

**CONCORDIA R-II  
STANDARD FORM OF AGREEMENT  
between**

**CONCORDIA R-II AND CONTRACTOR FOR CONSTRUCTION**

This Agreement is by and between the Concordia School District (“Owner”) and \_\_\_\_\_ (“Contractor”). The parties, in consideration of the mutual covenants as set forth herein, agree as follows:

**Article 1 – Work**

1.01 Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

**Article 2 – Time**

*2.01 Time of the Essence*

All time limits for milestones, if any, substantial completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

*2.02 Dates for Substantial Completion and Final Payment*

The work will be substantially complete on or before \_\_\_\_\_, 20\_\_\_\_. The work will be totally complete and ready for final payment on or before \_\_\_\_\_, 20\_\_\_\_.

**Article 3 – Contract Sum**

3.01 Owner shall pay Contractor for completion of the work in accordance with the Contract Documents in an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.02 below:

For all work other than unit price, a base lump sum of \$\_\_\_\_\_.

**Article 4 – Payment Procedures**

*4.01 Submittal and Processing of Payments*

Applications for payment will be submitted by the Contractor to the Owner for processing. With each application for payment, Contractor will also submit complete copies of its records for that month reflecting payment of material suppliers, subcontractors and employees so that Owner can verify compliance with Prevailing Wage laws.

#### *4.02 Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract price on the basis of Contractor's applications for payment. Contractor must submit its application for payment on or before the 25<sup>th</sup> day of each month. Owner shall make progress payments within 30 days of submittal of the application for payment.

B. Prior to final completion, progress payments will be made for the work completed less ten percent retainage and less such amounts as Owner may determine or withhold, including but not limited to liquidated damages.

C. A progress payment or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

#### *4.03 Final Payment*

Upon final completion and acceptance of the work by the Board of Education, Owner shall pay the remainder of the contract price.

### **Article 5 – Contractor's Representations**

5.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- a. Contractor has examined and carefully studied the Contract Documents and any other related data identified in the bidding documents;
- b. Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress and performance of the work;
- c. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the work;
- d. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the contract price, within the contract times, and in accordance with the other terms and conditions of the Contract Documents;

- e. Contractor is aware of the general nature of the work to be performed by Owner and others at the site that relates to the work as indicated in the Contract Documents;
- f. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents;
- g. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work; and
- h. Contractor warrants and guarantees to Owner that all work will be in accordance with the Contract Documents and will not be defective. Contractor's obligation to perform and complete the work in accordance with the Contract Documents shall be absolute.

## **Article 6 – Contract Documents**

### *6.01 Contents*

The Contract Documents consist of the following and are incorporated herein by reference:

- 1. This Agreement;
- 2. Special Conditions;
- 3. Performance Bond;
- 4. Payment Bond;
- 5. Project Specifications;
- 6. The following drawings:
- 7. Contractor's bid.
- 8. Written Change Orders or Construction Change Directives issued after execution of this Agreement.

The Contract Documents may only be amended, modified or supplemented with the written agreement of the Owner and Contractor.

## **Article 7 – Bonds and Insurance**

### *7.01 Performance, Payment and Other Bonds*

Contractor shall furnish a Performance Bond in an amount at least equal to the Contract price and a Payment Bond in an amount at least equal to the Contract price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These Bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period, if any, except as provided otherwise by laws or regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.

### *7.02 Certificates of Insurance*

Contractor shall deliver to Owner Certificates of Insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. Owner shall be identified as an additional insured on all such Certificates of Insurance.

### *7.03 Contractor's Liability Insurance*

Contractor shall purchase and maintain such liability and other insurance as is appropriate for the work being performed and also will provide protection from claims which may arise out of or result from Contractor's performance of the work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Sub-Contractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable. Contractor's liability insurance must be for at least \$\_\_\_\_\_ in coverage.

### *7.04 Permits*

Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work which are applicable at the time of opening of bids, or, if there are no bids, on the effective date of the Agreement.

## **Article 8 – Indemnification**

8.01 To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless Owner, and the board members, officers, directors, partners,

employees, agents, consultants and Sub-Contractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals in all courts or arbitration or other dispute resolution costs) arising out of or relating to the performance of the work, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused by any act or omission of Contractor, any Sub-Contractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work or anyone for whose acts any of them may be liable.

## **Article 9 – Wage Rates**

9.01 This Agreement shall be based upon the required payment by the Contractor of not less than the prevailing hourly rate of wages, as set out in the Wage Order attached herein and made part of the Specification for Work under the Contract, must be paid to all workers performing work under the Contract. The Contractor will forfeit a penalty to the Owner of \$100.00 per day (or portion of a day) for each worker that is paid less than the prevailing rate for any work done under the Contract by the Contractor or by any Subcontractor.

9.02 During periods of excessive unemployment (any month immediately following two consecutive calendar months during which the level of unemployment in the state has exceeded 5% as measured by the United States Bureau of Labor Statistics) only Missouri laborers (persons who have resided in Missouri for at least 30 days and intend to become or remain Missouri residents) and laborers from non-restrictive states (persons who are residents of a state which has not enacted state laws restricting Missouri laborers from working on public works projects in that state, as determined by the Labor and Industrial Relations Committee) may be employed under the Contract, except that other laborers may be used when Missouri laborers or laborers from non-restrictive states are not available, or are incapable of performing the particular type of work involved, and so certified by the Contractor and approved by the Contracting Officer.

## **Article 10 – Use of Employment Verification System**

Prior to commencement of the Work, Contractor shall provide to Owner a sworn affidavit and other sufficient documentation to affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Contract. Contractor shall also provide Owner a sworn affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

## **Article 11 – Completion of the Work**

11.01 *Contractor's Construction Schedule*

Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work, and a schedule for the critical path for the construction of the Project. Contractor shall provide an updated schedule for construction every 60 days thereafter and anytime upon request of Owner.

#### 11.02 *Delays*

A. If Owner or other contractors or utility owners performing other work for Owner, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both if a Claim is made therefore. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

B. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal unforeseen weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times if a Claim is made therefore, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph.

C. Owner shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

E. Contractor shall make written request, with supporting documentation, to Owner for a requested adjustment in the Contract Price or Contract Times as discussed in this Section. Failure to make said request within 10 days of the occurrence giving rise to the request constitutes a waiver of the claim for any adjustment in the Contract Price or Contract Times.

#### 11.03 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been

rejected by Owner, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 11.04 Change Orders

A. Changes in the Work may be accomplished after execution of this Contract, and without invalidating the Contract, by Change Order or Construction Change Directive.

B. A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Engineer and Contractor, stating their agreement upon all the following:

1. A change in the Work;
2. The amount of the adjustment in the Contract Sum, if any; and
3. The extent of the adjustment in the Contract Time, if any.

C. A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

D. Upon receipt of a Change Order or Construction Change Directive, Contractor shall proceed promptly, unless otherwise notified, with the Work set forth.

E. Contractor may submit a Request for Information to Engineer for clarification of any portion of the Contract Documents, including Change Orders and/or Construction Change Directives. Engineer shall respond to all requests for information promptly.

#### 11.05 *Contractor's Warranties*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

B. Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

#### 11.06 *Waiver of Claims*

The making and acceptance of final payment will constitute:

A. A waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

B. A waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### **Article 12 – Waiver of Consequential Damages**

Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Agreement.

### **Article 13 – Substantial Completion and Final Completion**

#### 13.01 *Substantial Completion*

A. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

B. When the Work or designated portion thereof is substantially complete, the Owner will make an inspection to determine whether the Work is substantially complete. When the Owner determines that the Work is substantially complete the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall



commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

#### 13.02 *Final Completion*

A. Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment.

B. Final payment shall not become due until 30 days after Contractor finally completes the Work, submits to the Owner all required documents including, but not limited to, releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract, and the Owner issues a final Certificate for Payment.

### **Article 14 - Termination**

#### 14.01 *Owner May Suspend Work*

At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

#### 14.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule as adjusted from time to time);
2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
3. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 14.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. Incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. Complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 14.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 14.02.B and 14.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 7.01, the termination procedures of that bond shall supersede the provisions of Paragraphs 14.02.B, and 14.02.C.

#### 14.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### Article 15 – Dispute Resolution

Owner and Contractor shall make a good faith effort to resolve all disputes with an informal meeting between representatives of both parties with decision-making authority before resorting to other means of resolution. By written agreement, the parties may decide to enter into formal mediation or arbitration proceedings to resolve a dispute, although neither is required. Nothing in this paragraph shall limit either party's ability to file a lawsuit in a court of law regarding a dispute.

#### Article 16 – Safety Program

The Contractor and all Subcontractors to the Contract must require all onsite employees to complete the ten hour construction safety training program required under Section 292.675, RSMo, if they have not previously completed the program or have no documentation of having done so. The Contractor will forfeit a penalty to the Owner of \$2,500.00 plus an additional \$100.00 for each employee employed by the Contractor or Subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training.

#### **Article 17 – Miscellaneous Provisions**

##### *17.01 Nondiscrimination in Employment*

Contractor will be required to comply with the President's Executive Order No. 11246, Title VI and Section 3 of the 1968 HUD Act as pertaining to Equal Employment Opportunity through Affirmative Action. Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, national origin, age or disability.

##### *17.02 Transient Employers*

Every transient employer, as defined in Section 285.230, RSMo, must post in a prominent and easily accessible place at the worksite a clearly legible copy of the following: (1) a notice of registration for employer withholding issued to such transient employer by the Director of Revenue; (2) proof of coverage for workers compensation insurance or self-insurance signed by the transient employer and verified by the Department of Revenue through the records of the Division of Workers Compensation; and (3) the notice of registration for unemployment insurance issued to such transient

employer by the Division of Employment Security. Any transient employer failing to comply with these laws shall, under Section 285.234, RSMo, be liable for a penalty of \$500.00 per day until the notices required by this Section are posted as required by that Statute.

#### 17.03 *Taxes*

The Owner is a public entity exempt from payment of state sales taxes and will furnish the Contractor with all required information to allow Contractor to benefit from this status. The Contractor shall apply the exemption in accordance with state law for purchases required for the Work. The Contractor shall pay all other required sales, consumer, use and other similar taxes, if any.

#### 17.04 *Background Checks*

Contractor shall provide documentation proving that all of its employees working on the Project have passed all applicable criminal background checks required by the District before entering the District premises.

#### 17.05 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. Delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
2. Delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### 17.06 *Computation of Times*

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### 17.07 *Cumulative Remedies*

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract

Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

#### 17.08 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

#### 17.09 *Controlling Law*

This Contract is to be governed by the law of the State of Missouri.

#### 17.10 *Venue*

Venue of any lawsuit filed regarding the Project or arising out of this Contract will be in the Circuit Court of Lafayette County, Missouri.

#### 17.11 *Headings*

Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

#### 17.12 *Counterparts*

This Contract may be executed in one or more counterparts, each of which shall constitute an original and which, when taken together, shall constitute one entire Contract. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties to this Contract.

#### 17.13 *Fax Signatures*

For purposes of this Contract, a document (or signature page thereto) signed and transmitted by facsimile machine or telecopier is to be treated as an original document. The signature of any party thereon, for purposes hereof, is to be considered an original signature, and the documents transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party, any facsimile or telecopy document is to be re-executed in original form by the parties who executed the facsimile or telecopy document. No party may raise the use of a facsimile machine or telecopier or the fact that a signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement to this Contract or any amendment or other document executed in compliance with this paragraph.

17.14 *Assignment*

Neither party may sign their rights and obligations under this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld.

17.15 *Entire Agreement*

This Contract constitutes the entire agreement between the parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof, and may not be changed, modified or amended, in whole or in part, except in writing signed by Owner and Contractor.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Board President

Title: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: Board Secretary

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No.: \_\_\_\_\_  
(Where applicable)

Agent for service or process: \_\_\_\_\_

\_\_\_\_\_  
(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)