

CLOVIS UNIFIED SCHOOL DISTRICT

RFP 2974- District Campus Phase II Design for Manufacturing Steel Buildings

Addendum No. 4

January 12, 2024

Notice:

This addendum forms a part of the RFP /Contract Documents for the above referenced project and shall be incorporated integrally. Each proposer shall make necessary adjustments and submit their proposal with full knowledge of all modifications, clarifications, and supplemental data included therein. Where provisions of the following supplemental data differ from those of the original RFP / Contract Documents, this Addendum shall govern.

You are hereby notified of the following changes, clarifications, or modifications to the original RFP /Contract Documents:

RFI- Response

AD4-01: Section 3.5.8 says the Contract form is attached to this RFP Packet. However, we are unable to locate the Contract form. May we please be directed to a copy of the Contract form?

Response: Sample Contract Attached to this Addendum.

AD4-02: Will the Customer submit payment at the Time of Delivery for the PEMB Building FOB Jobsite?

Response: Payment installments will be negotiated during contract execution.

AD4-03: What is the advertised budget for the project?

Response: The Engineer's estimate is \$1,300,000.00.

RFP Modification

AD4-04: District will award by building.

AD4-05: Proposal form shall be deleted and replaced with revised Proposal Form attached to this addendum.

AD4-01

SAMPLE
DESIGN FOR MANUFACTURING AGREEMENT
(“Agreement”)
COVER

Program/Event: Design for Manufacturing Steel Buildings (4)

CONTRACTOR	
<u>Full legal name of other party (“Contractor”)</u> Attn: <u>Name of contact person, Title</u> <u>Street address (no PO box)</u> <u>City, State #####</u> Phone: <u>(###) ###-####</u> Email: <u>email</u>	DBA <i>(leave blank if none)</i> :
DISTRICT	
Clovis Unified School District (“District”) Attn: <u>Tatum Toste, Director of Purchasing</u> <u>1450 Herndon Avenue</u> <u>Clovis, CA 93611</u> Email: <u>tatumtoste@clovisusd.k12.ca.us</u>	
CONTRACT TERM (see § 3.1)	TERMINATION DURING CONTRACT TERM (see § 3.2)
“Effective Date” : <u>February 1, 2024</u> “Termination Date” : <u>February 28, 2025</u>	Ground for Termination: With or without cause “Notice Period” : At least <u>30 days</u> before the effective date of termination of this Agreement
CONTRACT AMOUNT, INVOICE, AND PAYMENT (see Art. 2). Contractor shall invoice District and District shall pay Contractor the Contract Amount pursuant to the Payment Schedule stated below <i>(mark one and complete as indicated)</i> :	
<input type="checkbox"/> A. Entire Contract Amount/Completion Of All Services: Entire “Contract Amount” of <u>\$_____</u> , including the Owner Contingency Allowance of <u>\$_____</u> . The Contract Amount is more fully set forth in Exhibit A. Contractor shall submit the invoice to District within 30 days of the date on which Contractor completed all Services in accordance with this Agreement.	
<input type="checkbox"/> B. Other/Specified Amount, Paid Periodically: The “Contract Amount” of <u>\$_____</u> , including the Owner Contingency of <u>\$_____</u> . The Contract Amount is more fully set forth in Exhibit A. Contractor shall submit each invoice to District within 30 days of the date on which Contractor has completed, in accordance with this Agreement, the Services for which Contractor requests payment.	
Invoice and “Payment Schedule” : Each invoice shall comply with Section 2.2 and must be received and approved by District before Contractor may receive any payment under this Agreement.	

CONTRACTOR OBLIGATIONS. Unless specifically stated otherwise on this Cover, Contractor shall provide all labor, materials, supplies, equipment, and transportation necessary to perform all obligations required of Contractor as set forth elsewhere in this Agreement and the following “**Services**”:

A. *What Services will Contractor provide:* | Contractor shall be responsible for the design and fabrication of four (4) engineered metal buildings in accordance with District’s RFP for Design of Manufacturing Steel Buildings and Contractor’s proposal incorporated by reference as though fully set forth herein.

Contractor must coordinate all aspects of the design with the District’s structural engineer (Teter, Inc.) to enable a complete and coordinated design. The design must meet all City of Clovis design standards and all other applicable requirements as more fully set forth in the General Terms and Conditions.

The steel building components will be delivered to the District’s property located at Fowler and Herndon Avenues in Clovis, California. All site work and installation of the steel building components will be performed separately. Contractor shall coordinate the delivery with the District’s construction manager (Mark Wilson Construction, Inc.). |

B. *When will Contractor provide the Services (mark one and complete as indicated):*

Date Determined – Contractor will perform the Services on (state specific date(s)): | Time is of the essence in this Agreement. The design period shall be completed within 16 weeks of the Effective Date. Following approval of the design by the District, the Contractor shall fabricate and deliver the steel building components by no later than February 28, 2025. The delivery date for the steel building components shall be coordinated with the District’s construction manager (Mark Wilson Construction, Inc.). The Parties’ staff may mutually change any specified date if the new date is within the Contract Term and there is no change to the Contract Amount.

Date to Be Determined – The Parties’ staff will coordinate and schedule the particular date(s) on which Contractor shall perform the Services, which date(s) shall be within the Contract Term.

C. *Where will Contractor provide the Services (state full address):* | Design and fabrication of the steel building components will take place remotely at Contractor’s facilities. Once complete, delivery of the steel building components will be at the property owned by the District near the Southeast corner of Fowler and Herndon Avenues, Clovis, California 93611. | The Parties’ staff may mutually change the location if there is no change to the Contract Amount.

D. *Full name of Contractor staff who must perform the Services (leave blank if none designated):* | |

DISTRICT OBLIGATIONS. District shall perform all obligations required of District as set forth elsewhere in this Agreement and the following (leave blank if no additional obligations):

| Collaborate with Contractor to revise and finalize the design of the buildings. The District shall retain a licensed contractor to unload the steel upon delivery for installation in coordination with Contractor. |

REQUIRED DOCUMENTS (see § 1.4.1). Contractor shall provide to District each document marked below and those required of Contractor elsewhere in this Agreement (collectively “**Required Document**”):

- A. Insurance marked below and complying with Section 4.1, written proof of which Contractor shall provide to District when Contractor delivers this Agreement signed by Contractor and before Contractor commences any Services, unless Contractor is a school district or other public entity in which case Contractor shall provide written proof to District upon District’s request (*mark each required*):
 - Commercial general liability with additional insured coverage (see Section 4.1.1).
 - Workers compensation and employer’s liability if Contractor has any employees.
 - Commercial auto liability with a combined single limit of not less than \$1,000,000 per accident if Contractor operates any vehicle to perform the Services and such Services do not include the transportation of students and/or other persons. If the Services required of Contractor includes the transportation of students and/or other persons, this insurance shall contain: (1) a combined single limit of not less than \$5,000,000 per accident and (2) a blanket additional insured endorsement or be endorsed to name the Clovis Unified School District, and its officers, employees, agents, and volunteers as an additional insured.
 - Professional liability.
- B. Fingerprinting and Criminal Background Check Certification (“**Fingerprinting Certification**”), which Contractor must obtain from and submit to District before Contractor commences any Services.
- C. Fingerprinting and Criminal Background Check Addendum for Contractor Operating as Sole Proprietor (“**Sole Proprietor Fingerprinting Addendum**”), which Contractor must obtain from and submit to District.
- D. At District’s request and as applicable, Taxpayer Identification Number Request, W-9 (*the form of which Contractor shall obtain from District*) or Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (W-8); *and* Nonresident Withholding Allocation Worksheet (Form 587), Withholding Exemption Certificate (Form 590), or other Franchise Tax Board forms; *and* documents that District requires to process payment to Contractor.

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from this Agreement, Contractor and District, separately referred to as a “**Party**” and collectively as the “**Parties**,” have reviewed and understand and hereby enter into this Agreement. Unless the context requires otherwise, any reference to a Party in this Agreement includes, as applicable, its governing body and members thereof, officers, employees, and agents. Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Agreement.

CONTRACTOR

DISTRICT

By: _____

Print Name: { }
Title: { }

By: _____

Print Name: { }
Title: { }

NOTE – ELECTRONIC SIGNATURE: While District will accept digital signatures on contracts and amendments, they must be validated by a reliable Certificate Authority, and if a digital signature is used to execute any such document, the signature page thereof must be provided to District in the electronic format it was signed in.

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GENERAL TERMS AND CONDITIONS

These General Terms and Conditions contain the following Articles:

Article 1	Scope of Services and Obligations
Article 2	Payment
Article 3	Term and Termination of Agreement; Suspension of Services
Article 4	Insurance
Article 5	Indemnity
Article 6	Dispute Resolution
Article 7	General Provisions

Terms with initial capital letter shall have the respective meanings set forth in this Agreement.

ARTICLE 1 SCOPE OF SERVICES AND OBLIGATIONS.

SECTION 1.1 PURPOSE. By this Agreement, the Parties desire to set forth the terms and conditions upon which Contractor shall provide, and District shall compensate Contractor for, performance of Contractor's obligations under this Agreement, and to set forth the Parties' rights and obligations relating to this Agreement.

SECTION 1.2 NON-EXCLUSIVE CONTRACT. Contractor understands and agrees that: (A) this Agreement does not constitute an exclusive contract for Contractor to provide the Services to District, and District has or may enter into contract(s) with one or more third parties to provide services to District that are identical or similar to the Services; and (B) except as required by a Purchase Order issued in accordance with this Agreement, Contractor is not obligated to provide any Services to District and District is not obligated to accept or pay Contractor for any Services

SECTION 1.3 QUALIFICATION, SUPERVISION, AND CONTROL. Contractor represents and shall ensure that it and all persons whom it employs or retains to perform this Agreement have the necessary training, skill, and experience and are qualified to so perform, including having throughout the Contract Term all required licenses, permits, and/or certifications (collectively and separately "**License**"). Contractor shall provide District with written proof of each License upon District's request and notify District in writing no later than 10 days after Contractor receives any notice that any such License has been revoked, suspended, placed on probation, or non-renewed. Unless stated otherwise in this Agreement or a Purchase Order in which case such provisions shall apply to the extent provided therein, Contractor is solely responsible for: (A) all means, methods, techniques, sequences, procedures, safety, and work coordination necessary or proper for Contractor to perform this Agreement; (B) the acts and omissions of Contractor's officers, employees, agents, and any other persons who Contractor retains to perform this Agreement; and (C) taking all reasonable precautions for the safety and prevention of injury to the person of and/or damage or loss to the property of Contractor's officers, employees, agents and any persons who Contractor retains to perform this Agreement, to any officers, employees, agents, students, or invitees of District, or to any Third Party. Upon District's request,

Contractor shall dismiss any of Contractor's employees, suppliers, or materialmen whom District determined are not skilled for the task assigned.

- 1.3.1 STANDARD OF SERVICE. Contractor shall perform all Services as expeditiously as is consistent with professional skill and care and the orderly progress. Contractor shall perform all Services required of Contractor under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the engineering profession practicing in California under similar conditions as Contractor. Contractor is in no way relieved of or excused from performing any of its obligations under this Agreement by the activities of the District's construction contractor, construction manager, engineer and/or the City of Clovis. Except as required by this Agreement or Applicable Law, Contractor shall not be responsible for the acts or omissions of the District's construction contractor, construction manager, engineer, and any other person or entity retained by any of them to perform work on the project.
- 1.3.2 COMPLIANCE WITH APPLICABLE LAWS. Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and a provision in an Applicable Law, the provision in this Agreement shall govern except where the provision in this Agreement is specifically prohibited or void by the Applicable Law in which case the provision in the Applicable Law shall govern to the extent provided in the Applicable Law. Contractor shall comply with and ensure that the Services comply with all laws, regulations, ordinances, and requirements that apply to the Services (separately and collectively referred to as "**Applicable Law**"), including but not limited to, the following:
- 1.3.2 (A) All federal, California, local laws, including but not limited to, applicable provisions of the Education Code, Business and Professions Code, Government Code, and Health and Safety Code.
 - 1.3.2 (B) All regulations, ordinances, orders, procedures, policies, and requirements of each Approval Agency that has jurisdiction over the Project, including but not limited to, applicable provisions of Title 21 and Title 24 of the CCR.
 - 1.3.2 (C) If the Project is subject to the jurisdiction of DSA, the regulations, policies, Interpretation of Regulations, procedures, and requirements of DSA.
 - 1.3.2 (D) All laws and regulations applicable to access to public buildings for persons with disabilities, including but not limited to, applicable provisions of the Government Code, Health and Safety Code, and Title 24 of the CCR.
 - 1.3.2 (E) All laws, regulations, procedures, and requirements of the State Fire Marshal and the Department of Industrial Relations ("**DIR**").
 - 1.3.3 (F) California Executive Order N-6-22 (EO) issued on March 4, 2022, by Governor Gavin Newsom regarding sanctions in response to Russian aggression in Ukraine.

Nothing in this Agreement is to be construed to permit any Services, Design Documents, workmanship, or materials that do not comply with Applicable Law.

SECTION 1.4 WORK PRODUCTS AND RIGHTS THERETO.

- 1A.4.1 Except for documents, data, or information that District provides to Contractor ("**Owner Work Product**"), Contractor represents that any designs, plans, drawings, specifications, studies, estimates, writings, other documents or any other work of authorship, or instrument of services as set forth in Business and Professions Code section 5536.4 and including professional services described in Business and Professions Code section 5500.1(b), whether written, recorded, electronically or otherwise stored or fixed in any tangible medium, that Contractor and/or its employees, consultants, or agents develop, originate, prepare, or modify as part of Contractor's performance of this Agreement (collectively "**Contractor Work Product**") are Contractor's original work and do not contain any unlawful matter and does not infringe upon the copyright or violate any rights or interest of any third party.

1A.4.2 Pursuant to Education Code 17316, the Contractor Work Product are instruments of service and Contractor shall be deemed the author of the Contractor Work Product and shall retain all common law, statutory and other reserved rights, including the copyright on the Contractor Work Product; however, the Contractor Work Product shall be and become District's sole property upon completion of the Services or termination of this Agreement, whichever is earlier. In addition, District, during and after the Contract Term, shall have the right to use, reuse, duplicate or modify, in whole or in part, in any manner, and for any purposes, the Contractor Work Product, and to sell to, transfer to, disclose to, and/or authorize others to use, reuse, duplicate or modify the Contractor Work Product. Accordingly, District shall indemnify and hold Contractor harmless from any claim or liability by a third party for injury or loss found to have been caused by District's reuse or modification of the Contractor Work Product or the use, reuse or modification of the Contractor Work Product by others with District's written consent or agreement. District shall defend Contractor against claims, demands, lawsuits, causes of action, actions, and other liabilities (including but not limited to damages, judgments, reasonable attorney's fees and costs, and other expenses) alleged or claimed by a third party to have been caused by Contractor's reuse or modification of the Contractor Work Product or use, reuse or modification of the Contractor Work Product by others with District's written consent or agreement.

1A.4.3 Contractor shall retain and require its subcontractors to retain all Contractor Work Product for at least 15 years after the effective date of termination of this Agreement.

1A.4.4 The following shall apply to the Owner Work Product: (A) the Owner Work Product is District's property and District has all rights thereto; (B) Contractor does not own and shall not claim any right or interest to or in Owner Work Product; (C) District grants to Contractor a limited license during the Contract Term to use and reproduce only those portions of the Owner Work Product necessary for Contractor to perform this Agreement; and (D) Contractor shall return any or all Owner Work Product to District upon District's request.

SECTION 1.5 COMPLIANCE WITH APPLICABLE LAWS AND GRANT.

1.5.1 **GENERALLY.** Each Party shall comply with all laws and regulations (collectively "**Law**") applicable to its performance of this Agreement, and all Law that it agrees to comply under this Agreement (referred to collectively and separately as "**Applicable Law**") and shall include amendments and Law that are in effect as of the Effective Date or become effective during the Contract Term). Each Applicable Law is deemed inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and an Applicable Law, the provision in this Agreement shall govern except where such provision is specifically prohibited or void by the Applicable Law in which case the Applicable Law shall govern to the extent provided therein. Each Party shall comply with each grant (if any) that provides funding to pay for this Agreement and all Law and requirements applicable to such grant.

1.5.2 FEDERAL GRANT FUNDS. The provisions of this Subsection apply if this Agreement is paid, in part or in whole, with federal grant funds. Each Party shall comply with federal laws, regulations, and requirements applicable to such federal grant funds. Contractor represents that it is not debarred, suspended, or otherwise excluded or ineligible to be awarded this Agreement. Contractor shall comply with federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Orders 12549 and 12689. Contractor shall also comply with: (A) applicable federal laws, regulations, and requirements, including but not be limited to, non-discrimination based on race, color, national origin, sex, disability, or age; (B) applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387); (C) Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; (D) the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and District's Conflict of Interest Policies; (E) Conflict Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements (37 CFR Part 401); (F) Surveillance Equipment Restrictions (2 CFR Section 200.216); (G) Domestic Preferences (2 CFR Section 200.322); Procurement of Recovered Materials (2 CFR Section 200.323); (H) Small and Minority Business Preferences (2 CFR Section 200.321); (I) Federal Occupational Safety and Health Act (34 CFR 75.609); and (J) and Energy Conservation Compliance (34 CFR 75.616). Upon District's request, whether during or after the Contract Term, Contractor shall cooperate with and provide District with documents and information relating to this Agreement that are necessary for District to comply with applicable federal laws, regulations, and requirements. The provisions of this Subsection shall survive the termination of this Agreement.

SECTION 1.6 RECORDS AND INFORMATION.

1.6.1 REQUIRED DOCUMENTS. Contractor shall provide to District each Required Document marked on the Cover, each of which is incorporated into and constitutes a part of this Agreement. If any Required Document becomes incorrect or inapplicable or expires during the Contract Term, Contractor shall promptly notify in writing and/or submit to District the corrected, updated, or effective Required Document. If Contractor refuses to provide any Required Document or corrected, updated, or effective version thereof, District shall have the right to withhold payment of any or all of the Contract Amount until such time that District receives the Required Document from Contractor.

1.6.2 CONFIDENTIAL MATERIAL. If any documents and/or information (for example and not as a limitation, employee or student record) that are subject to nondisclosure or protection under federal and/or California laws (collectively and separately "**Confidential Material**") are provided to or created by Contractor for or pursuant to this Agreement, Contractor shall: (A) not release, disseminate, publish, or disclose the Confidential Material, except as required by law or a court order or as this Agreement may permit; (B) unless specifically permitted by Applicable Law, not use the Confidential Material for any purpose not related to Contractor's performance of this Agreement; and (C) protect and secure the Confidential Material, including Confidential Material saved or stored in an electronic form, to ensure that it is safe from theft, loss, destruction, erasure, alteration, and

unauthorized viewing, duplication, and use. The provisions of this Subsection shall survive the termination of this Agreement.

- 1.6.3 **RECORD RETENTION, INSPECTION, AND AUDIT.** Contractor shall maintain accurate books and records of all Services provided under, amounts billed pursuant to, and all documents required of Contractor under this Agreement for at least five years after the date on which this Agreement terminates and make them available, upon District's request, for review, audit, and/or copying by District and/or any federal or state agencies. Upon District's written notice to Contractor that a longer retention period is necessary in order for District to comply with records retention requirements under a court order or federal or state laws, Contractor shall continue to retain such books and records for the period stated in District's notice. If this Agreement involves the expenditure of \$10,000 or more in funds from the State of California, it is subject, for three years after the final payment is made, to the State Auditor's examination and audit at District's request or as part of an audit of District. The provisions of this Subsection shall survive the termination of this Agreement.

ARTICLE 2 PAYMENT.

SECTION 2.1 CONTRACT AMOUNT. As full consideration and compensation for Contractor's performance of this Agreement, District shall pay Contractor the Contract Amount, which includes the Owner Contingency, in accordance with the Payment Schedule stated on the Cover. Except as stated in this Agreement or an amendment hereto, Contractor shall not be entitled to any other payment from District; in the event Contractor has received any payment to which Contractor is not entitled to under this Agreement or an amendment, Contractor shall refund such payment to District within 30 days of District's request.

- 2.1.1 **ESTABLISHMENT.** District shall establish a contingency allowance for the District ("**Owner Contingency Allowance**"), which shall be under District's control and possession. The Owner Contingency Allowance is also referred to as "**Contingency Allowances**".
- 2.1.2 **PURPOSE.** District may approve in an amendment the use of the Owner Contingency Allowance to pay for the additional costs of materials, equipment, transportation, or other items that Contractor is required to incur for and/or additional work that Contractor is required to perform as a result of a change in the scope of the Service by District, unknown conditions, or necessary construction changes that were unforeseen but that are realized during the performance of the Services. The Owner Contingency Allowance shall not be used to pay for any costs that are included in the Contract Amount or for any additional costs of materials, equipment, transportation, or other items that Contractor incurs for and/or additional work that Contractor performs as a result of any acts, errors, or omissions of Contractor and/or any of its subcontractors. The portion of the Owner Contingency Allowance that District approves in a change order executed by the Parties shall be added to and become a part of the Contract Amount.

- 2.1.3 AMOUNT. The amount of the Owner Contingency Allowance shall be as stated on the Cover.
- 2.1.4 OWNERSHIP OF CONTINGENCY ALLOWANCES. Except for amounts that District approves pursuant to an amendment out of the Owner Contingency Allowance, all funds in the Owner Contingency Allowance shall belong to the District.
- 2.1.5 USE OF FUNDS IN CONTINGENCY ALLOWANCES. Any use of the funds out of the Owner Contingency Allowance shall only be made pursuant to an amendment that is executed by the Parties and sets forth, at a minimum, the additional work, materials, and/or other items that Contractor will provide; and the amount for such additional work, materials, and/or other items and any change to the Contract Amount.

SECTION 2.2 INVOICE, ADDITIONAL INFORMATION, AND DECLARATION UNDER PENALTY OF PERJURY. Before Contractor may receive any payment under this Agreement, Contractor shall submit an itemized invoice and other documents as set forth below to District at District's address for invoice stated on the Cover. Each person submitting and/or signing an invoice on behalf of Contractor declares under penalty of perjury under California laws, and certifies and attests that: (A) he/she has thoroughly reviewed the claim for payment and know its content; (B) the invoice and supporting information are true, accurate, and complete, and reflect amounts due and services that Contractor has completed in accordance with this Agreement and the correct amount for those services; (C) Contractor has complied and is in compliance with all obligations required of Contractor under this Agreement; and (D) he/she is familiar with Penal Code section 72 pertaining to false claims, and knows and understands that submission and/or certification of a false claim may lead to fines, imprisonment, and/or other legal consequences. Upon receiving an invoice and if District objects to it and/or requires additional information, District shall notify Contractor and Contractor shall provide such information to District within 10 days after Contractor receives District's notice. If Contractor fails or refuses to provide the additional information, District shall have the right to withhold payment of any or all of the Contract Amount until such time that District receives such information from Contractor.

SECTION 2.3 PAYMENT SCHEDULE, DEDUCTION, AND RELEASE. The Payment Schedule, as stated on the Cover, shall apply to District's payment of the Contract Amount to Contractor. District may deduct from each payment, if applicable, withholdings required by applicable laws, including but not limited to, those for non-California or foreign residents. Contractor's acceptance of any payment under this Agreement shall constitute, effective on the date of acceptance, a release of all claims and liabilities that Contractor has or may have against District for any additional payment for the Services, and/or matters, for which the payment was made. However, District's payment shall not relieve Contractor of Contractor's obligations under this Agreement or for deficient or defective Services that District discovers after the payment is made.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT; AND SUSPENSION OF SERVICES.

SECTION 3.1 CONTRACT TERM. This Agreement is effective on the Effective Date and continues in full force and effect thereafter until and including the Termination Date and any written extension thereto ("**Contract Term**") and, unless terminated during the Contract Term in accordance with Section 3.2 below, shall terminate at 12:00 midnight on the last day of the Contract Term without any notice or action by either Party.

SECTION 3.2 TERMINATION DURING CONTRACT TERM.

3.2.1 GROUNDS FOR TERMINATION. During the Contract Term, this Agreement may only be terminated pursuant to one or more of the following:

3.2.1.1 CAUSE/WITHOUT CAUSE. A Party, with or without cause, may terminate this Agreement by giving the other Party written notice for the Notice Period.

3.2.1.2 CONTRACTOR INSOLVENCY. This Agreement shall terminate effective the day immediately preceding the day on which: (A) there is a filing by or against Contractor to have Contractor adjudged bankrupt or there is a petition for reorganization or arrangement of Contractor under any law relating to bankruptcy; (B) Contractor applies for, consents to, or has an order, judgment, or decree entered by a court for approval of a petition for or appointment of a receiver, trustee, custodian, or liquidator of all or a substantial part of Contractor's assets; (C) Contractor is unable to, fails to, or admits in writing its inability generally to pay its debts or obligations as they become due; and/or (D) Contractor makes a general assignment for the benefit of creditors. Contractor shall provide District with written notice within 15 days of the occurrence of any of the aforementioned events.

3.2.1.3 OTHER GROUNDS. District may terminate this Agreement effective on the date stated in District's written notice of termination to Contractor pursuant to any of the following: (A) Contractor is required to but fails to provide to District and/or comply with the Fingerprinting Certification or the Sole Proprietor Fingerprinting Addendum; (B) Contractor is required to but fails to provide to District and/or comply with the TB Certification; (C) District and/or any entity from which District receives or is to receive funds to pay for this Agreement reduce or eliminate some or all such funds, or fail or determine not to appropriate sufficient funds to make future payments under this Agreement; (D) a government or issuing agency revokes, suspends, places on probation, or non-renews any License that Contractor must hold to perform this Agreement; (E) Contractor assigns, transfers, or subcontracts any or all of Contractor's obligations and/or rights under this Agreement in breach of Section 7.3; (F) Contractor fails to maintain and provide written proof of insurance as required by Article

4; (G) Contractor is required to provide particular staff as named on the Cover to perform this Agreement but such staff is not able, not willing, or not available to perform this Agreement; (H) Contractor's legal rights to exist or conduct business in California has been revoked or terminated by the State of California, another agency, or a court; and/or (I) Contractor's legal rights to exist or conduct business in California has been suspended or rendered inactive by the State of California, another agency, or a court and such suspension lasts more than 30 consecutive days.

3.2.2 RIGHTS AND OBLIGATIONS UPON TERMINATION. Upon termination of this Agreement during the Contract Term, the following shall apply and survive the termination of this Agreement: (A) District shall pay Contractor only for Services that Contractor is required to perform, and has performed in accordance with, this Agreement before the effective date of termination; (B) Contractor shall submit an invoice within 30 days of the effective date of termination; (C) Sections 2.2 and 2.3 shall apply to Contractor's invoice and District's payment under this Subsection; and (D) upon District's payment, if any has been invoiced by Contractor and is due to Contractor, District is not obligated to make any further payment to Contractor, whether pursuant to contract, law, or equity.

SECTION 3.3 SUSPENSION OF SERVICES. Despite any contrary provision in this Agreement, District shall have the right to suspend, delay, or interrupt any or all Services at any time during the Contract Term by providing written notice to Contractor at least 15 days before the date on which the suspension, delay, or interruption is to begin, and stating the beginning and ending dates thereof ("**Suspension Period**"). Unless the Parties agree otherwise in writing, the following shall apply upon District's exercise of the rights under this Section: (A) Contractor shall suspend, delay, or interrupt such Services as stated in District's notice but shall continue to perform all other Services; (B) Contractor shall not be entitled to any compensation for Services that Contractor would have been required to perform under this Agreement but did not perform during the Suspension Period, and the Contract Amount shall be adjusted to deduct the amount of such compensation and such adjustment shall be set forth in an amendment executed by the Parties; (C) Contractor shall not be entitled to any damage, loss, or cost arising out of, resulting from, or relating to District's exercise of its right under this Section or the Suspension Period; (D) Contractor shall resume performance of the suspended Services on the next business day following the last day of the Suspension Period; and (E) the Contract Term shall remain the same.

SECTION 3.4 FORCE MAJEURE. A Party is not liable for failing to perform or delaying performance of this Agreement due to events that are beyond the Party's reasonable control and occurring without its fault or negligence, for example, acts of God such as epidemics or pandemics (nationally, statewide, or locally declared) tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively "**Force Majeure**"), provided that the Party has promptly notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse District's payment to Contractor of any portion of the Contract Amount that is due to Contractor where Contractor has performed, in accordance with

this Agreement, the Services for which payment is requested, and submitted an invoice and supporting information as required on the Cover and Section 2.2. Contractor shall not receive any payment for Services that Contractor did not perform during the period in which the Force Majeure occurred.

ARTICLE 4 INSURANCE.

SECTION 4.1 REQUIRED INSURANCE. Contractor, at its cost unless stated otherwise on the Cover, shall maintain in effect insurance as marked on the Cover and complying, at a minimum, with the applicable requirements stated below. If Contractor is a California public agency, the required coverage may be through self-insurance. District, in its sole discretion, may waive in writing any requirement in this Article; however, District's failure to insist or request that Contractor comply with such requirements shall not constitute a waiver on District's part. District reserves the right to reject any insurance and/or to require that Contractor obtain insurance through an insurer satisfactory to District.

- 4.1.1 *Commercial General Liability*, in effect during the Contract Term, coverage for property damage, bodily injury, and personal and advertising injury with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This insurance shall contain a blanket additional insured endorsement or be endorsed to name the Clovis Unified School District and its officers, employees, agents, and volunteers as an additional insured.
- 4.1.2 *Workers Compensation* in accordance with California laws and *Employer's Liability Insurance* with a limit of not less than \$1,000,000 per accident, both of which shall be in effect during the Contract Term.
- 4.1.3 *Commercial Automobile Liability*, in effect during the Contract Term, with limits per accident not less than the amount stated on the Cover and providing coverage, at a minimum, for non-owned and hired autos and, if there are any autos owned by Contractor, then also covering owned autos.
- 4.1.4 *Professional Liability*, in effect during the Contract Term and three years thereafter, with limits of not less than \$1,000,000 per claim and \$2,000,000 general aggregate, written on a claims-made basis. The obligation to maintain this insurance shall survive the termination of this Agreement.

SECTION 4.2 PROOF AND NOTICE; DEDUCTIBLE OR SELF-INSURED RETENTION. Contractor shall provide to District: (A) as required on the Cover and from time to time as District may request, written proof satisfactory to District of the existence of the insurance required of Contractor, including any required endorsement; (B) upon District's request, a copy of the insurance policy and/or other evidence of insurance satisfactory to District; (C) no later than 15 days before the date on which a required insurance expires, written proof of renewal of the insurance, including any required endorsement; and (D) written notice within two business days of the occurrence of any of the following: (1) any required insurance is cancelled or non-renewed, (2) notice from the insurer that the insurer intends to or will cancel or non-renew the insurance, and/or limit, restrict, or reduce Contractor's insurance coverage such that the insurance does

not comply with the requirements in Section 4.1, or (3) any required insurance's policy limits have been reduced below those required in Section 4.1. Contractor shall disclose any deductible or self-insured retention for any of the required insurance. District reserves the right to require that such deductible or self-insured retention be eliminated or reduced, that Contractor obtain a bond or other security guaranteeing payment of losses and costs within the limits of the deductible or self-insured retention, or that Contractor provide other assurances satisfactory to District. Contractor's obligation to provide written proof of the insurance required under Section 4.1 shall survive the termination of this Agreement.

ARTICLE 5 INDEMNITY.

A Party ("**Indemnitor**") shall: (A) indemnify and hold harmless the other Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) defend and pay for all of Indemnitor's attorney's fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. A Party who intends to seek or seeks indemnity and/or hold harmless for any Loss from the other Party shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of this Agreement. "**Claim**" means any claim, demand, administrative proceeding, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to this Agreement where there has been no Final Determination. "**Loss**" means any bodily injury, property damage, personal injury, advertising injury, labor dispute (including but not limited to unpaid wages, employment benefits, and taxes), liability, loss, damage, judgment, expense, and/or cost (excluding attorney's fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to this Agreement and for which there has been a Final Determination that a Party is or both Parties are liable. "**Final Determination**" means any judgment, order, or decision, each a "**Determination**," by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.

ARTICLE 6 DISPUTE RESOLUTION.

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 5 and any dispute relating to this Agreement that arises or occurs after the termination of this Agreement. During any dispute, District's decision, for the time being, shall prevail and Contractor shall perform this Agreement as District directs without prejudice to a Final Determination, as this term is defined in Article 5. During a dispute regarding payment under this Agreement,

District shall pay Contractor the amount that is undisputed and due to Contractor; if a disputed amount is determined in a Final Determination to be due to Contractor, District shall pay such amount to Contractor within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, District shall pay Contractor in accordance therewith. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 7 GENERAL PROVISIONS.

SECTION 7.1 ENTIRE AGREEMENT, CONFLICT, EXECUTION, AMENDMENT, AND WAIVER. This Agreement is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. This Agreement consists of, and any conflict or inconsistency in this Agreement shall be resolved by giving precedence as follows: Cover, General Terms and Conditions, exhibit or attachment stated in this Agreement as being a part of this Agreement, the Required Documents, District's RFP, and Contractor's proposal. The Parties may execute this Agreement and any amendment in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement or an amendment with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. The Parties may amend or waive any provision of this Agreement only by a writing executed by them.

SECTION 7.2 INTERPRETATION; APPLICABLE LAWS AND TIME ZONE; VENUE; SEVERABILITY; AND SURVIVAL OF TERMINATION. If there is uncertainty of any language in this Agreement, the Parties agree that Civil Code section 1654 shall not apply to interpret the uncertainty. The language of this Agreement shall be interpreted according to its fair meaning and not strictly for or against any Party and under California laws without giving effect to California's choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement shall be adjudicated in state or federal court in Fresno County, California, provided that District does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement.

SECTION 7.3 INDEPENDENT CONTRACTOR, ASSIGNMENT, TRANSFER, AND SUBCONTRACT. Contractor is an independent contractor, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of District. Contractor represents that it is a business service

provider and the Services are provided as a bona-fide business-to-business contracting relationship consistent with Labor Code section 2776. This Agreement does not and shall not be construed to create an employment or agency relationship, partnership, or joint venture between the Parties. Contractor and its officers, employees, agents, and any other person performing services for or on behalf of Contractor shall not have any right or claim against District for wages or employee compensation, social security benefits, workers compensation benefits, health benefits, vacation, sick leave, or other employee benefits. Contractor shall not assign or transfer any or all of its obligations and/or rights under this Agreement, including by operation of law or change of control or merger, without District's prior written consent. Unless stated on the Cover, Contractor shall not subcontract with any subcontractor to perform some or all of the Services required of Contractor.

SECTION 7.4 NOTICES. Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail *and* transmitted by e-mail. A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement.

/ /

AD4-05

PROPOSAL FORM
RFP 2974- District Campus Phase II
Design for Manufacturing Steel Buildings

From:

Name of Vendor: _____

Contact Person: _____ Title _____

Address:

Phone: _____ Email: _____

Dear Clovis Unified School District ("**District**"):

The above-named vendor hereby proposes and agrees to design for manufacturing four steel buildings and deliver to the District as more fully set forth in the RFP. The price listed on this Proposal Form shall include the cost to design, manufacture and deliver the steel buildings as set forth in this RFP. The vendor shall also attach the fee schedule for any additional services that may be required. Any contingency will be determined after the vendor is selected and shall not be included on this Proposal Form.

The vendor shall complete the information requested on this Proposal Form and the other Response Forms listed in the RFP and submit them to the District in accordance with the Instructions to Bidders. Failure to so complete and submit shall render the proposal non-responsive. The vendor designates the above contact person and address as its office to which the District may deliver the notice of award of the Contract if the vendor is selected.

Building	Price
A (Two Story Office Building)	\$
B (Single Story Shop Building)	\$
C (Single Story Shop Building)	\$
D (Single Story Shop Building)	\$
TOTAL PROPOSAL PRICE (All 4 Buildings)	\$
<i>This total will be used for purpose of determining the lowest price</i>	

ADDENDA. Circular letters, bulletins, addenda, and other documents issued during the RFP are included in this proposal and are a part of the Contract. The vendor acknowledges receipt of the following addenda:

Addendum No. ___ Date _____

Addendum No. ___ Date _____

Addendum No. ___ Date _____

Addendum No. ___ Date _____

The undersigned declares under penalty of perjury under the laws of the State of California and signs on behalf of the above-named vendor that the representations made in this Proposal Form and other Proposal Response Documents are true and correct.

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

NOTE: This proposal must contain the vendor's full legal name and business address. If the vendor is a partnership, this Proposal Form must be signed in the partnership's name and by a general partner authorized to bind the partnership, with the name and title of the person signing typed or printed below the signature. If vendor is a corporation, this Proposal Form must be signed in the corporation's legal name and by the chairman of the board, president or any vice president, *and* by the secretary, assistant secretary, the chief financial officer or assistant treasurer, with the name and title of each person signing typed or printed below the signature. All persons signing this Proposal Form must be authorized to bind the vendor. Upon the District's request, a vendor shall provide written evidence of each such person's authority.

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REVISED PROPOSAL FORM
RFP 2974- District Campus Phase II
Design for Manufacturing Steel Buildings

From:

Name of Vendor: _____

Contact Person: _____ Title _____

Address:

Phone: _____ Email: _____

Dear Clovis Unified School District ("**District**"):

The above-named vendor hereby proposes and agrees to design for manufacturing one or more steel building(s) identified by vendor in this Proposal Form and deliver to the District as more fully set forth in the RFP. The price listed on this Proposal Form shall include the cost to design, manufacture and deliver the steel building(s) as set forth in this RFP. The vendor shall also attach the fee schedule for any additional services that may be required for each building. Any contingency will be determined after the vendor is selected and shall not be included on this Proposal Form.

The vendor shall complete the information requested on this Proposal Form and the other Response Forms listed in the RFP and submit them to the District in accordance with the Instructions to Bidders. Failure to so complete and submit shall render the proposal non-responsive. The vendor designates the above contact person and address as its office to which the District may deliver the notice of award of the Contract if the vendor is selected.

Building	Identify Price for Building (or leave blank to decline)
A (Two Story Office Building)	\$
B (Single Story Shop Building)	\$
C (Single Story Shop Building)	\$
D (Single Story Shop Building)	\$

ADDENDA. Circular letters, bulletins, addenda, and other documents issued during the RFP are included in this proposal and are a part of the Contract. The vendor acknowledges receipt of the following addenda:

Addendum No.____ Date _____ Addendum No.____ Date _____
Addendum No.____ Date _____ Addendum No.____ Date _____

The undersigned declares under penalty of perjury under the laws of the State of California and signs on behalf of the above-named vendor that the representations made in this Proposal Form and other Proposal Response Documents are true and correct.

Signature: _____ Signature: _____
Print Name: _____ Print Name: _____
Title: _____ Title: _____
Dated: _____ Dated: _____

NOTE: This proposal must contain the vendor's full legal name and business address. If the vendor is a partnership, this Proposal Form must be signed in the partnership's name and by a general partner authorized to bind the partnership, with the name and title of the person signing typed or printed below the signature. If vendor is a corporation, this Proposal Form must be signed in the corporation's legal name and by the chairman of the board, president or any vice president, *and* by the secretary, assistant secretary, the chief financial officer or assistant treasurer, with the name and title of each person signing typed or printed below the signature. All persons signing this Proposal Form must be authorized to bind the vendor. Upon the District's request, a vendor shall provide written evidence of each such person's authority.

End of Addendum