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| SCHOOL FACILITIES OVERSIGHT BOARD |
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Adopted: June 14, 1999

Modified: April 3, 2008, October 5, 2011, June 30, 2021, April 5, 2023

**TERMS AND CONDITIONS FOR ACCEPTANCE OF MONIES FROM
THE NEW SCHOOL FACILITIES FUND FOR LAND ACQUISITION**

School District:

Project Number:

Project Description:

Board Approval Date:

SFOB Funding Amount:

1. PURPOSE OF TERMS AND CONDITIONS

These Terms and Conditions apply to the distribution of monies by the School Facilities Division (“SFD”) from the New School Facilities Fund (“Fund”) to the District to acquire land (“Project”) that the Board has approved as an appropriate school site pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-5741(F). The Division shall distribute monies based upon the statutory requirements in A.R.S. §41-5741, the Board’s regulatory requirements for Minimum School Facility Guidelines, and the Arizona Administrative Code, (A.A.C.) for new school and land funding, A.A.C. R7-6-501 through R7-6-506.

2. TERM OF TERMS AND CONDITIONS

The term of this Terms and Conditions shall begin on the date of the District’s signature and shall continue until the District provides a copy of the Deed and settlement statement.

2.1 ABANDONMENT OF PROJECT

A land purchase is considered to be abandoned if it has not been successfully completed within three years of funding appropriation and the district has been notified of the abandonment of the project. In such an instance, any remaining unspent monies received from the SFD must be returned to the SFD.

3. FINANCIAL CONDITIONS

The District will accept monies from the Fund in accordance with all applicable state statutes and rules, and will expend the monies in compliance with all provisions of such statutes and rules, including but not limited to, the following:

- a. Use of fiscal control and fund accounting procedures as prescribed in the Uniform System of Financial Records, which will ensure proper disbursement of, and accounting for, monies paid to the District from the Fund;
- b. Compliance with the School District Procurement Rules adopted by the State Board of Education, A.A.C. R7-2-1001 et seq., the USFR Purchasing Guidelines and the School Facilities Oversight Board's policies, as applicable;
- c. Compliance with all applicable state, federal, and local codes and laws related to buildings and building access, including soil remediation standards established by the Department of Environmental Quality.
- d. The SFD may require meetings with the district, selected architect, and/or engineer before any funding is made available;
- e. Further requests for funds in the form of subsequent phases, change orders, supplemental funding requests, and other requests outside of the project scope as described in the Terms and Conditions may be deemed ineligible upon review by the Division staff. Staff will provide guidance and technical assistance to the district in meeting program requirements. The final determination of the SFD or the Board are appealable agency actions as detailed in § 41-5702 (A)(5) (i) and subsection and 9. of these Terms and Conditions.
- e. Failure to comply with any term or condition required by this Agreement may result in a delay in the processing of payment applications and change orders.

3.1 UNIFORM SYSTEM OF FINANCIAL RECORDS

The District will maintain records as required by the Uniform System of Financial Records and provide access to those records to the SFD as necessary to perform its duties. The District will cooperate with the SFD or the Auditor General or any of their authorized representatives when audits are conducted as authorized by law. This cooperation includes access without unreasonable restrictions to the District's records and personnel for the purpose of obtaining relevant information.

3.2 SURPLUS FUNDS/INTEREST EARNED/ESTIMATED COSTS

- a. If the final cost of the Project is less than the amount awarded by the Board, the District shall return the unspent monies to the SFD.

b. All interest earned on monies in the District's Fund 695 (New School Facilities Fund) associated with the land purchase must be apportioned to each separate land purchase and returned to the SFD once the District takes title to the land.

c. If monies are distributed to the District to verify, gather, and submit required information based on an estimated cost, an adjustment for the actual cost will be made.

3.3 UNFORESEEN CONDITIONS

The District shall notify the SFD if any unforeseen conditions arise during the acquisition process. The SFD will direct the District on how to proceed. The District must receive approval from the SFD to proceed if the unforeseen condition requires any additional funding or will result in any changes to the purchase agreement.

3.4 LOCAL FUNDS

If the District intends to supplement the Project with additional funds, the District shall provide to the Board a resolution from the District's governing board setting forth the commitment of additional funding. The District's governing board's resolution shall clearly indicate the amount being committed in each project. The resolution must be received by the SFD prior to distribution of land acquisition funds.

3.5 SCOPE OF WORK

The SFD must approve any changes in the scope of the work of the Project. If changes in the scope of work are made without the Board's approval, the SFD shall determine if the new scope of work satisfies the project criteria for funding. If the SFD determines that the new scope of work does not meet the criteria for funding, the SFD shall consider the Project abandoned. The District shall return any unspent monies to the SFD, and reimburse the Fund for monies spent without proper authorization from the SFD within thirty (30) days of being notified by the SFD.

3.6 TITLE

The title to any real property purchased or improved with Fund monies shall remain with the District.

4. REPORTING REQUIREMENTS

The District will make reports to the SFD as requested, and will cooperate with any evaluation of the Project as required by the Board. All expenditures for the Project are

subject to audit. All related contracts entered into by the District shall contain a clause that will permit the Board and/or the District to audit the contract.

4.1 PUBLIC RECORD

Any application, report, or plan relating to the funded land acquisition in the possession of the District, its agents, or designees is deemed a public record under state law. However, the SFD may deem certain records or documents confidential if the disclosure of such records or documents would be detrimental to the best interests of the Board and the SFD/or the State of Arizona.

5. FAIR MARKET VALUE

- a. The District understands that the appraisals obtained to determine the fair market value as required by A.R.S. §41-5741 (F) will be completed by a certified MAI appraiser.
- b. Fund monies may only be spent for the project as approved by the Board. The Board will approve the fair market value at the same time it provides final approval for the land acquisition. The Board must approve any changes that may affect its determination of the suitability of the land acquisition for use as a school site.

6. TITLE AND DISPOSITION OF LAND

The land for which the District received monies from the Fund for purchase shall be titled in the name of the District. If the District sells or otherwise disposes of the land, the District must follow all applicable statutory and regulatory requirements. The proceeds derived through the sale of any land purchased or partially purchased with monies received from the Fund shall be returned to the Fund on a proportional basis pursuant to A.R.S. §41-5741 (F).

6.1 USE OF LAND

The District shall not use land purchased or partially purchased with monies provided by the Board for a purpose other than a site for a school facility without obtaining prior written approval from the Board. The District shall not lease, sell or take any action that would diminish the value of land purchased or partially purchased with monies provided by the Board without obtaining prior written approval from the Board. A.R.S. §41-5741(F).

7. AUDIT OF RECORDS

Pursuant to A.R.S. §§ 35-214 and 35-215, the District shall retain and shall contractually require each subcontractor to retain all data, books and other records (“records”) relating to these Terms and Conditions for a period of five years after completion of these Terms and Conditions. All records shall be subject to inspection and audit by the State for five years after the termination of these Terms and Conditions.

8. AVAILABILITY OF FUNDS

Every payment obligation of the SFD under these Terms and Conditions is conditioned upon the availability of funds allocated for the payment of such obligations. If funds are not allocated and available for the continuance of the Project, these Terms and Conditions may be terminated by the SFD at the end of the period for which funds are available. No liability shall accrue to the SFD in the event this provision is exercised, and the SFD shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. APPEALABLE AGENCY ACTION

Pursuant to A.R.S. 41-5702 subsection A.5.i and subsection P, land purchase requests are an appealable agency action.

SFD Staff shall notify a school district in writing that the proposed project does not meet eligibility criteria. The written notification shall include documentation to support the staff's determination that the proposed project does not meet the eligibility criteria. The SFD will send written notification to the school district after the final decision that the school district is not eligible. The school district may directly appeal the staff's determination of ineligibility to the director. The school district may directly appeal the director's determination of ineligibility to the board.

A school district may appeal the denial of a request for monies or any other appealable Division action pursuant to title 41, chapter 6, article 10. For the purposes of this subsection, "appealable agency action" has the same meaning prescribed in section 41-1092.

a. RESOLUTION OF DISPUTES

The Parties to these Terms and Conditions agree to resolve all disputes arising out of or relating to these Terms and Conditions through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

10. NON-DISCRIMINATION

The Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that employment and employees are

not discriminated against due to race, creed, color, religion, sex, national origin or disability. However, Indian tribes are exempt from the definition of employer for both federal and State Civil Rights Act.

11. TERMINATION

Each party shall have the right to terminate this Agreement by notifying the other party in writing of the termination at least thirty (30) days prior to the effective date of said termination. If the Agreement is terminated by the Board, the District shall be paid for all the allowable costs incurred prior to the date of termination. The payment of costs may be subject to audit verification by the Board or its duly authorized representative.

12. ASSIGNMENT AND DELEGATION

Neither party may assign any rights hereunder without the express, prior written consent of both parties.

13. CANCELLATION FOR CONFLICT OF INTEREST

The parties acknowledge that these Terms and Conditions are subject to the cancellation provisions set forth in A.R.S. § 38-511.

14. ENTIRE AGREEMENT

These Terms and Conditions contain the entire understanding of the parties hereto. There are no representations or provisions other than those contained herein. Any amendment or modification of these Terms and Conditions shall be consistent with section 1 of these Terms and Conditions.

15. APPLICABLE LAW

These Terms and Conditions shall be governed and interpreted by the laws of the State of Arizona.

16. THIRD PARTY ANTITRUST VIOLATIONS

The District assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the District toward fulfillment of these Terms and Conditions.

17. PROGRAM REVIEW AND SITE VISITS

The SFD has the right to make site visits at reasonable intervals for purposes of review of Project accomplishments and management control systems and to provide technical assistance, if required. The District will provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience to the Board's

representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

18. RIGHTS IN DATA

The SFD may duplicate, use, and disclose in any manner and for any purpose whatsoever, within the limits established by Federal and State laws and regulations, all information relating to these Terms and Conditions.

19. FEDERAL IMMIGRATION AND NATIONALITY ACT

By entering into the Contract, the District warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The District shall obtain statements from its contractors and its subcontractors certifying compliance and shall furnish the statements to the Board upon request. These warranties shall remain in effect through the term of the Terms and Conditions. The District and its contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

The State may request verification of compliance for any of the District's contractor or subcontractors performing work under these Terms and Conditions. Should the State suspect or find that the District or its contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Terms and Conditions for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

20. PROHIBITION OF SCRUTINIZED BUSINESS OPERATION

Pursuant to A.R.S. §35-393.06 and A.R.S. § 35-391.06, the District's contractors shall certify that they do not have a scrutinized business operation in either Sudan or Iran.

21. PURSUANT TO E-VERIFY REQUIREMENT, A.R.S. § 41-4401

21.1 The District's contractors must warrant compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214(A). (That subsection reads: After December 31, 2007, each employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-verify program.)

21.2 A breach of warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of contract and the contractor may be subject to penalties up to and including termination of the contract.

21.3 Failure to comply with a Board audit process to randomly verify the employment of contractors and subcontractors shall be deemed a material breach of contract and the contractor may be subject to penalties up to and including termination of the contract.

21.4 The Board retains the legal right to inspect the papers of any employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

22. CERTIFICATION / AUTHORIZATION

These Terms and Conditions must be signed by the President of the Governing Board, Superintendent, and CFO/Business Manager of the District and certify that he or she has read these Terms and Conditions and represents and warrants that he or she is duly authorized to agree and accept and therefore sign these Terms and Conditions on behalf of the District.

Governing Board President (signature)

Date

Name (printed/typed)

School District

Superintendent (signature)

Date

Name (printed/typed)

CFO/Business Manager (signature)

Date

Name (printed/typed)

Project Number: