

**BOARD OF TRUSTEES SPECIAL MEETING AGENDA**

**Tuesday, April 18, 2023**

**Library**

**5:00 p.m. – Regular Session**

*Any materials required by law to be made available to the public prior to a meeting of the Board of Education of the District can be inspected at the above address during normal business hours. Individuals who require special accommodations including, but not limited to, American Sign Language interpreter, accessible seating or documentation in accessible formats should contact the superintendent or designee within a reasonable time before the meeting date.*

**Governing Board Members**

Shannon Clay, President

Kelly Salas-Ernst, Clerk

Thomas Gibbons, Trustee

Daniella Pearce, Trustee

Jeania Reasner, Trustee

**I. PUBLIC SESSION: 5:00 p.m. Call to Order and Flag Salute**

**II. Welcome Guests**

**III. ITEMS SCHEDULED FOR ACTION**

**A. Approval of the revised Preconstruction Services Agreement for the Benjamin Foxen Elementary School MUR and School Renovation Project.**

**\*\*\* IT IS RECOMMENDED THAT the Board of Education approve the revised Preconstruction Services Agreement for the Benjamin Foxen Elementary School MUR and School Renovation Project as presented:**

**MOVED:**

**SECOND:**

**VOTE:**

**Shannon Clay:**

**Jeania Reasner:**

**Daniella Pearce:**

**Kelly Salas-Ernst:**

**Thomas Gibbons:**

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**B. Approval of Resolution number 2023-04-18, Resolution approving the award of preconstruction and master lease-leaseback services for the Benjamin Foxen Elementary School MUR and School Renovation Project.**

**\*\*\* IT IS RECOMMENDED THAT the Board of Education approve Resolution number 2023-04-18, Resolution approving the award of preconstruction and master lease-leaseback services for the Benjamin Foxen Elementary School MUR and School Renovation Project.**

**MOVED:**

**SECOND:**

**VOTE:**

**Shannon Clay:**

**Jeania Reasner:**

**Daniella Pearce:**

**Kelly Salas-Ernst:**

**Thomas Gibbons:**

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**IV. Announcement of the award of preconstruction and master lease-leaseback services for the Benjamin Foxen Elementary School MUR and School Renovation Project.**

**V. PUBLIC COMMENTS**

**PUBLIC COMMENTS ARE WELCOME**

The Blochman Union School District will receive public comments about items not appearing on today's agenda, as well as other matters within the subject matter jurisdiction of the Board. All such comments will be received during the Public Comments section of the agenda. Individuals who address the Board are limited to three (3) minutes to speak on any item and a total of 10 minutes on all items for their presentation. The Board may limit the total time for all public comment to 30 minutes. Persons needing additional time are requested to submit the information in writing.

For comments concerning matters not on the agenda, open meeting laws and fairness to other residents who may have an interest in your topic prohibit the Board from taking action or engaging in extended discussion of your concerns. The Board may direct staff to meet at a later date with speakers who have specific concerns or needs. The Board may also direct that an issue be placed on a future agenda for discussion and consideration. This permits the Board and staff members to prepare and receive necessary information and for the public to be aware that a topic is being formally considered. We appreciate your cooperation.

**VI. Adjourn**

**Time:** \_\_\_\_\_

**MOVED:**

**SECOND:**

**VOTE:**

**Shannon Clay:**

**Jeania Reasner:**

**Daniella Pearce:**

**Kelly Salas-Ernst:**

**Thomas Gibbons:**

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III - A

## **PRE-CONSTRUCTION SERVICES AGREEMENT**

This Contractor Pre-Construction Services Agreement (“Agreement”) is made and entered into effective April 18, 2023, by and between the Blochman Union School District, a California school district organized and operating under the laws of the State of California (hereinafter “District”) and Diani Building Corp., a licensed California building contractor (hereinafter “Contractor”) in relation to the Preconstruction Services for Benjamin Foxen Elementary School MUR and School Renovation Projects (“Project”).

### **RECITALS**

WHEREAS, District conducted a best value selection process through a competitive request for sealed proposals to select a contractor to provide both preconstruction services and lease-leaseback construction services pursuant to and in accordance with Education Code section 17406, which resulted in the selection of Contractor as the successful respondent.

WHEREAS, Contractor and District desire to enter into a lease-leaseback arrangement for construction of the Project pursuant to Education Code section 17406, which arrangement will be documented, if at all, by a Lease and Sublease with attachments, including Construction Services Agreement (“Lease-Leaseback Agreements”).

WHEREAS, Education Code section 17402 states that the District must have adopted the Plans and Specifications for the Project after approval of those documents by the Division of the State Architect (“DSA”), which must occur prior to entering into the Lease-Leaseback Documents.

WHEREAS, Contractor desires to provide consulting services to the District with respect to reviewing the Plans and Specifications to identify and call out all deficiencies, incongruities and inconsistencies that may affect constructability of the Project, including but not limited to design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services in accordance with the applicable standard of care, excluding only responsibility for the professional negligence of any licensed engineer or architect in the preparation of the Plans and Specifications (“Services” or “Pre-Construction Services”) to facilitate, and in preparation for, the successful development and construction of the Project.

WHEREAS, this is not an agreement for design-build services.

WHEREAS, Contractor represents that it has the knowledge and experience necessary to perform the Services set forth in this Agreement.

WHEREAS, the parties acknowledge that the Contractor and District anticipate negotiating and entering into Lease-Leaseback Documents which utilize a guaranteed maximum sum for complete construction of the Project, which guaranteed maximum sum will include the fee provided herein, and the parties also acknowledge that the District may opt not to enter into Lease-Leaseback Documents

or otherwise proceed with the Project with or without Contractor, for any reason or no reasons, in District's sole and absolute discretion.

NOW, THEREFORE, the parties agree as follows:

## **ARTICLE 1** **DEFINITIONS**

1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings specified herein unless the context requires otherwise.

“Architect” shall mean the Architect of Record for the design of the Project, currently nineteen six Architects, or any successor architect of record approved and appointed by the Board for the design of the Project.

“Board” shall mean the Board of Trustees of the Blochman Union School District.

“Construction Budget” shall mean the amount of money that the District has allocated for all construction.

“Construction Cost” shall mean the cost to perform all Work pursuant to the Construction Documents.

“Consultant” includes an architect, engineer, planner, landscape architect, inspector or other professional/advisor with whom the District contracts with directly or indirectly to perform Project-related services.

“Construction Documents” shall mean those documents which are required for the actual construction of the Project as accepted and approved by DSA and the District's Governing Board, including not limited to the complete final working drawings and specifications setting forth in detail the work to be done and the materials, workmanship, finishes and equipment required, as well as all related correspondence providing additional direction as to the design intent, including RFIs, reviewed submittals, CCDs, change orders, etc.

“Contractor” shall mean the licensed Contractor performing the professional services under this Agreement, as authorized by Government Code sections Government Code 4525, 4526, 4529.5.

“Day” shall mean a calendar day unless otherwise specifically designated.

“District Representative” shall mean **Nancy Shafer**, and any successor appointed by District.

“DSA Laws and Regulations” shall mean, in connection with each construction phase, the laws and regulations relating to the jurisdiction and authority of the Division of the State Architect in effect at the time construction is approved and the applicable permits, if any, are obtained, including, without limitation, the Field Act, Education Code sections 17280 et seq., and the California Disabled Access Law, Government Code sections 4450, et seq., along with all related laws, regulations rules and

policies.

“Educational Specifications” shall mean the District’s approved educational specifications for school facility construction and incorporated herein by this reference and approved by the Board.

“General Conditions” shall mean the agreed upon overhead, temporary utilities, trailers, equipment and other on site and off site costs borne by the Contractor during Construction Phase of the Project.

“GMP” shall mean the Guaranteed Maximum Price” as that term is defined by State law for purposes of the Lease Leaseback delivery method of public school construction.

“IOR” shall mean Inspector of Record for the Project.

“Master Project Schedule” shall mean the Project schedule and any Master Project Schedule presented to, and approved by, the Board at a later date.

“Project” shall mean the pre-construction and construction of the facilities that will comprise the **Benjamin Foxen Elementary School MUR and School Renovation Projects**.

“Project Budget” shall mean the budget for the Project, prepared and revised by the Program Manager and the Contractor and approved by District during the pre-construction phase and approved by the Board.

“Program Manager” shall mean **Nancy Shafer**, the District Board of Trustees’ approved Program Manager, and any successor appointed by the District.

“Reimbursable Expenses” shall mean, any item of expense approved by the District as a reimbursable expense in connection with this Agreement and as detailed in Exhibit B.

“Work” shall mean all the construction, work, labor, materials, machinery, equipment, tools, supplies, services and other items that the Contractor is to perform or provide in connection with the Project pursuant to the Construction Documents.

## **ARTICLE 2**

### **PRE-CONSTRUCTION CONTRACTOR BASIC SERVICES AND RESPONSIBILITIES**

Contractor represents to the District that: (i) it has previously acted as a Contractor; (ii) it has the necessary license(s) required by law for the Services set forth in this Agreement, (License No. 850921); and (iii) it has expertise and experience in constructability reviews, cost estimating, value engineering, construction supervision, bid preparation, evaluation of construction projects, project scheduling, cost benefit analysis, claims review and negotiation, and general management and administration of construction projects.

Contractor covenants to provide its best skill and judgment in furthering the interests of the District in the performance of its obligations under this Agreement. Contractor agrees to furnish efficient business administration and management services and to perform in an expeditious and

economical manner consistent with the interests of the District. Contractor shall provide all services with respect to the Project as set forth in this Agreement and the attached exhibits (the "Services").

It is understood and agreed that time is of the essence in connection with the funding plan and the design and construction of the Project and Contractor agrees to use its best efforts to ensure that the Project is submitted to DSA for approval by no later than **To Be Determined**.

Unless directed otherwise by the District, the District's Representative, and/or the Program Manager, the Contractor shall direct all communication, correspondence, and other interactions with the District through the Program Manager, including communication with the District's personnel, the Architect, the District's consultants, and any other agencies, organizations, or outside entities.

2.1 BASIC SERVICES. The Basic Services shall include project design review and evaluation, planning for construction mobilization and supervision, construction cost estimating and analysis, project scheduling, and cost-benefit analysis, including, but not limited to, the tasks identified below.

2.1.1 Contractor shall communicate and coordinate with the District and the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

2.1.2 Contractor shall provide a preliminary evaluation of the District's schedule and Construction Budget, each in terms of the other.

2.1.3 The Architect's agreement with the District may include numerous phases of services described in such agreement. During the Architect's services, Contractor shall coordinate with the Architect as necessary to deliver the Services and support the schematic design, design development, construction documents, DSA submittal development and approval, and bid preparation, administration, review of bids, and development of proposed guaranteed maximum price ("GMP").

2.1.4 Contractor shall perform the Pre-Construction Services as defined in the Recitals and further detailed in this Article 2 in accordance with the applicable standard of care for a licensed contractor, excluding only responsibility for the professional negligence of any licensed engineer or architect in the preparation of the Plans and Specifications:

(1) Perform an ongoing review of the Architect's programming plan including the size of space, proposed finishes, ceiling heights, building height, exterior finishes, circulation spaces, any necessary ancillary spaces, and any anticipated site work;

(i) Contractor shall submit to the Program Manager, at each document review phase, an analysis of the Architect's program in comparison to the District's approved Educational Specifications, including quantified cost and time impacts associated with each variance.

(2) Perform an ongoing analyses and review of the Construction Documents during their development and advise and make recommendations on proposed site use and improvements, facility improvements, selection of materials, building systems and equipment, constructability

reviews, value engineering and related quality assurance/quality control consulting, scheduling, and methods of Project delivery.

(3) Contractor shall advise and provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost and scheduling including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies;

(4) Regularly revise and update a Project Scope of Work document in coordination with the Architect to:

(i) Identify, quantify, and delineate the trade-specific scopes of work, how they are separate from each other, and where coordination is required to deliver a complete system for all components of the Project Scope of Work,

(ii) Identify potential scope gaps, or scope overlaps between trades and present such findings to the Architect and the Program Manager in a timely manner for review and consideration,

(iii) Identify long lead procurement items and approval activities required for each trade's scope of work, and

(iv) Identify submittal requirements, agency approvals, permit requirements, licensing requirements, and any other necessary items that are required for timely completion of each trade's scope of work;

(v) Ensure that all Construction Documents submitted to DSA shall be constructible by a competent general building contractor duly licensed by the State of California, without need for any Requests for Information, Supplemental Instructions, Change Orders or similar inquiries or changes in order to complete construction of the full Scope of Work within a Construction Cost, including all contingencies and allowances, not to exceed 90% of the Construction Budget and to form the basis of the Guaranteed Maximum Price for the Project.

(5) Coordinate actively with the Architect to provide trade coordination input into the design process to ensure that all Construction Documents are fully coordinated and that all clashes and inconsistencies are identified and remedied through, or to the equivalent extent of Building Information Management clash detection analysis;

(6) Perform ongoing and accurate Construction Cost estimating to confirm that cost to perform the Work does not exceed the Construction Budget, including regular reconciliation reports between Architect's and Contractor's cost estimates, including square foot pricing at schematics, detailed line item quantities and costs at conceptual design, and regular cost estimate updates at design development, construction documents, DSA submittal, bid set and further phases as needed;

(7) Prepare an ongoing and accurate, and periodically update, Master Project Schedule for the Architect's review and the District's acceptance showing major construction milestones including but not limited to: start of construction, mobilization, demolition, abatement, site work,



foundations, structure, mechanical/electrical/plumbing/fire sprinkler (MEPF) systems, building envelope, exterior finishes, interior finishes, landscaping/hardscaping, and Project completion. The Master Project Schedule must include the following information: detailed work activities properly sequenced for trade coordination planning as needed to ensure that the Project can be completed within the allotted construction schedule, long lead items are identified, curing times are identified, procurement schedule requirements are defined, submittal schedule requirements are defined, and other timeline and schedule planning as necessary to ensure that the Project can be constructed within the allotted timeframe. Contractor coordinate and collaborate with the Architect as necessary to prepare, and shall prepare accordingly the portion of the preliminary Project schedule relating to the performance of the Architect's services in accordance with the Architect's agreement(s) with the District. In the Master Project Schedule, Contractor shall coordinate and integrate Contractor's Services, the Architect's services, the construction of the Project, the District's responsibilities, inspection requirements, document review periods, and all other activities required for Project completion, highlighting critical and long-lead-time items;

(8) Develop a list of recommended contingencies, allowances, and estimated escalation;

(9) Develop proposed General Conditions and all proposed markups including but not limited to: fee, insurance, and bonding. Develop site logistics and safety plan showing laydown areas, construction traffic flow and construction personnel parking;

(10) Develop a complete list of bid alternates, and proposed bid list of trade contractors as well as criteria for trade contractors pre-qualification, exercising all due diligence to obtain at least five (5) trade contractors per trade required for major trades, and three (3) trade contractors per trade required for minor trades, and in the event that Contractor is unable, despite the exercise of due diligence, to obtain the minimum number of trade contractor bids required, present to District the record of due diligence which District shall not unreasonably reject as adequate in lieu of obtaining the minimum number of trade contractor bids required;

(11) Develop proposed GMP with full detail, bid results, and notes, including bid alternates and associated pricing.

2.1.5 Further, Contractor shall provide ongoing advice to the District and the Architect in a team effort to assure that the Project is delivered on time and on budget. To provide such ongoing support and consulting, the Contractor shall:

(1) Participate in Project progress meetings, as scheduled by the Program Manager, with Architect and Program Manager to provide ongoing updates of status of items set forth in 2.1.4 (1) through (12) above, and to discuss any and all issues that arise that may affect the Project;

(2) Prepare a monthly progress report and provide weekly updates as needed to include, but not be limited to, the following information:

(i) Status of all required deliverables in progress, and required within 4 weeks

of date of report,

- (ii) Design intent and scope questions,
- (iii) Programming status,
- (iv) Coordination reviews,
- (v) Regulatory and agency review updates,
- (vi) Progress on any required studies and deliverables,
- (vii) Contract administration,
- (viii) Budget and value engineering, and
- (ix) Schedule status;

(3) Provide support to the Program Manager as requested and or required to provide accurate and complete monthly updates to the Board and the Citizen's Bond Oversight Committee, including but not limited to (i) attending meetings with Program Manager, (ii) preparing reports and presentations to demonstrate project progress, (iii) coordinating with Architect and Consultant to ensure complete and accurate information is provided at all times to the Board and Citizens' Bond Oversight Committee.

2.1.6 Following the District's approval of each phase of the development of Construction Documents, Contractor shall update and submit the latest estimate of the Construction Cost and the Master Project Schedule, and all other Phase Deliverables.

## 2.2 ADDITIONAL SERVICES

Services in addition to those set forth in this Agreement will require written request or pre-authorization in writing by the District following specific approval of such services by the Board. It is understood and agreed that Contractor shall not perform any services in addition to those set forth in this Agreement unless and until Contractor receives specific written approval for such additional services from the Board. It is understood and agreed that if Contractor performs services in addition to those set forth in this Agreement without receiving prior written approval from the Board, Contractor shall not be paid for such services.

## 2.3 TIME

2.3.1 Contractor shall perform the Services set forth in this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project. Time is of the essence in connection with the Project and with all of Contractor's Services.

2.3.2 Contractor shall be entitled to an extension of time for the time of completion for delay which may arise due to an act of God, such as an earthquake, flood or fire, or an act of a public

enemy or act of war, if such act results in delays on any approvals necessary for completion of the Project, but Contractor shall have no claim for any other compensation for such delay.

2.3.3 Should the schedule for the construction of the Project be extended due to an added scope of work as directed by the District and approved by the Board or an extension of the schedule related to governmental agency approvals necessary for completion of the Project, the time for performance under this Agreement shall be extended and Contractor shall be compensated for this extension as mutually agreed by the parties.

### **ARTICLE 3** **THE DISTRICT'S RESPONSIBILITIES**

3.1 The District shall provide all information actually known to District, without obligation or duty to undertake any investigation, research, inspection, inquiry, regarding the requirements of the Project including the District's objectives, constraints and criteria.

3.2 The District shall designate a District Representative to act on the District's behalf with respect to the Project. The District, or the District Representative, if authorized, shall render decisions promptly to avoid unreasonable delay in the progress of Contractor's Services.

3.3 The District shall furnish tests, inspections and reports as required by law or the Construction Documents.

3.4 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Construction Documents, prompt notice thereof shall be given by the District to Contractor. District has no obligation or duty to undertake any investigation, research, inspection, inquiry or other steps to discover any fault or defect in the Project, or nonconformance with the Construction Documents, but only the obligation to inform Contractor of any specific fault, defect or non-conformance of which the District actually becomes aware.

3.5 The District reserves all rights regarding the Project and any development, progress or work thereon, including the right to cease any or all work on or related to the Project, the right to perform work related to the Project with the District's own forces and/or whether to award any contracts to any person or entity in connection with the Project. Contractor understands and acknowledges that this Agreement contains no promise to enter into or negotiate any further agreement, work or engagement with or for District by and between the District and Contractor.

3.6 The District shall retain the Architect whose services, duties and responsibilities are described in the agreement between the District and the Architect. The District-Architect agreement shall be furnished to Contractor.

**ARTICLE 4**  
**CONSTRUCTION COST**

1.1 Construction Cost shall not include the compensation of Contractor for the Services performed under this Agreement, nor all services of the Architect and Consultant, the cost of land, rights-of-way and other costs that are the responsibility of the District.

1.2 Contractor shall consult with the Architect and the District to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents to adjust the Construction Costs so that it does not exceed the allowable Construction Budget indicated in the attached Exhibit "A".

1.3 Contractor shall provide for the District's review and acceptance, a monthly report showing the status of the Project. With the District's assistance, and in accordance with District procedures, Contractor shall provide all construction related Board agenda items. Examples: change orders, notices to proceed, notice of completion, authorization to bid, award of Prime Contracts, etc.

**ARTICLE 5**  
**BASIS OF COMPENSATION AND PAYMENT**

1.1 COMPENSATION AMOUNT. The Contractor shall perform the Services as set forth in this Agreement for a fee of \$12,672.00 (the "Total Project Fee") which shall otherwise be invoiced and paid in accordance with this Article. In any event that Contractor invoices the Total Project Fee prior to completion of all Services required of Contractor herein, Contractor shall continue to perform all Services required herein through completion for the Total Project Fee received as good and sufficient consideration of all Services required of Contractor herein.

Reimbursable expenses, other than Approved Charges, as designated in Exhibit "B," are included in the Total Project Fee. Approved Charges, as designated in Exhibit "B," shall be reimbursed by the District as described in this Article 5.

1.2 INVOICING FOR SERVICES. Contractor shall submit an invoice monthly in form and substance satisfactory to the District in an amount that reflects the percentage complete of the Total Project Fee, for that month.

Contractor shall identify all reimbursable expenses or charges included in the invoice or request for payment as separate from Total Project Fee, and provide a cumulative total of reimbursable expenses billed to date, current reimbursable amount billed, and remaining amount for reimbursable expenses as provided for in this Agreement. All reimbursable expenses shall be identified using the categories agreed upon by the parties. Requests for reimbursable expenses shall be limited to the categories of charges listed in Exhibit "B", and any other categories of charges agreed to at a later date by the Board, and must be within the total amount allowable per this Agreement. A request for reimbursement of a Reimbursable Direct Charge (General Conditions) is limited to the categories of approved charges listed in Exhibit "B", and any other categories of charges agreed to at a later date by the Board.

Each invoice or request for payment shall also be accompanied by a certificate from Contractor to the effect that invoice or request for payment is a true and accurate reflection of the Services performed by Contractor and that the items for which compensation is requested have not been previously paid for or denied compensation by the District.

1.3 TIMING OF PAYMENT. District shall pay Contractor for all undisputed amounts, which are approved by the District pursuant to this Agreement no later than thirty (30) calendar days from the date of receipt by the District of an invoice from Contractor.

## **ARTICLE 6** **TERMINATION, ABANDONMENT OR SUSPENSION OF WORK**

### 1.1 TERMINATION OF PRE-CONSTRUCTION CONTRACTOR SERVICES

The District may terminate all or any portion of this Agreement or the Services for cause in the event Contractor fails to promptly and efficiently perform the Services or otherwise fails to comply with the terms of this Agreement. The termination shall be effective if Contractor fails to cure such default within thirty (30) Days following issuance of written notice thereof by the District, or if the cure by its nature takes longer, fails to commence such cure within thirty (30) Days of issuance of the notice and diligently prosecutes such cure to the satisfaction of the District.

Contractor may give thirty (30) Days written notice to the District of Contractor's intent to terminate this Agreement for the District's failure to perform its duties and responsibilities under this Agreement. If, after the expiration of such thirty (30) Days, the District fails to cure the performance as set forth in Contractor's notice of intent to terminate the Agreement, Contractor may issue a notice of termination. If the actions to be taken to cure the default would reasonably exceed thirty (30) Days and the District commences curing the default within said period of time, and thereafter continuously

continues to cure the default, Contractor agrees not to suspend or terminate the Agreement until the District has had a reasonable opportunity to fully cure the default.

The District shall also have the right in its absolute discretion to terminate this Agreement without cause following forty-five (45) Days written notice from the District to Contractor.

### 1.2 CONTINUANCE OF WORK

In the event of a dispute between the parties as to performance of the Services by Contractor or the interpretation of this Agreement, or payment or nonpayment for Services performed or not performed, the parties shall attempt to resolve the dispute. The District and Contractor agree to seek, in good faith, a timely and equitable resolution of a dispute. All efforts will be made by both the District and Contractor to avoid any legal proceedings arising from a dispute.

However, pending resolution of a dispute, Contractor agrees to continue the Services diligently to completion and the District agrees to continue paying Contractor all undisputed compensation in accordance with Article 5. If the dispute is not resolved, Contractor agrees it shall neither terminate the Agreement nor stop the progress of its Services, but Contractor's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute.

### 1.3 ABANDONMENT OF THE PROJECT

The District has the absolute discretion to suspend or abandon all or any portion of the work on the Project and may do so upon fourteen (14) Days' written notice to Contractor. Upon notice of suspension or abandonment, Contractor shall immediately discontinue any further action on the Project or the abandoned portion of the Project, as applicable. If the entire work to be performed on the Project is abandoned, the parties shall each be relieved of the remaining executory obligation of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

### 1.4 COMPENSATION IN THE EVENT OF TERMINATION, ABANDONMENT OR SUSPENSION

In the event the District terminates this Agreement for cause, abandons or suspends the work on the Project, there shall be due and payable within thirty (30) Days following such termination, abandonment or suspension a sum of money sufficient to increase the total amount paid to Contractor to an amount which bears the same proportion to the Total Project Fee as the amount of Services performed or provided by Contractor prior to the time of such termination, suspension or abandonment of this Agreement bears to the entire Services Contractor is required to perform pursuant to this Agreement.

In the event of termination due to a breach of this Agreement by Contractor, the compensation due Contractor upon termination shall be reduced by the amount of damages sustained by the District due to such breach.

## 1.5 DELIVERY/OWNERSHIP OF DOCUMENTS

Upon termination, abandonment or suspension, Contractor shall deliver to the District all documents and materials related to the Project. It is agreed that the District is the sole owner of all documents, schedules and materials concerning the Project.

## **ARTICLE 7** **INDEMNIFICATION**

7.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and save and hold the District, its Board, officers, employees, agents and authorized volunteers (the "Indemnitees") harmless from any and all liability arising out of:

7.1.1 Any and all claims under worker's compensation acts and other employee benefit acts with respect to Contractor's employees arising out of Contractor's performance of Services under this Agreement; and

7.1.2 Any claim, loss, injury to or death of persons or damage to property to the extent that it is caused by any negligent or reckless act, error or omission or willful misconduct (other than a professional act or omission) of Contractor, its officers, employees, consultants, subconsultants or agents, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, arising out of, or in any way connected with the Project, including injury or damage either on or off District property, but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of the Indemnitees.

7.2 To the fullest extent permitted by law, Contractor agrees to indemnify and hold the Indemnitees entirely harmless from all liability arising out of, pertaining to, or relating to any claim, loss, injury to or death of persons or damage to property to the extent caused by the negligent professional act or omission in the performance of professional services by Contractor, its officers, employees, consultants, subconsultants or agents, pursuant to this Agreement.

7.3 Contractor's obligation to indemnify does not include the obligation to defend actions or proceedings brought against the Indemnitees but rather to reimburse the Indemnitees for attorney's fees and costs incurred by the Indemnitees in defending such actions or proceedings brought against the Indemnitees to the extent such actions or proceedings arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, but not to the extent of loss, injury, death or damage caused by the active negligence or willful misconduct of the Indemnitees.

7.4 Contractor's obligation to indemnify as outlined above will be continuing and shall survive the term of this Agreement or any earlier termination of this Agreement.

**ARTICLE 8**  
**SUCCESSORS, SUCCESSORS AND ASSIGNS**

This Agreement is binding upon and inures to the benefit of the successors, executors, administrators, and assigns of each party to this Agreement, provided, however, that Contractor shall not assign or transfer by operation of law or otherwise any or all rights, burdens, duties, or obligations without prior written consent of the District. Any attempted assignment without such consent shall be invalid.

**ARTICLE 9**  
**APPLICABLE LAW**

The laws of the State of California shall govern this Agreement, however, in the event that the District receives any State funding for the Project from the State Allocation Board, this Agreement shall also be governed by any applicable laws and/or regulations relating to such State funding from the State Allocation Board (collectively the "Applicable Law"). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail.

**ARTICLE 10**  
**PRE-CONSTRUCTION CONTRACTOR NOT AN OFFICER OR EMPLOYEE OF DISTRICT**

While engaged in carrying out and complying with the terms and conditions of this Agreement, Contractor is an independent construction management consultant and not an officer or employee of the District.

**ARTICLE 11**  
**INSURANCE**

11.1 Without in any way affecting the indemnity provided in or by Article 7, before commencement of any Services, Contractor shall procure and maintain at its own cost and expense for the duration of the Services, and longer as required by the District against claims for injuries to persons or damages to property which may arise from or in connection with the Services, the types and amounts of insurance set forth herein.

11.2 Minimum Limits of Insurance. Contractor shall procure and maintain the types and amounts of coverage as follows:

11.2.1 Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence for bodily injury, personal injury and property damage/\$2,000,000 annual aggregate.



11.2.2 Automobile Liability Insurance (Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto)). Minimum of \$1,000,000 limit each accident.

11.2.3 [This Section intentionally omitted]

11.2.4 Workers' Compensation Insurance as required by the State of California (Division IV of the California Labor Code, and any amendatory acts or provisions thereto).

11.2.5 Employer's Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury or disease.

### 11.3 Minimum Scope of Insurance.

11.3.1 Commercial General Liability insurance shall be written on Insurance Services Office Form CG 0001 (or a substitute form providing coverage at least as broad) and shall cover liability arising from bodily injury and property damage (broad form property damage), premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability (including the tort liability of another assumed in a business contract), contractual liability with respect to this Agreement, explosion, collapse and underground hazards.

11.3.2 Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 0001, or a substitute form providing liability coverage at least as broad. The policy may require deductibles acceptable to the Director of Risk Management of the District, but not self-insured retention without written approval from District.

11.3.3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after final completion of the Project to which it applies. The "retro date" must be shown and must be before the date of this Agreement.

11.4 Content and Endorsements: Each policy must contain, or be endorsed to contain, the following provisions:

11.4.1 The Commercial General Liability policy shall name District, the Board and each member thereof, its officers, employees, agents, and designated volunteers as named additional insureds ("Additional Insureds"). The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Coverage shall be primary and not contributory with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Contractor's insurance and shall not contribute with it.

11.4.2 On each policy of insurance, the insurer shall agree to waive all rights of subrogation against the District, the Board and each member thereof, its officers, employees,

agents, and volunteers.

11.4.3 Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days prior written notice has been given to the District by the carrier. In the case of cancellation for non-payment, ten (10) days' notice is acceptable. Qualified statements such as carrier "will endeavor" or that "failure to mail such notice shall impose no obligation and liability upon the company" shall not be acceptable.

11.4.4 The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.5 General Insurance Matters: All insurance coverage required under this Agreement shall:

11.5.1 Be issued by insurance companies admitted to do business in the State of California, or permitted to do business under the Surplus Line Law of the State of California, with a financial rating of at least an A:VII as rated in the most recent edition of Best's Insurance Reports. Contractor shall notify District in writing if any of its insurer(s) have an A.M. Best rating of less than A:VII. At the option of District, either 1) District can accept the lower rating; or 2) Contractor shall be required to procure insurance from another insurer.

11.5.2 Except for professional liability policies, all insurance required by this Article shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its Board, its directors, officials, officers, employees and agents.

11.5.3 Contractor shall promptly notify the District of any materials change in the coverage, scope, or amount of any policy.

11.5.4 Except for professional liability policies for which primary coverage is not available, all such insurance shall be primary insurance. Any insurance of the District shall be excess coverage for benefit of the District only and non-contributory.

11.5.5 At all times while this Agreement remains in effect, Contractor shall maintain on file with the District valid and up to date certificates of insurance showing that the required insurance coverage is in effect in not less than the required amounts. If not contained on the face of the policy, endorsements signed by a person authorized by the insurer to bind coverage on its behalf, shall be separately provided. Each policy endorsement, copy, or a certificate of the policy executed by the insurance company, and evidence of payment of premiums for each policy shall be deposited with the District within twenty-one (21) Days of execution of this Agreement and prior to the commencement of Services, and on renewal of the policy, not less than twenty (20) Days before the expiration of the term of the policy.

11.5.6 If Contractor fails to provide or maintain the required insurance, the District may, at its sole and absolute discretion, obtain such insurance at the Contractor's expense and deduct the premium from any fees or reimbursable expenses subsequently invoiced by

Contractor.

11.5.7 Any deductibles or self-insured retentions in excess of \$100,000 must be declared to the District and must be reduced to a level deemed acceptable by the District in writing. Contractor agrees that, at the option of the District, it will either: (A) arrange for the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to the District, its directors, officials, officers, employees and agents; or (B) procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

## **ARTICLE 12** **EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and Contractor.

Contractor, in the performance of this Agreement, shall be and act as an independent construction management consultant. Contractor understands and agrees that Contractor and all of Contractor's employees, Contractor, subconsultants or other subcontractors shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation insurance. Contractor assumes full responsibility for the acts and/or omissions of Contractor's employees, agents, Contractor or subconsultants as they relate to the services to be provided under this Agreement. Contractor assumes full responsibility for payment of all federal, state and local taxes, and all contributions, including all employment benefits, unemployment insurance, social security and income taxes for Contractor's employees, Contractor, subconsultants or other subcontractors.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Contractor.

District and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Contractor shall not assign this Agreement without the express, written consent of District, which may be withheld by District for any reason or no reason, in District's absolute discretion.

This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding shall rest in Stanislaus County. In the event of any claim or civil action between District and Contractor to enforce this Agreement, each party will bear its own attorneys' fees.

While it is the intent of the parties that, if the Project continues, they will engage in good faith efforts to negotiate a further, separate and distinct set of agreements for construction of the Project, the District

retains sole and complete discretion to cease the Project, suspend the Project, or engage any other person or firm to provide any or all further services related to the Project. Nothing in this Agreement obligates the District to engage the Contractor, or to attempt to negotiate with the Consultant to provide services or work in any further agreements or capacity, whatsoever.

The parties, through their authorized representatives, have executed this Agreement on the day and year first written above.

**Blochman Union School District**

**By: Doug Brown, Superintendent**

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**Diani Building Corp.**

**By: Michael J Diani, President**

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**EXHIBIT "A" PROJECT BUDGET**

## **EXHIBIT “B” BASIS OF COMPENSATION**

Total Project Fee Amount for Phase I and II:

**\$12,672.00 (100%) Proposed Fee Payout**

The preconstruction contractor shall bill the District on a percentage complete basis

<b>Total Project Fee</b>	<b>100%</b>
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**Approved Charges\*:**

- Agency plan check fees, utility fees, permit fees, and other fees or costs associated with carrying out required approvals and permitting processes, if paid on behalf of the District.
- Expenses incurred on behalf of the District as directed in writing.

\*Note: Reimbursable Expenses and Charges not explicitly listed above must be approved in writing by the Program Manager prior to invoicing for reimbursement.

\*\*Note: Additional services must be approved in writing by the Program Manager prior to proceeding with work, or invoice for services.

**EXHIBIT "C" MASTER PROJECT SCHEDULE**

Guaranteed Maximum Price (GMP) Due:.. May 5, 2023  
GMP Board Approval..... May 9, 2023  
Phase I Site Available..... June 16, 2023  
Phase I Construction Complete..... July 28, 2023  
Phase II Site Available..... To Be Determined  
Phase II Construction Complete ..... To Be Determined

## **EXHIBIT “D” BACKGROUND CHECK AND FINGERPRINTING PROCEDURES**

Pursuant to Education Code section 45125.1, Contractor shall either conduct criminal background checks of all employees of Contractor assigned to the Project site, and shall certify that no employees who have been convicted of serious or violent felonies, as specified in Education Code Section 45125.1, will have contact with pupils, by utilizing the Certification Regarding Background Checks and the corresponding Attachment “A” as found in the Contract Documents or shall be separated by a physical barrier from students.

If it is determined that Contractor must provide certification of employees, as part of such certification, Contractor must provide the Owner with a list of all employees providing services pursuant to this Agreement, and designate which sites such employees will be assigned. In performing the services set forth in this Agreement, Contractor shall not utilize any employees who are not included on the above-referenced list.

At Owner’s sole discretion, Owner may make a finding, as authorized under Education Code section 45125.1, that Contractor’s employees will have only “limited contact” with pupils. Contractor’s failure to comply with this law shall be considered a material breach of this Agreement upon where this Agreement may be terminated, at Owner’s sole discretion, without any further compensation to Contractor.

Contractor shall complete the following form certifying compliance with these provisions:



## CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

Diani Building Corp. certifies that it has performed one of the following:

Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the Blochman Union School District, pursuant to the contract/purchase order dated April 18, 2023, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, attached hereto as Attachment "A" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:

1. The installation of a physical barrier at the worksite to limit contact with pupils.
1. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date \_\_\_\_\_, 2023

Diani Building Corp.

By its:

III - B

**RESOLUTION NO. 2023-04-18**

**RESOLUTION OF THE BOARD OF EDUCATION OF THE BLOCHMAN UNION SCHOOL DISTRICT APPROVING THE AWARD OF PRECONSTRUCTION AND MASTER LEASE-LEASEBACK SERVICES FOR THE BENJAMIN FOXEN ELEMENTARY SCHOOL MUR AND SCHOOL RENOVATION PROJECT**

**WHEREAS**, the Blochman Union School District (“District”) plans to construct the Benjamin Foxen Elementary School MUR and School Renovation Project (“Project”) utilizing the lease-leaseback construction delivery method, whereby the District will lease a site that it owns to a contractor who will construct improvements thereon and lease the project and the underlying site back to the District; and

**WHEREAS**, Education Code Section 17406 authorizes the governing board of a school district to let to any person, firm or corporation any real property belonging to the District if the instrument by which the property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of that term; and

**WHEREAS**, the award of any lease-leaseback contract pursuant to Education Code section 17406 is to be based on a competitive solicitation process to the proposer providing the “best value” to the school district, taking into consideration the proposer’s demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

**WHEREAS**, pursuant to Education Code section 17400(b)(1), “best value” means a competitive procurement process whereby the selected proposer is selected on the basis of objective criteria for evaluating the qualifications of proposers with the resulting selection representing the best combination of price and qualifications; and

**WHEREAS**, on February 14, 2023, the District’s Board of Education adopted Resolution No 2023-02-14 setting forth the procedures and guidelines for the award of lease-leaseback contracts; and

**WHEREAS**, on March 28, 2023, the District issued a Request for Proposal seeking proposals for preconstruction and lease-leaseback construction services for the Benjamin Foxen Elementary School MUR and School Renovation Project, which set forth the criteria and scoring of the proposals, including relevant experience, safety record, price proposal, and other criteria specified by the District; and

**WHEREAS**, on April 11, 2023, the District received one proposal for the Benjamin Foxen Elementary School MUR and School Renovation Project and conducted interviews on April 12, 2023; and

**WHEREAS**, the Proposal Evaluation Committee evaluated the qualifications of the proposals based upon the criteria and evaluation methodology set forth in the RFP, assigned scores to each proposal, and once the evaluation process was complete, the District determined the proposer with the best value score; and

**WHEREAS**, based on the Proposal Evaluation Committee's assessment of proposals, Diani Building Corp. ("Contractor") achieved the highest best value score; and

**WHEREAS**, in order to construct the Project using the lease-leaseback delivery method, it is necessary that the District enter into a site lease, in which the site will be leased to the Contractor; a sublease which provides for the sublease of the site and the lease of the project by the Contractor back to the District; and a construction services agreement that contains construction provisions with which Contractor shall comply with respect to the construction of the Project.

**NOW, THEREFORE, THE BOARD OF EDUCATION OF THE BLOCHMAN UNION SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:**

**Section 1.**     Recitals. All of the recitals herein contained are true and correct.

**Section 2.**     Determination of Best Value Contractor. The Blochman Union School District implemented a Request for Proposals and, in accordance with Education Code section 17406, determined that Diani Building Corp. was responsive and received the best value score based on the evaluation of objective criteria contained in the RFP.

**Section 3.**     Award of Preconstruction and Lease-Leaseback Agreement. The District's Board of Education hereby awards of the preconstruction services, and lease-leaseback contract to Diani Building Corp. for the Project. The Lease-Leaseback Agreement which includes the Site Lease, Sublease, and Construction Services Agreement were included in the RFP. The preconstruction services for the Project shall be \$12,672.00.

**Section 4.**     Guaranteed Maximum Price. After any preconstruction services are completed, and subcontractors are selected by Diani Building Corp. for the various projects, the guaranteed maximum price and contingencies for the various projects shall be negotiated and finalized for the various projects. The District's Board of Education must approve the final guaranteed maximum price prior to the start of any construction work on the various projects.

**Section 5.**     Other Acts; Delegation. The District's Board of Trustees hereby approves a delegation of authority and appoints its Superintendent, or the designee of the Superintendent, who is/are hereby authorized and directed to carry out the intent of this Resolution. Said delegation shall be valid until otherwise rescinded by the Board.

**Section 6.**     Effective Date. This Resolution shall take effect upon adoption.

APPROVED, PASSED AND ADOPTED by the Board of Education of the Blochman Union School District this 18th day of April, 2023, by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAINED: \_\_\_\_\_

I, Shannon Clay, President of the Blochman Union School District Board of Trustees, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a specially scheduled and conducted meeting held on said date, which resolution is on file in office of said Board.

\_\_\_\_\_  
President of the Board of Education  
Blochman Union School District

I, Kelly Salas-Ernst, Clerk of the Board of Education of the Blochman Union School District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Education of the Blochman Union School District at a special meeting thereof held on the 18th day of April, 2023, by the following forgoing vote.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Blochman Union School District this 18th day of April, 2023.

\_\_\_\_\_  
Clerk of the Board of Education  
Blochman Union School District