

SILVERCREEK INDUSTRIES
AND
CENTRALIA SCHOOL DISTRICT

PORTABLE BUILDING UNIT PRICE AGREEMENT

THIS AGREEMENT, dated the 12th day of October, 2017, in the County of Orange, State of California, is by and between Centralia School District, (hereinafter referred to as "DISTRICT"), and Silvercreek Industries, Inc. (hereinafter referred to as "CONTRACTOR").

The DISTRICT and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. CONTRACTOR agrees to complete the Project known as **2017 Districtwide Contract for the Purchase and Installation of DSA Approved Portable Buildings, Project No. CEPU, #N15-2017/18** according to all the terms and conditions set forth in the Project Documents, including but not limited to the Notice Calling for Bids, Bid Advertisement, Information for Bidders, Bid Forms 1 and 2 including all attachments, Bid Bond, Designation of Subcontractors Form, Request for Substitution at the Time of Bid, Non-Collusion Affidavit, Iran Contracting Act Certification, Agreement, Faithful Performance Bond, Payment Bond, Drug Free Workplace Certificate, Workers' Compensation Certificate, Criminal Records Check Certification, Guarantee, Certificate Regarding Non-Asbestos Containing Materials, Tobacco Free Workplace, Lead Containing Materials Certification, Disabled Veterans Business Enterprise (DVBE) Certification, Escrow Agreement, General Conditions, Supplementary General Conditions, Bidders Request for Information, Construction Request for Information, Shop Drawing Transmittal, Contractors Request for Inspection, Change Order Forms (Additive/Deductive), Technical Specifications, and all modifications, addenda and amendments thereto by this reference incorporated herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. CONTRACTOR shall perform within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide, furnish and pay for all the labor, materials, necessary tools, expendable equipment, and all taxes, utility and transportation services required for construction of the Project. All of said work shall be performed and completed in a good workmanlike manner in strict accordance with the drawings, specifications and all provisions of this Agreement as hereinabove defined and in accordance with applicable laws, codes, regulations, ordinances and any other legal requirements governing the Project. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the District or Program Manager, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project Documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within three (3)

working days of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project Documents.

3. DISTRICT shall pay to the CONTRACTOR, as full consideration for the faithful performance of this Agreement, subject to any additions or deductions as provided in the Project Documents, number of dollars agreed upon (based on the unit prices) between the Owner and Contractor for each individual project/purchase order activated under this unit price agreement. The cost shall be documented on a specific individual project quotation form, and in the actual purchase order.

4. The work shall be commenced on or before the First (1st) day after receiving the DISTRICT'S Notice to Proceed and shall be completed within the number of consecutive calendar days (including punch list items) from the date specified in the Notice to Proceed, negotiated between the Owner and Contractor in Accordance with the terms of Article 5 of the Information for Bidders, Project Schedule, for each project activated under this unit price agreement. The timeline shall be documented in each and every purchase order executed against this agreement.

5. **Time is of the essence.** If the work is not completed in accordance with Paragraph 4 above, it is understood that the DISTRICT will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to DISTRICT as fixed and liquidated damages, and not as a penalty, the sum of Five-hundred Dollars (~~\$500.00~~) for each calendar day of delay until work is completed and accepted. Time extensions may be granted by the DISTRICT as provided in Article 61 of the General Conditions. Liquidated damages shall be imposed as set forth in Article 61 of the General Conditions.

6. Termination for Cause or Nonappropriation. In the event CONTRACTOR defaults in the performance of the Agreement as set forth in General Conditions Article 13(a) or if there is a nonappropriation of funds or insufficient funds as set forth in General Conditions Article 13(d), then this Agreement shall terminate or be suspended as set forth in General Conditions Article 13.

7. Termination for Convenience. DISTRICT has discretion to terminate this Agreement at any time and require CONTRACTOR to cease all work on the Project by providing CONTRACTOR written notice of termination specifying the desired date of termination. Upon receipt of written notice from DISTRICT of such termination for DISTRICT's convenience, CONTRACTOR shall:

- (i) Cease operations as directed by DISTRICT in the notice;
- (ii) Take any actions necessary, or that DISTRICT may direct, for the protection and preservation of the work; and
- (iii) Not terminate any insurance provisions required by the Project Documents.

In case of such termination for DISTRICT's convenience, CONTRACTOR shall be entitled to receive payment from DISTRICT for work satisfactorily executed and for proven loss

with respect to materials, equipment, and tools, including overhead and profit for that portion of the work completed. In the case of Termination for Convenience, DISTRICT shall have the right to accept assignment of subcontractors. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the DISTRICT.

8. The CONTRACTOR agrees to and does hereby indemnify and hold harmless the DISTRICT, its Governing Board, officers, agents, and employees from every claim or demand made, and every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Any injury to or death of any person(s) or damage to, loss or theft of any property sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the work called for in this AGREEMENT, except for liability resulting from the sole active negligence, or willful misconduct of the DISTRICT.

(b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs either on or off DISTRICT property, if the liability arose due to the negligence or willful misconduct of anyone employed by the CONTRACTOR, either directly or by independent contract,

The CONTRACTOR, at CONTRACTOR'S own expense, cost, and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its Governing Board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its Governing Board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

9. Hold Harmless and Indemnification. To the fullest extent permitted by law, the CONTRACTOR, at the CONTRACTOR's sole cost and expense, agrees to fully defend, indemnify and hold harmless, the DISTRICT, including but not limited to any of its governing board members, officers, employees and agents, from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, anticipated losses of revenues, and expenses, including any fees of accountants, attorneys or other professionals, arising out of, in connection with, resulting from or related to, or claimed to be arising out of, in connection with, resulting from or related to any act or omission by the CONTRACTOR or any of its officers, agents, employees, subcontractors, sub-subcontractors, any person performing any of the work pursuant to a direct or indirect contract with the CONTRACTOR or individual entities comprising the CONTRACTOR, in connection with or relating to, or claimed to be in connection with or relating to the work, this Agreement, or the Project, including but not limited to any costs or liabilities arising out of or in connection with:

(a) failure to comply with any applicable law, statute, code, ordinance, regulation, permit or orders;

- (b) any misrepresentation, misstatement or omission with respect to any statement made in the Project Documents or any document furnished by the CONTRACTOR in connection therewith;
- (c) any breach of duty, obligation or requirement under the Project Documents;
- (d) any failure to coordinate the work of other contractors;
- (e) any failure to provide notice to any party as required under the Project Documents;
- (f) any failure to act in such a manner as to protect the DISTRICT and the Project from loss, cost, expense or liability; or
- (g) any failure to protect the property of any utility company or property owner.

This indemnity shall survive termination of the contract or final payment thereunder. This indemnity is in addition to any other rights or remedies which the DISTRICT may have under the law or under the Project Documents. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, the DISTRICT may in its sole discretion reserve, retain or apply any monies due to the CONTRACTOR under the Project Documents for the purpose of resolving such claims; provided, however, that the DISTRICT may release such funds if the CONTRACTOR provides the DISTRICT with reasonable assurance of protection of the DISTRICT's interests. The DISTRICT shall in its sole discretion determine whether such assurances are reasonable.

10. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this Agreement, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain the insurance coverages set forth below and in Article 16 of the General Conditions. CONTRACTOR agrees to provide all evidences of coverage required by DISTRICT including certificates of insurance and endorsements.

	Combined Single Limit
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Builder's Risk	To be negotiated for each individual purchase order initiated under this Master Agreement

11. Public Contract Code Section 22300 permits the substitution of securities for any retention monies withheld by the DISTRICT to ensure performance under this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the monies withheld shall be deposited with the DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. The DISTRICT retains the

sole discretion to approve the bank selected by the CONTRACTOR to serve as escrow agent. Upon satisfactory completion of the Agreement, the securities shall be returned to the CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request DISTRICT to make payment of earned retention monies directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments into securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the Agreement, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300.

12. If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of California, and that BRETT BASHAW, whose title is PRESIDENT, is authorized to act for and bind the corporation.

13. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

14. This Agreement constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Governing Board of the District. This Agreement shall be governed by the laws of the State of California.

15. Piggybacking. To the extent the Contractor is required to, or otherwise agrees to, permit "piggybacking" on the Contract by public agencies as described in the Instructions For Bidders, the District shall have no liability whatsoever (outside of the requirements in Public Contract Code sections 20118 and 20652) in connection with any orders submitted to the Contractor by such other public agencies, and in each case, any and all liabilities associated with a piggyback order shall be the sole responsibility of the Contractor and/or the public agency that submitted the order to the Contractor. The Contractor acknowledges that certain legal limitations on piggyback contracts under Public Contract Code sections 20118 and 20652. In each such case, the Contractor shall reasonably endeavor to advise each public agency to seek legal counsel. To the extent required pursuant to Sections 8 and 9 above, the Contractor shall indemnify, defend and hold-harmless the District, the Governing Board and each member thereof, and the District's other officers, employees, or agents and Program Manager with respect to any and all liabilities that arise from the piggybacking on the Contract by any public agency.

- (a) Contracts with Other Agencies/Rights to Order: Other public school DISTRICTS, community college DISTRICTs, and public agencies throughout the State of California including, but not necessarily limited to the attached list (Attachment #1), may purchase identical items at the same unit price(s) subject to the same terms and conditions, pursuant to Sections 20118 and 20652 of the Public Contract Code. Centralia School District waives its right to require other DISTRICTs to draw their warrants in favor of the DISTRICT and authorizes each DISTRICT/agency to make payments directly to the successful bidder.

16. Assignment. Contractor shall not assign, sublet or by any other means transfer the Contract or any obligation, right, title or interest herein, including right to payments hereunder, without the prior written consent of District. The Contract shall be binding on any authorized assignee, sublessee, transferee or other successor to the Contractor. If Contractor attempts, without District permission, to assign, sublet or by any other means transfer the Contract or any obligation, right, title or interest herein, the District may, at its option, terminate the Contract and shall thereafter be relieved from any and all obligations to Contractor and any purported assignee, sublessee or transferee.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CENTRALIA SCHOOL DISTRICT

SILVERCREEK INDUSTRIES

By: 
Signature

By: 
Signature

Scott R. Martin
Assistant Superintendent
Business and Administrative Services
Title

Brett Bashaw
PRESIDENT
Title

Board Approval: October 11, 2017

855259
Contractor's License No.

20-2097832
Tax ID/Social Security No.

brett@silver-creek.net
Email

951-943-5393
Telephone

(CORPORATE SEAL OF CONTRACTOR,
if corporation)