

AGREEMENT

Agreement No.: 22-23-03-03

THIS AGREEMENT (the "Agreement"), dated the 14 day of June, 2023, in the County of Los Angeles, State of California, by and between the AZUSA Unified School District, hereinafter referred to as "DISTRICT" or "OWNER" and Danny Letner, Inc., hereinafter referred to as "CONTRACTOR."

WITNESSETH:

That DISTRICT and CONTRACTOR, for the consideration stated herein, agree as follows:

1. Contract

The complete Contract includes all of the contract documents, including the (1) Notice to Contractors Calling for Bids, (2) Information For Bidders, (3) Scope of Work Summary, (4) Bid Form, (5) Information Required from Bidders, (6) Non-collusion Declaration, (7) Site Visit Certification, (8) Designation of Subcontractors, (9) Bid Bond, (10) Bidder's Acknowledgement of Project manual, (11) Storm Water Pollution Prevention Certification, (12) this Agreement, (13) Performance Bond, (14) Payment Bond, (15) Workers' Compensation Certification, (16) Drug-Free Workplace Certification, (17) Conduct Rules for Contractor(s), (18) Asbestos and Other Hazardous Materials Certification, (19) Lead Based Paint Certification, (20) Criminal Records Check Certification, (21) Escrow Agreement for Security Deposits in Lieu of Retention, if applicable, (22) Shop Drawing Transmittal Form, (23) Change Order Form, (24) Guarantee, (25) General Conditions, (26) Special Conditions, if any, (27) Project manual, (28) Plans, (29) Drawings, (30) Specifications, (31) Reports, (32) Insurance Policies, and all modifications, addenda, and amendments thereto, and by this reference are incorporated herein (the "Contract Documents"). The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. Statement of Work

CONTRACTOR shall perform that work designated in CONTRACTOR's Bid Form which constitutes at least 15% of the total Work, exclusive of supervisory and clerical work, without the services of any Subcontractor. CONTRACTOR shall perform within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete Contract and required for the Work described as the:

Roof Coating Project in accordance with Drawings and Specifications for the Project prepared by Architects, N/A the Project Architect ("ARCHITECT") as follows: N/A, DSA N/A, dated N/A, 2023. All of said Work to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with the Plans, Drawings, Specifications and provisions of the complete Contract. CONTRACTOR shall be liable to DISTRICT for any damages arising as a result of a failure to fully comply with this obligation, and CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of ARCHITECT, Engineer, Inspector, Division of the State Architect, or representative of any of them, unless such act or

omission actually prevents CONTRACTOR from fully complying with the requirements of the documents, and unless CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing CONTRACTOR from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with DISTRICT OFFICE within three (3) working days of the date of occurrence of the act or omission preventing CONTRACTOR from fully complying with the Contract Documents.

The Work required to be performed by this Agreement shall be subject to the payment of prevailing wages, as described in the Labor Code, by CONTRACTOR and each Subcontractor on the Project. The Work shall further be subject to the fulfillment of the requirements related to the payment of prevailing wages, including, but not limited to, the obligation to furnish electronically certified payroll records to the Labor Commissioner as required by the Labor Commissioner. Payments to CONTRACTOR shall not be made when payroll records due directly to the Labor Commissioner are delinquent or inadequate and the Labor Commissioner so directs. The prevailing rates of per diem wages and a description of employer payments are on file at DISTRICT's Administrative Office and are available to any interested party upon request. They are also available from the Director of the Department of Industrial Relations. CONTRACTOR shall post a copy of such wage rates at the job site. CONTRACTOR shall also post at the job site a notice containing the following language:

This public works project is subject to compliance monitoring and investigative activities by the Public Works Unit of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the Public Works Unit to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on this public works project. These wages are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity that awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this public works project may be filed with the Public Works Unit at any office of the Division of Labor Standards Enforcement.

Local Office Telephone Number: (213) 620-6330

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws. Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity that awarded the public works contract, and the location and name of the project.

FENCING NIC (NOT IN CONTRACT)

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any Division of Labor Standards Enforcement office. Complaint forms are also available at the Department of Industrial Relations website, at www.dir.ca.gov/dlse/DLSE-Forms.htm.

3. Compensation

DISTRICT shall pay to CONTRACTOR, as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, the sum of ONE MILLION NINE HUNDRED SEVENTY-ONE THOUSAND AND ZERO Dollars (\$ 1,971,000.00) said sum being the total amount stipulated in the proposal: ONE MILLION NINE HUNDRED SEVENTY-ONE THOUSAND AND ZERO DOLLAR . Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by CONTRACTOR and DISTRICT, subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that CONTRACTOR proceeds with a change in Work without an agreement between DISTRICT and CONTRACTOR regarding the cost of a Change Order, CONTRACTOR waives any claim of additional compensation for such additional Work.

4. Commencement of Work and Time for Completion

CONTRACTOR shall not start the Work until it has received DISTRICT's Notice to Proceed for the Project. CONTRACTOR shall commence the Work on June 08th, 2023. Commencement of Work shall include reasonable and evident efforts on the Project site.

Time for completion of the Project shall be on or before Aug 14th, 2023. The Starting Date shall be the date of DISTRICT's Notice to Proceed. Said Notice shall not be issued prior to five (5) Days after award of the Contract, and shall not require that Work be commenced less than forty-eight (48) hours from the date of said Notice. **DISTRICT and CONTRACTOR stipulate and agree that the amount of time for completion as specified in this paragraph is reasonable.**

5. Claims

As required by Article 60 of the General Conditions, if CONTRACTOR should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation out of CONTRACTOR's control, obligates DISTRICT to pay additional compensation to CONTRACTOR or to grant an extension of time for the completion of the Contract, CONTRACTOR shall notify DISTRICT and ARCHITECT, in writing, of such claim in accordance with the procedure specified in Article 57 of the General Conditions. CONTRACTOR's failure to notify DISTRICT and ARCHITECT within the specified period shall be deemed a waiver and relinquishment of such a claim against DISTRICT. If such notice is given within the specified time, the procedure for its consideration shall be as stated in Article 60 of the General Conditions. CONTRACTOR hereby acknowledges that it understands this provision and that it will abide by it.

6. Liquidated Damages

Agreement No.: 22-23-03-03

IT IS AGREED BY CONTRACTOR AND DISTRICT THAT, IF THE PROJECT FAILS TO REACH SUBSTANTIAL COMPLETION WITHIN THE CONTRACT TIME PLUS ANY AUTHORIZED EXTENSION OF TIME HEREUNDER, THEN AS COMPENSATION TO DISTRICT FOR THE LOSS OF THE BENEFICIAL USE OF THE PROJECT DURING THE PERIOD OF THE DELAY, THERE SHALL BE ASSESSED AGAINST CONTRACTOR AS LIQUIDATED DAMAGES, BUT NOT AS A PENALTY, THE SUM OF ONE THOUSAND DOLLARS (\$1000.00) FOR EACH DAY THEREAFTER UNTIL THE DATE THAT PHYSICAL COMPLETION OF THE WORK AND THE PROJECT HAS REACHED COMPLETION. IT IS HEREBY AGREED BY CONTRACTOR AND DISTRICT THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGE TO DISTRICT SHOULD THE ENTIRE WORK AND PROJECT NOT BE COMPLETED WITHIN THE TIME PERIOD SPECIFIED ABOVE PLUS ANY AUTHORIZED EXTENSIONS OF TIME HEREUNDER AND DISTRICT BE DEPRIVED OF THE BENEFICIAL OCCUPANCY OF THE PROJECT AS A RESULT THEREOF. THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS PARAGRAPH REPRESENT THE PARTIES' REASONABLE ESTIMATE OF THE ACTUAL DAMAGES THAT DISTRICT WILL INCUR IF ITS BENEFICIAL USE OF THE PROJECT IS DELAYED BEYOND THE EXPIRATION OF THE CONTRACT TIME. THE PAYMENT OF THE AMOUNTS DESCRIBED IN PARAGRAPH 6 AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO DISTRICT PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

CONTRACTOR'S INITIALS:  DISTRICT'S INITIALS: _____

DISTRICT may deduct liquidated damages described in Paragraph 6 from any unpaid amounts then or thereafter due CONTRACTOR under this Agreement in accordance with Article 64 of the General Conditions. Any liquidated damages not so deducted from any unpaid amounts due CONTRACTOR shall be payable to DISTRICT at the demand of DISTRICT, together with interest thereon from the date of demand until paid at a rate equal to ten percent (10%) per annum.

7. Default

In the event the CONTRACTOR fails to perform in accordance with the terms and conditions of the formal bid or the contract, DISTRICT may terminate their orders, in whole or in part, in accordance with Section 8 Termination for Default provision of this agreement.

8. Termination for Default

The AZUSA UNIFIED SCHOOL DISTRICT may, by written notice of default to the CONTRACTOR, terminate the agreement in whole or in part if:

A. The CONTRACTOR fails or neglects to perform any of the services listed herein in the manner and time specified, or if, in the opinion of the DISTRICT, the item(s) provided fail to perform satisfactorily;

OR

B. The CONTRACTOR fails to perform any of the other provisions of the formal bid, agreement, or purchase order and does not cure such failure within a period of ten (10) days (or such longer period as DISTRICT may authorize in writing) after receipt of notice from DISTRICT specifying such failure.

In the event DISTRICT terminates the agreement, in whole or in part, DISTRICT may acquire services, similar to those so terminated from another source and the CONTRACTOR shall be liable for any excess costs of acquisitions of such similar supplies.

9. Termination for Program, Site Closure, Re-Organization or Reduction of

Funds

In the event funds for DISTRICT programs are discontinued or funds are not allocated within the agency for the continuation of this agreement in whole or in part, DISTRICT may terminate the service(s) under this clause without penalty. In the event funds for DISTRICT programs are discontinued or funds are not allocated within the agency for the purchase of materials and/or services, DISTRICT does not guarantee that any or all items shown in this agreement will be purchased for the duration of the agreement period.

10. Force Majeure

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault or negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy, insurrection, acts of the federal government or any unit of state or local government in sovereign capacity, fires, floods, epidemics,

quarantine restrictions, strikes, freight embargoes or delays in transportation, to the extent that such circumstances are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

11. Indemnification

CONTRACTOR agrees to and does hereby indemnify and hold harmless DISTRICT, ARCHITECT, PROJECT INSPECTOR, and their respective officers, agents, and employees from every claim or demand made, and every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by CONTRACTOR or any person, firm or corporation employed by CONTRACTOR upon or in connection with the Work called for in this Agreement, except for liability resulting from the sole negligence or willful misconduct of DISTRICT, ARCHITECT, PROJECT INSPECTOR, or their respective officers, employees, agents or independent contractors who are directly employed by DISTRICT, and except for liability resulting from the active negligence of DISTRICT, ARCHITECT, or PROJECT INSPECTOR.

(b) Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of CONTRACTOR, or any person, firm, or corporation employed by CONTRACTOR, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including DISTRICT, ARCHITECT, or PROJECT INSPECTOR arising out of, or in any way connected with the Work covered by this Agreement, whether said injury or damage occurs either on or off school district property, if the liability arose from the negligence or willful misconduct of anyone employed by CONTRACTOR, either directly or by independent contract, and not by the active negligence of DISTRICT, ARCHITECT, or PROJECT INSPECTOR.

(c) In the event CONTRACTOR is required to access DISTRICT's computer system or network in the performance of the Contract, CONTRACTOR shall provide 48-hours advance notification to DISTRICT. In the event such access infects DISTRICT's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, CONTRACTOR agrees to indemnify DISTRICT and pay for any and all losses, damages and expenses incurred by DISTRICT to remedy any such infection.

(d) Liability for fines, penalties, or other monetary damages incurred by DISTRICT for CONTRACTOR's, or its Subcontractor's, failure to comply with applicable Storm Water Requirements as generally described in the Storm Water Pollution Prevention Certification executed by CONTRACTOR.

CONTRACTOR, at CONTRACTOR's own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against DISTRICT, ARCHITECT, PROJECT INSPECTOR, or their respective officers, agents or employees, or any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against

DISTRICT, ARCHITECT, PROJECT INSPECTOR, or their respective officers, agents or employees in any action, suit or other proceedings as a result thereof.

In accordance with Section 9201 of the Public Contract Code, DISTRICT shall timely notify CONTRACTOR of any third-party claim it receives relating to the Contract. CONTRACTOR shall promptly reimburse DISTRICT for the reasonable costs incurred in providing CONTRACTOR such notification.

12. Insurance

Prior to execution of the Contract, CONTRACTOR furnish DISTRICT with insurance endorsements evidencing insurance coverage as required by this Section 8, and further indicating that such insurance policies have been endorsed to name the "AZUSA UNIFIED SCHOOL DISTRICT" as an additional insured. The endorsements shall provide that "CONTRACTOR's policies are primary over any insurance carried by DISTRICT and that such policies will not be cancelled or materially changed without Sixty (60) calendar days prior written notice" being given to DISTRICT's Purchasing Department. CONTRACTOR shall take out, prior to commencing the Work, and maintain, during the life of the Contract, and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain the following policies issued by insurance companies authorized to transact business in the State of California and which comply with all requirements of the Department of Insurance for the State of California:

- 1) The Certificate of Liability (Acord 25 or similar form) is to be issued by the vendor's insurance company. **Azusa Unified School District** is to be named as **Additional Insured and Certificate Holder**.
- 2) **Coverage** needs to be in force for the complete term of the contract. If insurance expires during the contract term, Purchasing must receive a new certificate at least ten (10) days before the expiration.
- 3) "Description of Operations" should include a brief description of the services being performed, and reference any contracts or agreements involved.
- 4) Certificate Holder Information

AZUSA UNIFIED SCHOOL DISTRICT
546 South Citrus Ave
Azusa, CA, 91702

A. **General Liability**

Minimum Required Coverage Amounts:

- (a) General Aggregate \$2,000,000
- (b) Each Occurrence \$1,000,000
- (c) Products/Completed Operations \$1,000,000
- (d) Personal and Advertising Injury \$1,000,000
- (e) Damage to Rented Premises \$50,000
- (f) Medical Expense (any one person) \$5,000

B. **Automobile Liability**

Insurance for any auto, owned, scheduled, non-owned, or hired automobiles.

Minimum Required Coverage Amounts:

\$1,000,000 per Occurrence.

Personal transportation vehicles that are driven onto and parked on school property, California State minimum requirements for private passenger vehicles:

\$15,000 injury/death to one person \$30,000 injury/death to more than one person

\$5,000 damage to property

Commercial vehicles that are used to provide services (construction, food service, etc)

Minimum Required Coverage Amounts:

\$1,000,000.00 limit per Occurrence

C. Umbrella (excess) Liability

Minimum Required Coverage Amounts:

\$2,000,000, unless waived by the District.

D. Workers Compensation and Employer's Liability

Minimum Required Coverage Amounts:

\$1,000,000.00 limit per Statute

It is the vendor's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws. The policy shall be endorsed with the insurer's waiver of rights of subrogation against the District.

5) Waiver of Subrogation

Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

6) Subcontractors

Contractor shall require and verify that all subcontractors indemnify the District to the same extent and maintain insurance meeting all of the requirements to the same extent as the Contractor.

13. CONTRACTOR's Representations

Execution of the Agreement by CONTRACTOR is a representation that CONTRACTOR has visited, examined, and inspected the site, become generally familiar with the Project site and the local conditions, excepting conditions that are unknown and concealed or not reasonably inferable from the conditions observed, such as unsuitable soils, and is satisfied with the conditions and limitations under which the Work is to be performed including, without limitation: (i) the location, accessibility, physical qualities, layout, and nature of the Project site, the improvements thereon and the surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment. Except as explicitly set forth elsewhere in the Contract Documents, DISTRICT assumes no responsibility for the physical condition of the Project site, or any improvements located on the Project site and CONTRACTOR shall be solely responsible for providing a safe place for the performance of the Work. DISTRICT shall not be required to make any adjustment in the Contract Price or the Contract Time in connection with any failure by CONTRACTOR to comply with the requirements of this Section.

Execution of the Agreement by CONTRACTOR is a further representation that CONTRACTOR has examined all documents provided to CONTRACTOR pertaining to the Work, has correlated its personal observations at the Project site with the requirements of the Contract Documents, has read carefully and is fully aware of the critical time restriction for

AGREEMENT

performance of the Work, is fully aware of the provisions and requirements of the Drawings and Specifications, and recognizes that it must perform the Work consistent with the appropriate standard of care regarding safety, protection of existing structures and other facilities in the area, protection of pedestrians, health and sanitation laws and ordinances, and protection of existing facilities, utilities, neighboring property and adjacent walks and streets.

Execution of the Agreement by CONTRACTOR is a further representation that CONTRACTOR is registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5, is a licensed contractor who possesses a reasonable level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligation hereunder, has sufficient experience and competence to do so, and will perform the Work in accordance with the appropriate standard of care.

The above representations and warranties shall survive the execution and delivery of the Agreement, any termination of this Agreement, and the final completion of the Work.

14. Required Number of Executed Copies

The number of executed copies of the Agreement, the Contractor's Certificate, the Performance Bond and the Payment Bond required is three (3).

15. Inspector's Field Office

The inspector's field office shall be not less 20 sf of area.

16. Substitution of Securities

Pursuant to Section 22300 of the Public Contract Code, this Agreement permits the substitution of securities for any monies withheld by DISTRICT to ensure performance under this Agreement. At the request and expense of CONTRACTOR, securities equivalent to the amount withheld shall be deposited with DISTRICT, or with a state or federally chartered bank in California as the Escrow Agent, who shall then pay such monies to CONTRACTOR. Upon satisfactory completion of the Contract, the securities shall be returned to CONTRACTOR. Alternatively, CONTRACTOR may request and DISTRICT shall make payment of retentions earned directly to the Escrow Agent at the expense of CONTRACTOR.

Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

17. Corporate Status

If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of California and that Dennis Olson, whose title is president, and Stuart Hein, whose title is secretary, are authorized to act for and bind the corporation. See Paragraph 5 of Information for Bidders for additional information.

18. Required Provisions

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then, upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

19. Entire Agreement

The complete Contract as set forth in Paragraph 1 of this Agreement constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the Work to be performed under this Agreement, exists between the parties. This Agreement can be modified only by an agreement in writing, signed by both parties and pursuant to action of the Governing Board.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

AZUSA UNIFIED SCHOOL DISTRICT

CONTRACTOR

Signature: _____

Signature:  _____

Print Name: Latasha D. Jamal

Print Name: Stuart Hein

Title: Assistant Superintendent
Business Services

Title: Corporate Secretary

Date: June 13, 2023

Date: May 9, 2023

Signature: _____

Print Name: _____

Title: _____

Date: _____

CONTRACTOR'S License No.:

(CORPORATE SEAL OF
CONTRACTOR, if corporation)