

CITY OF SOUTH SAN FRANCISCO

OWNER-CONTRACTOR AGREEMENT

FOR THE

WESTBOROUGH PRESCHOOL PROJECT (2360 Galway Drive, South San Francisco)

THIS AGREEMENT made and entered into this xx, day of May, 2026, between the CITY OF SOUTH SAN FRANCISCO, a municipal corporation and political subdivision of the State of California, hereinafter called "OWNER," and CLW Builders, Inc., hereinafter called "CONTRACTOR"¹.

In consideration of the mutual covenants and agreements set forth herein, CONTRACTOR and OWNER hereby agree as follows:

ARTICLE I

CONSTRUCTION

Subject to and in accordance with the terms of this Agreement, the CONTRACTOR shall do all the work and furnish all the labor, services, materials and equipment necessary to construct and complete, in accordance with the CONTRACT DOCUMENTS (as hereinafter defined) in a good, workmanlike and substantial manner and to the satisfaction of OWNER, SOUTH SAN FRANCISCO **WESTBOROUGH PRESCHOOL PROJECT** ("PROJECT") upon that real property located in South San Francisco, California. The PROJECT is that described and reasonably inferable from specifications and documents enumerated in Exhibit A. Such construction and furnishing of labor, services, materials and equipment and the performance of CONTRACTOR's other services and obligations required by the CONTRACT DOCUMENTS are hereinafter referred to as the "WORK." The term "CONTRACT DOCUMENTS" or "CONTRACT" shall mean all of the items enumerated in Exhibit A, and all change orders or addenda issued with respect to the works and improvements described, mentioned, and set forth including this Agreement.

The term "Contractor" as used herein is employed without distinction as to either number or gender and shall include whenever the context shall permit all agents, representatives, employees, servants, subcontractors and business or social invitees of Contractor.

ARTICLE II

CONTRACT SUM

OWNER shall pay and CONTRACTOR shall accept as full compensation for the WORK the sum of ELEVEN MILLION FIVE HUNDRED SIXTY FOUR THOUSAND TWO HUNDRED NINETY SIX and NO/100 DOLLARS (\$11,564,296) as set forth in Exhibit B.

ARTICLE III

TIME FOR PERFORMANCE

The Contractor shall complete all Work under the CONTRACT DOCUMENTS within **Four Hundred Twenty (420) calendar days** of the effective date of the Notice to Proceed ("Scheduled Completion Date"). The CONTRACTOR shall begin work within seven (7) calendar days from the issuance of the Notice to Proceed and shall diligently perform all of the work under this Contract in all parts and requirements as defined in the CONTRACT DOCUMENTS.

In addition to the above;

1. All close-out documentation shall be submitted to the Owner no later than thirty (30) days after Substantial Completion.

Section 3.1. Definitions.

The following are definitions as used in this Agreement:

The term "Completion Date" shall mean the date that all the WORK is substantially complete.

The term "Direct Costs" shall mean the premium portion of overtime pay (i.e., the amount in excess of their regular hourly rate), the labor cost of adding additional workers to perform a task in excess of the number of workers CONTRACTOR reasonably had planned to use, equipment costs in excess of equipment CONTRACTOR reasonably had planned to use, and such other items of cost requested in advance by CONTRACTOR and approved by OWNER.

The term "Excusable Delay" shall mean an actual delay in the performance of the

WORK on the Project's Critical Path by CONTRACTOR caused by any of the following only if such events are beyond the reasonable control of CONTRACTOR despite CONTRACTOR having taken all reasonable attempts to prevent, avoid delay and mitigate the effects thereof:

- A. An act or omission of OWNER, or by an employee, agent or representative of OWNER (other than by reason of the proper exercise of their respective rights, duties and obligations under the CONTRACT DOCUMENTS) except as provided in Section 7102 of the Public Contract Code; or
- B. A fire, flood, unusually severe and abnormal weather conditions, rain in excess of the anticipated average number of rain days per year over a ten (10) year period based on historic weather data, war, embargo, sabotage, hurricane, earthquake, tornado; or
- C. An injunction that prevents performance of the WORK, except for legal actions initiated by CONTRACTOR, any subcontractor or supplier, or an injunction or legal action that resulted from the acts or omissions of CONTRACTOR or any subcontractor or supplier; or
- D. A general strike, regulatory delays, strikes in or losses during transportation, or other similar event which is beyond CONTRACTOR'S control.

The CONTRACTOR acknowledges that actual delays in activities that do not affect the completion time ("non-critical delays") do not have any effect upon the Scheduled Completion Date, and therefore, will not constitute an "Excusable Delay" nor be a basis for changing the Scheduled Completion Date. The CONTRACTOR acknowledges that time extensions will be granted only to the extent that Excusable Delays exceed the available float in the PROJECT Schedule. Nothing herein excused CONTRACTOR from its obligation to mitigate damages.

The term "Final Completion" shall mean the completion of all the WORK including punch list items.

The term "Notice to Proceed" shall have the meaning described in Section 3.2 below.

The term "PROJECT" shall have the same meaning as that set forth in the General Conditions.

The term "Scheduled Completion Date" shall mean and refer to the date set forth by Section 3.2 below, as such date may be extended pursuant to Section 3.3 below, or by Change Order.

The terms "Substantial Completion" and "Substantially Complete" shall have the meaning set forth in Article 8 and Article 9 of the General Conditions.

Section 3.2. Notice to Proceed/Scheduled Completion Date.

The WORK under the Contract shall proceed pursuant to and in accordance with a written notice from OWNER to CONTRACTOR to proceed ("Notice to Proceed").

CONTRACTOR shall diligently commence performance of the WORK on the date specified in the Notice to Proceed. CONTRACTOR shall complete performance of the entire WORK (as defined in Article 8 and Article 9 of the General conditions) on or before **SIXTY (60) consecutive calendar days** after the date of issuance of the Notice to Proceed ("Scheduled Completion Date").

Section 3.3 Extension of Scheduled Completion Date.

(A) Excusable Delay

In the event that CONTRACTOR is actually delayed on the performance of the WORK by any "Excusable Delay" which is an unforeseeable delay beyond the CONTRACTOR'S control and not the fault of either party, then the Scheduled Completion Date shall be extended for a period equal to the length of such Excusable Delay, as permitted by the General Conditions in the Contract Documents. Such extension of time on account of an Excusable Delay shall not be allowed unless applied for in writing by the CONTRACTOR within ten (10) calendar days of the commencement of any such delay and CONTRACTOR meets the requirements provided for in the General Conditions of the Contract Documents. No verbal approval, either express or implied, or any grant of time extension by OWNER or its agents shall be binding upon OWNER unless and until such approval is expressly ratified in writing.

In the event the CONTRACTOR is delayed in the WORK by any such Excusable Delay, the CONTRACTOR'S remedy shall be an extension of time. In no event shall CONTRACTOR be entitled to a monetary payment over and beyond that, which is specified in the OWNER-CONTRACTOR Agreement plus that which is specified by duly executed change orders.

(B) Excusable and Compensable Delays

In the event of delay in the Work that is (i) the responsibility of the OWNER, (ii) is unreasonable under the circumstances involved, and (iii) is not within the contemplation of OWNER and CONTRACTOR at the time the PROJECT was awarded, CONTRACTOR shall be entitled to an extension of time and compensation for such delay in strict accordance with the provisions of this Section. No extension of time or

compensation shall be granted unless the CONTRACTOR provides the OWNER with written notice within ten (10) calendar days of the commencement of any such delay, or, as the circumstance may be, CONTRACTOR'S reasonable notice of such delay. The OWNER must approve of any extension of time or payment of compensation in writing. No verbal approval, either express or implied, or any grant of time extension by OWNER or its agents shall be binding upon OWNER unless and until such approval is expressly ratified in writing.

CONTRACTOR'S remedy, in addition to the extension of time, shall be as follows, upon CONTRACTOR'S demonstration that these costs were actually incurred as a direct result of the delay:

- a. Field or on-site labor shall be paid according to actual payroll data for the time of the delay. No multipliers will be allowed unless previously approved in writing by OWNER;
- b. Idle field equipment will be priced at a daily rate calculated from the actual invoice costs;
- c. Idle field rental equipment will be priced at a daily rate calculated from the actual invoice costs; and
- d. Total mark up of items (a) through (c) above for overhead and profit, including all levels of subcontractors and CONTRACTOR combined, shall not exceed 15% cumulative. For the purposes of this section, overhead includes (1) all indirect labor such as management, supervision, engineer and consulting, drafting, estimating, secretarial and accounting; (2) all field office expenses, including office supplies and equipment; (3) insurance and bonds; and (4) all corporate office expenses.

In the event of delay in the WORK, which is not due to an Excusable Delay under Section 3.3(A), or is not an Excusable and Compensable Delay under Section 3.3(B), OWNER may direct that the WORK be accelerated by means of overtime, additional crews or additional shifts or resequencing of the WORK. All such acceleration associated with an inexcusable delay, where the delay is attributable to the CONTRACTOR, shall be at no cost to OWNER. In the event of Excusable Delay under Section 3.3(A), or an Excusable and Compensable Delay under Section 3.3(B), OWNER may similarly direct acceleration and CONTRACTOR agrees to perform the WORK on the basis of reimbursement of Direct Cost plus a fee of five percent (5%) of such costs but expressly waives any other compensation, therefore. In the event of any acceleration requested pursuant to this paragraph, CONTRACTOR shall provide promptly a plan including recommendations for, in CONTRACTOR's opinion, the most effective and economical acceleration.

Section 3.4 Liquidated Damages.

A. Timely Completion

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not complete within the time specified, plus any extensions of time authorized under Section 3.3 of this Agreement. OWNER and CONTRACTOR further recognize the delays, expense and difficulty involved in proving OWNER'S actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, OWNER and CONTRACTOR agree that for each calendar days delay beyond the Scheduled Completion Date, (which delays are not excused pursuant to Section 3.3 of this Agreement), CONTRACTOR shall pay to OWNER the amount of **\$1000.00**

B. Prevailing Wage Compliance

OWNER and CONTRACTOR recognize that CONTRACTOR's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and OWNER's additional prevailing wage compliance provisions within this Contract (Article IV of the Owner-Contractor Agreement and Article 17 of the General Conditions), will cause the OWNER damage by undermining OWNER's goals in assuring timely payment of prevailing wages, and will cause the OWNER additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by CONTRACTOR's payment of restitution to the worker paid less than the prevailing wage. OWNER and CONTRACTOR further recognize the delays, expense and difficulty involved in proving OWNER's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, OWNER and CONTRACTOR agree that for each instance where OWNER has determined that prevailing wage requirements were not met, CONTRACTOR shall pay to OWNER as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

ARTICLE IV

PREVAILING WAGES

Reference is made to the requirements on the general prevailing wage rates set forth in the General Conditions of the CONTRACT DOCUMENTS. Those rates are hereby specified as the minimum rates of prevailing wage to be paid workers under this Contract.

This Project is a Public Work, subject to Labor Code §1771. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to

execute this Agreement is that ascertained by the Director of the Department of Industrial Relations of the State of California. The Prevailing Rate Schedules shall be made available to any interested party on request. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of worker employed on the PROJECT. CONTRACTOR shall post the Prevailing Rate Schedule at the Site.

The wages to be paid for a day's work to all classes of laborers, workers, or mechanics on the work contemplated by this contract, shall be not less than the minimum wage rate described in the Notice to Bidders as applicable to this contract. Each laborer, worker or mechanic employed by a CONTRACTOR or by any subcontractor shall receive the wages herein provided for. The CONTRACTOR shall pay forty dollars (\$40) per day penalty for each worker paid less than prevailing rate of per diem wages unless the failure of the CONTRACTOR or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the CONTRACTOR or subcontractor. The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the CONTRACTOR or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Labor Code Section 1777.1. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Contractor to each worker.

The general prevailing wage rates determined by the Director of Industrial Relations are available at the California Department of Industrial Relations website at <http://www.dir.ca.gov>, at the County of San Mateo and at the Office of the City Engineer located at:

City of South San Francisco
315 Maple Avenue
South San Francisco, CA 94080

CONTRACTOR shall comply with the payroll records requirements set forth in Section 17.2 of the General Conditions and the provisions in Section 7.10 of the General Conditions concerning apprentices and shall be responsible for causing all of CONTRACTOR's subcontractors to comply with these requirements and provisions.

In addition to the California Labor Code requirements, OWNER recognizes that CONTRACTOR's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of South San Francisco and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;
2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;
3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of South San Francisco by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and
4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

The OWNER will not recognize any claim for additional compensation because of the payment by the CONTRACTOR for any wage rate in excess of prevailing wage rate set forth in the contract documents. The possibility of wage increases is one of the elements to be considered by the CONTRACTOR in determining the CONTRACTOR's bid, and will not, under any circumstances be considered as the basis of a claim against the OWNER on the contract.

An error on the part of an awarding body does not relieve the CONTRACTOR from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775.

ARTICLE V

NON-DISCRIMINATION

In the performance of this Agreement, the CONTRACTOR will not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to compensation, terms, conditions or privileges of employment, because of such person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or other protected status. If the CONTRACTOR or any of his subcontractors shall be found in violation of the above nondiscrimination provision, the CONTRACTOR shall be deemed to be in material breach of this Agreement and thereupon the OWNER shall have the power to do all or any of the following: (1) to cancel or suspend this Agreement, in whole or in part, and (2) to deduct

and retain from the amount payable to the CONTRACTOR the sum of \$250.00 for each person discriminated against in the performance of this Agreement for each calendar day during which such person was discriminated against in the performance of this Agreement, as liquidated damages for such breach of this Agreement, provided that the number of persons discriminated against shall not be deemed, for the purpose of determining the amount of such damages only, to exceed the number of positions in connection with which such discrimination occurs, e.g., if 20 persons are improperly discriminated against in connection with five positions, then the multiple use in assessing damages shall be the number of positions (5) and not the number of persons (20) discriminated against. In the event such finding is made after completion of the contract and after payment of all sums due CONTRACTOR by OWNER, CONTRACTOR shall be obligated to pay said sum to OWNER upon demand by OWNER. Violations of said provisions by subcontractors shall for the purposes of this provision be deemed to be violations by the CONTRACTOR. The CONTRACTOR shall not be deemed to be in breach of the provisions of this paragraph unless the California Department of Fair Employment and Housing, or an appropriate Federal commission or agency, or a court of the State of California or of the United States Government finds, in any action or proceeding to which CONTRACTOR is a party, that the CONTRACTOR or a subcontractor unlawfully discriminated against one or more specifically named employees or applicants for employment in the performance of this Agreement; provided that such court or state or federal entity has issued a final judgment, order, decree, or injunction in such action or proceeding, and provided further, that for the purpose of this paragraph, no judgment, order, decree or injunction shall be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

The CONTRACTOR shall include the provisions of the above paragraph in every subcontract or purchase order so that such provision shall be binding upon each of his subcontractors and vendors.

ARTICLE VI

WORKER'S COMPENSATION INSURANCE

By my signature hereunder, as CONTRACTOR, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the WORK of this Agreement.

ARTICLE VII

CONFLICT

In the event of conflict between the terms of this Agreement and the bid or proposal of said CONTRACTOR, then, this Agreement shall control, and nothing herein shall be considered as an acceptance of the terms of the proposal conflicting herewith.

ARTICLE VIII

EXHIBITS

This Agreement includes the following Exhibits, which are attached hereto and incorporated herein by reference:

- | | |
|-----------|--------------------|
| Exhibit A | Contract Documents |
| Exhibit B | Contract Sum |

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the day and year first hereinabove written.

CITY OF SOUTH SAN FRANCISCO:

CLW BUILDERS., INC.:

By: _____
Laura Snideman, City Manager

By: _____

ATTEST:

Employer ID Number _____

Contractor's License No. _____

Expiration Date: _____

City Clerk

City Business License No. _____

Expiration Date: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

CONTRACT DOCUMENTS

1. Owner-Contractor Agreement
2. General Conditions
3. Contractor's Performance Bond
4. Contractor's Labor and Material Payment Bond
5. Technical Specifications
6. Addenda, Substitutions, Modifications, Change Orders
7. List of Subcontractors, Suppliers, Truckers and Brokers (Non-Federally Funded Projects)
8. Instructions to Bidders

END OF EXHIBIT A

EXHIBIT B

CONTRACT SUM

A. **BASE BID**

Lump sum price for the furnishing of all labor, materials, tools, services, equipment, subcontractors, suppliers, shipment, delivery, fringe benefits, taxes, insurance, overhead and profit and any other costs or expenses necessary to perform all the work according to the Contract Documents:

Base Bid	\$10,816,168
Alternative 2	\$149,760
Alternative 3	\$80,928
Alternative 4A	\$390,000
Alternative 5	\$127,440
GRAND TOTAL	\$11,564,296

Eleven Million Five Hundred Sixty Four Thousand Two Hundred Ninety Six Dollars (\$11,564,296.00)

C. ALLOWANCES - NOT USED

D. ADDITIVE ALTERNATES:

1. Add Alternate #2: Fiber conduit run from preschool building to fire station, and related work to bring conduit into the Fire Station building

(Written) One Hundred Forty-Nine Thousand Seven Hundred Sixty Dollars

\$ 149,760 _____

2. Add Alternate #3: Alternate specification for standing seam metal roof, R-1, to be Aluminum Span-Lok with 30-year warranty. Refer to alternate spec. section 07 41 13 included as standalone spec in addendum package.

(Written) Eighty Thousand Nine Hundred Twenty-Eight Dollars

\$ 80,928 _____

3. Add Alternate #4a: Provide PV Solar Panel System: (Deferred Submittal), All battery storage to meet 110 kWh demand to be Tesla Powerwall 3 units, or equal.

(Written) Three Hundred Ninety Thousand Dollars

\$ 390,000

4. Add Alternate #5: Three (3) pole lights, PL-1A, and associated footings. One pole light at each drive aisle location (north end of parking lot, south end of parking lot and new Westborough Blvd. curb cut)

(Written) One Twenty-Seven Thousand Four Hundred Forty Dollars

\$ 127,440

Deductive Alternates – Not Used

E. TOTAL CONTRACT SUM:

Eleven Million Five Hundred Sixty Four Thousand Two Hundred Ninety Six DOLLARS

(\$11, 564,296.00)

F. UNIT PRICING – NOT USED

END OF EXHIBIT B