

## **DIVISION OF SCHOOL FACILITIES**

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

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

School District:

School:

eCivis Award/Contract ID Number:

Project Title:

#### **1. PURPOSE OF TERMS AND CONDITIONS**

These Terms and Conditions apply to the distribution of monies by the Division of School Facilities (DSF) from the Building Renewal Grant Fund ("Fund") pursuant to Arizona Revised Statutes, ("A.R.S.") §41-5732, §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. 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. §41-5732 and the Building Renewal Grant Policy adopted on October 2, 2008 and as subsequently amended, as well as any applicable session law.

#### **2. 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. §41-5732.

##### **2.1 ABANDONMENT OF THE PROJECT**

A Project may be considered to be abandoned if a purchase order has not been issued within four months of approval of funding. In such an instance, the project may be subject to administrative closeout and any monies awarded by the Division of School Facilities to the District may be returned to the fund.

### **3. 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, 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 Division of School Facilities Performance Specifications;
- f. Any award based on an estimate is subject to the Division of School Facilities approval of the procurement process and award of the bid or quote as applicable prior to distribution of funds to the district;
- g. The Division of School Facilities will require a pre-award meeting with the selected contractor before any funding is made available. School district non-compliance with these Terms and Conditions and/or non-performance through the performance period of the project may result in the delay of payments until the issue is corrected;
- h. Professional services deliverables will be submitted to the Division of School Facilities via activity reports before project closeout to verify deliverables were successfully funded by the Building Renewal Grant Program.

#### **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 Board as necessary to perform its duties. The District will cooperate with the Board 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 is less than the amount awarded by the Division of School Facilities, the District shall return the unspent monies to the Division of School Facilities.

### 3.3 UNFORESEEN CONDITIONS

The District shall notify the DSF if any unforeseen conditions arise during project implementation. The Division of School Facilities will direct the District on how to proceed. The District must submit an executable Change Order which includes the signature of the District Representative, Architect, and contractor prior to receiving written approval from the Division to proceed. The Change Order is not considered executed until signed by the Division of School Facilities. The Change Order will also indicate any changes to the contract value, contract schedule, and contract scope. No work shall proceed without a fully executed Change Order. Any work the school district approves prior to the executed change order is the financial responsibility of the school district.

Pursuant to A.R.S. §41-5701.02.1.2., 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 Division of School Facilities ('The Division' for the purposes of this Change Order is interchangeable with 'Division Staff') 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 supplement the Project with additional funds, the District shall provide to the Division of School Facilities an itemized purchase order signed by a District representative authorized to make the expenditure. The District's purchase order shall clearly indicate the amount being committed in each project.

Elective upgrades to facilities, excluded spaces in excess of 10%, district administrative spaces, grade configuration updates of facilities, or program changes limited by "built as designed" plans are limited to district funds, notwithstanding campus-wide required fire, life, safety systems.

### 3.5 SCOPE OF WORK

Any change in the scope of work shall be implemented by a Change Order. The District must submit an executable Change Order which includes the signature of the District Representative, Architect, and contractor prior to receiving written approval from the Division of School Facilities to proceed. The Change Order is not considered executed until signed by the Division of School Facilities. No work shall proceed without a fully executed Change Order. If changes in the scope of work are made without the Division of School Facilities approval, the Division of School Facilities will not release any funding for the changes in the scope of work, and further may consider the Project abandoned. Any work the school district approves prior to the executed change order is the financial responsibility of the school district. The District shall return any unspent monies to the Division of School Facilities, and reimburse the Fund for

monies spent without proper authorization from the Division of School Facilities within thirty (30) days of being notified by the Division of School Facilities

### **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 proportional to the original cost sharing.

## **4. REPORTING REQUIREMENTS**

The District will make reports to the Division of School Facilities as requested, and will cooperate with any evaluation of the grant and/or project as required by the Division of School Facilities. 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 Division of School Facilities and/or the District to audit the contract.

### **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 FINAL FINANCIAL REPORT AND PROJECT CLOSEOUT**

The District shall complete a final financial report and project closeout for each project phase awarded before initiating an application for subsequent project phases. 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;
- d. The share of the total cost provided from other sources;
- e. A list of all change orders that were approved and denied for a construction project.

## **5. 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 incidences shall be

initiated by an insurance claim and partnerships reported.

## **6. 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.

## **7. 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, 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.

## **8. 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.

## **9. NON-DISCRIMINATION**

The Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that Districts for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability. 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 - Division of School Facilities, the District shall be paid for all the allowable costs incurred prior to the date of termination, and only cost determined appropriate by the Division of School Facilities to de-mobilize the contractor from the work site, if applicable.

The payment of costs may be subject to audit verification by the Division of School Facilities 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 Division of School Facilities 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 Division of School Facilities 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. RIGHT TO USE, DUPLICATE AND DISCLOSE**

The Division of School Facilities 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 Division of School Facilities 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 nor 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 Division of School Facilities 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 Division of School Facilities 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 Division of School Facilities may enter into additional agreements with the District that authorize the District to utilize Division of School Facilities funded investigations, assessments, repairs or replacements for construction defect litigation. This agreement may require the District to reimburse the Board 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, CFO/Business Manager, and Facilities Director 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.

**eCivis Award/Contract ID Number:**

\_\_\_\_\_  
Governing Board President (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (printed/typed)

\_\_\_\_\_  
School District

\_\_\_\_\_  
Superintendent (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (printed/typed)

\_\_\_\_\_  
CFO/Business Manager (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (printed/typed)