

**AMENDMENT NO. 1 TO
AGREEMENT FOR PRELIMINARY SERVICES BETWEEN
LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
AND
BLACH CONSTRUCTION COMPANY
(JUNCTION AVE. K8 SCHOOL FIRE ALARM UPGRADE, HVAC REPLACEMENT (BUILDINGS C & D1), AND SITE
ELECTRICAL UPGRADE PROJECT**

This Amendment No. 1 to the Agreement for Preliminary Services (“**Amendment No. 1**”) is made and entered into on **March 16, 2022**, between **Livermore Valley Joint Unified School District (“District”)** and **Blach Construction Company (“Contractor”)**. The Contractor and District may be referred to individually as a “**Party**” and collectively as the “**Parties**”. **The Parties agree all capitalized terms not herein defined shall have the same meaning as in the Agreement (as defined below).**

RECITALS

- A. WHEREAS**, the District selected Contractor to perform preliminary and constructions services for the Junction Ave. K8 School Fire Alarm Upgrade, HVAC Replacement (Buildings C & D1), and Site Electrical Upgrades Project (“**Project**”), and the Parties entered into an Agreement for Preliminary Services dated December 15, 2021 (“**Agreement**”), and which is Exhibit L to the Facilities Lease the Parties will enter to construct the Project (“**Facilities Lease**”); and
- B. WHEREAS**, although the Agreement only required that Contractor perform Preliminary Services, solicit subcontractors, and prepare a proposed guaranteed project cost to construct the project (“**Guaranteed Project Cost**” or “**GPC**”), the Facilities Lease requires Contractor to order and obtain materials and equipment sufficiently in advance of its construction work at no additional cost or advance payment from District to protect against price escalations and/or delay(s) in completing the Project; and
- C. WHEREAS**, the Facilities Lease will require all materials and equipment for the Project be stored at the Project site and secured by Contractor, unless otherwise approved in writing by the District; and
- D. WHEREAS**, the unique nature of this Project, the materials required to construct the Project, and current market conditions and supply chain challenges require the early procurement of certain materials and equipment components for the Project (“**Specific Materials & Equipment**”) to avoid cost escalations and delay(s) to the Project; and
- E. WHEREAS**, the Parties desire to guarantee pricing, and ensure the timely delivery of, the Specific Materials & Equipment and set forth the terms of the District’s payment to Contractor for those Specific Materials & Equipment on the terms and conditions described below.

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties set forth herein below, it is mutually agreed as follows:

TERMS AND CONDITIONS

- I.** This Amendment No. 1 constitutes the District’s written direction to purchase the “Early Purchase Item(s)” required by and defined in the section titled “Early Purchase of Materials & Equipment” in **Attachment A** to the Agreement, as amended by this Amendment No. 1.
- II.** The following is added to **Attachment A** to the Agreement:
 - 4. Early Purchase of Materials & Equipment**
 - 4.1. Definitions.**

4.1.1. Early Purchase Item(s). The term “Early Purchase Item(s)” means the below identified material(s) and equipment purchased early by Contractor on the terms set forth hereunder, and in the quantities and at the price indicated below, except that the Allowance (as defined below) is an amount set aside for Potential Purchase Item(s) (as defined below) and is not a cost to which Contractor is entitled unless otherwise provided herein:

EQUIPMENT AND MATERIAL	QUANTITY	PRICE
Air Cooled VRV Heat Recovery Unit	1	\$97,263 (Includes Tax [10.25%]: \$9,043)
Branch Selector Box Tag	2	
Fan Coil Unit Tag	19	
Rooftop HVAC Units	8	\$108,596 (Includes Tx [10.25%]: \$10,096)
		SUBTOTAL: \$205,859
		Additional Charges
		Shipping, Handling, Delivery: \$24,703
		Blach Fee (3.95%): \$9,107
		TOTAL COST: \$239,669
		ALLOWANCE: \$70,000
		TOTAL POTENTIAL COMPENSATION: \$309,669

4.1.2. Early Purchase Price & Total Purchase Price. The term “Early Purchase Price” means the individual cost for any one (1) Early Purchase Item, and the term “Total Early Purchase Price” means the “Total Cost” for the Early Purchase Items identified above.

4.2. Early Purchase of Items.

4.2.1. Option for Early Purchase of Materials & Equipment. In the District’s sole and absolute discretion, the District may direct Contractor to purchase the Early Purchase Item(s) consistent with the requirements hereunder.

4.2.2. Notice & Evidence of Order. Within **THREE (3)** calendar days of Contractor’s receipt of the District’s direction to purchase the Early Purchase Item(s), Contractor shall provide the District with a purchase order, bill of sale, invoice, or any other document identifying Contractor and/or its subcontractor, to the extent applicable, as the title owner to the Early Purchase Item(s) and sufficient information that the specification and type/brand of the Early Purchase Item(s) is satisfactory to the District (“Purchase Documentation”).

4.2.3. Proof of Receipt of Early Purchase Item. Upon delivery of the Early Purchase Item(s) to Contractor, whether at the Project site or off-site, Contractor shall provide the District with verifiable documentation of the receipt of any Early Purchase Item(s) in the form of photographs specifically identifying: (i) the Early Purchase Item(s); (ii) the serial number(s) of each Early Purchase Item(s); (iii) and/or other supporting documentation and evidence authenticating the Early Purchase Item(s).

4.3. Compensation for Early Purchase Items. The District shall compensate Contractor for any Early Purchase Item(s) as set forth below.

4.3.1. Total Compensation. The District shall pay Contractor for the Early Purchase Item(s) an amount **not to exceed** the Total Early Purchase Price.

4.3.2. Terms of Payment for Early Purchase Items. District shall pay Contractor for the Early Purchase Item(s) incrementally, based on the following schedule (each, a “**Early Purchase Payment**”):

4.3.2.1. **Upon Proof of Purchase (50%).** District shall pay Contractor **Fifty-Percent (50%)** of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation, upon the District’s receipt of the Purchase Documentation.

4.3.2.2. **Upon Delivery (50%).** District shall pay Contractor **Fifty Percent (50%)** of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation, upon delivery of the Early Purchase Item(s) to the Project site, or, if stored off-site, upon delivery of the Early Purchase Item(s) to the location for off-site storage.

4.3.3. Early Purchase Item Allowance.

4.3.3.1. **Allowance Amount.** This Agreement includes an allowance for the early purchase of additional materials and equipment (“**Potential Purchase Item(s)**”) in an amount **not to exceed Seventy Thousand Dollars (\$70,000)** (“**Allowance**”) that the District may use in its sole and absolute discretion, subject to the requirements below. The Parties agree and acknowledge that no portion of the Allowance is due and payable to the Contractor unless the conditions below for Allowance use and all other requirements related to Early Purchase Item(s) are satisfied.

4.3.3.2. **Allowance Use.**

4.3.3.2.1. The District may issue a written request to Contractor to provide it a quote for Potential Purchase Item(s) to be paid out of the Allowance (“**Purchase Quote**”). The Purchase Quote shall: (1) identify the Potential Purchase Item(s), quantity(ies), and costs in a form substantially similar to the matrix in the “Early Purchase Item(s)” section above; and (ii) include reasonable substantiation in the form of quotes or proposals from vendors supporting the required information.

4.3.3.2.2. The District may, in its sole discretion, given written direction to Contractor to purchase the Potential Purchase Item(s) in the Purchase Quote. Upon such direction, the Potential Purchase Item(s) shall be considered “Early Purchase Item(s)” and the total price in the Purchase Quote shall be considered the “Early Purchase Price” for each item respectively, and the total price part of the “Total Early Purchase Price”.

4.3.3.2.3. Contractor shall comply with all other requirements in this Agreement related to the Early Purchase Item(s). District shall make payment to Contractor consistent with the “Compensation for Early Purchase Item(s)” section above.

4.3.3.3. **Allowance Retention.** Any unused portion of the Allowance shall be retained by the District.

4.3.4. Requesting Payment. When any Early Purchase Payment becomes due as set forth above, Contractor shall submit an invoice to the District requesting that the District make any applicable Early Purchase Payment. The District shall pay Contractor undisputed amounts for the Early Purchase Payment within thirty (30) days of approval of the written approval of an invoice.

4.3.5. Retention. District shall retain **Five Percent (5%)** of the amount owed to Contractor from each Early Purchase Payment. Retention shall be released when the Contractor achieves Completion of the Project consistent with the terms of **Exhibit D** to the Facilities Lease.

4.3.6. Deduction from Guaranteed Project Cost.

4.3.6.1. Contractor agrees and acknowledges that Total Early Purchase Price for the for the Early Purchase Item(s) is a component of the Cost of Work in the Guaranteed Project Cost. If District makes payment of any portion of the Total Early Purchase Price prior to the Parties finalizing the Guaranteed Project Cost the District shall direct Contractor to:

4.3.6.1.1. Deduct any portion of the Total Early Purchase Price paid to Contractor from the Guaranteed Project Cost; **or**

4.3.6.1.2. Include the any paid portion of the Total Early Purchase Price in the Guaranteed Project Cost and Contractor will prepare a Schedule of Values consistent with the "Schedule of Values" section below..

4.4. Schedule of Values. If Contractor prepares a Schedule of Values for construction of the Project that includes the Early Purchase Item(s), Contractor shall include a line item(s) for each Early Purchase Item consistent with the requirements of **Exhibit D** to the Facilities Lease.

4.5. Storage and Related Requirements.

4.5.1. Contractor shall comply with all requirements in **Exhibit D** to the Facilities Lease related to the storage of equipment and materials when Contractor stores the Early Purchase Item(s).

4.5.2. If Contractor intends to store off-site any Early Purchase Item(s), Contractor shall comply with all requirements in **Exhibit D** to the Facilities Lease related to off-site storage.

4.5.3. In addition to the insurance requirements of this Agreement, Contractor shall ensure that its policies of insurance comply with all requirements set in **Exhibit D** to the Facilities Lease related to procuring insurance coverage to protect District property.

4.6. No Adjustment to the Contract Price and/or Contract Time. Contractor expressly agrees and acknowledges that this process for the early purchase of equipment and materials is a contractual mitigation measure so the Parties can avoid increased costs and delay(s) to the construction of the Project that may arising from supply chain challenges. The District's direction to Contractor to comply with this process hereunder shall in no way entitle the Contractor to an increase in the Guaranteed Project Cost or an extension of the Contract Time after the issuance of the Notice to Proceed for construction of the Project, unless otherwise permitted, and consistent with the requirements of, **Exhibit D** to the Facilities Lease.

III. The Parties acknowledge that this Amendment No. 1 is subject to approval or ratification by the District Board of Education ("**Board**"). In the event that the Board rejects this Amendment No. 1, none of the Parties shall be deemed to have waived any rights with respect to the Agreement.

IV. This Amendment No. 1 constitutes the entire agreement between the Parties related to the specific subject matter covered herein and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Amendment No. 1 may be amended or modified only by a written instrument executed by both Parties. All other provisions of the Agreement shall remain in full force and effect and are reaffirmed. If there is any conflict between this Amendment No. 1 and any provision of the Lease-Leaseback Documents, the provisions of this Amendment No. 1 shall control.

SIGNATURES ON FOLLOWING PAGE

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2022

Livermore Valley Joint Unified School District

By: _____

Print Name: _____

Print Title: _____

Dated: _____, 2022

Blach Construction Company

By: _____

Print Name: Dave Finn

Print Title: Vice President, Education