design documents limited to Site Plan, Exterior Elevations, Floor Plans, models, photographs, and renderings for the following, restricted purposes:

a) To acknowledge Architects and their school designs successfully funded by the Board;

b) To create a resource collection of promotional architectural designs for elementary, middle and high schools that will be available to other school districts to use as a school design resource.

It is understood that other school districts cannot use the District's design plans as their own as mandated by Code and Rules under the Arizona State Board of Technical Registration. Artistic representations shall not contain confidential or proprietary information, but shall include professional credit for the architect and engineers of the successful project.

18. FEDERAL IMMIGRATION AND NATIONALITY ACT

By entering into the Contract, the District warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The District shall obtain statements from its contractors and its subcontractors certifying compliance and shall furnish the statements to the Board upon request. These warranties shall remain in effect through the term of the Terms and Conditions. The District and its contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

The State may request verification of compliance for any of the District's contractors or subcontractors performing work under these Terms and Conditions. Should the State suspect or find that the District or its contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Terms and Conditions for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

19. E-VERIFY REQUIREMENTS PURSUANT TO A.R.S. § 41-4401

19.1 WARRANT COMPLIANCE

The District's contractors must warrant compliance with all Federal immigration laws and

regulations relating to employees and warrant its compliance with A.R.S. § 23-214(A). (That subsection reads: After December 31, 2007, each employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-verify program.)

19.2 BREACH OF WARRANTY

A breach of warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of contract and the contractor may be subject to penalties up to and including termination of the contract.

19.3 FAILURE TO COMPLY

Failure to comply with a SFD audit process to randomly verify the employment of contractors and subcontractors shall be deemed a material breach of contract and the contractor may be subject to penalties up to and including termination of the contract.

19.4 INSPECTION

The SFD retains the legal right to inspect the papers of any employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty under Paragraph 19.1.

20. REIMBURSEMENTS FOR INVESTIGATIONS, ASSESSMENTS, REPAIRS AND REPLACEMENTS.

The SFD may enter into additional agreements with the District that authorize the District to utilize SFD-funded investigations, assessments, repairs or replacements for construction defect litigation. This agreement may require the District to reimburse the SFD an agreed upon amount for the expenses incurred in obtaining those investigations, repairs or replacements if, upon the completion of the legal action, the District receives damages.

21. PROHIBITED BEHAVIOR-BOYCOTT OF ISRAEL

The District warrants that its contractors are not engaged in a boycott of Israel as defined by A.R.S. §35-393.01.

22. FLOW-DOWN REQUIREMENTS

The District shall comply with requirements of applicable Federal, State and local laws, regulations, policy and guidance, and shall flow down the requirements of applicable Federal, State, and local laws, regulations, policy and guidance to contractors and subcontractors at any tier to the extent necessary to ensure compliance with the requirements.

The District shall comply with all laws, statutes, ordinances, rules, codes, and regulations applicable to any school district.

23. CERTIFICATION / AUTHORIZATION

These Terms and Conditions must be signed by the President of the Governing Board, Superintendent and the CFO/Business Manager of the District and certifies that he or she has read these Terms and Conditions and represents and warrants that he or she is duly authorized to agree and accept and therefore sign these Terms and Conditions on behalf of the District.

BRG Project Number: PA-011144

School District: Catalina Foothills Unified District

Governing Board President (signature)	Date
Tom Logue	
Name (printed/typed)	
Superintendent (signature)	Date
Denise Bartlett Ed. D.	
Name (printed/typed)	
CFO/Business Manager (signature)	Date
Lisa Taetle	
Name (printed/typed)	