



ACADEMIC FACILITIES CATASTROPHIC PROGRAM

August 2008

PROJECT AGREEMENT

This Project Agreement (“Agreement”) is made and entered into by and between the *Division of Public School Academic Facilities and Transportation* (“Division”) and the _____ *School District* (“District”), _____ *County*, pursuant to Act 2206 of 2005.

WHEREAS, The Division, created pursuant to Act 1327 of 2005 is a body corporate and politic, an agency of state government and an instrumentality of the State of Arkansas (“State”), performing essential government functions of the State; and

WHEREAS, the District is acting as an agency of state government, performing essential functions of government pursuant to the laws of the State of Arkansas, and

NOW, THEREFORE, in consideration of the mutual promises herein contained, the District and the Division agree to cooperate in the design, construction and terms described herein and as follows.

I. AGREEMENT APPLICABILITY

This Project Agreement (Agreement) will become effective upon the signing of both parties and be binding on the date signed by the Director of the Division of Public School Academic Facilities. The district certifies that scope planning and financial planning have been completed prior to the project application submission. The district certifies that full replacement value insurance to include a provision requiring code upgrades is available for this project. By signing, the District acknowledges that it is prohibited from using the funds designated under this program for any purpose other than the approved emergency project and is limited only to those project related expenses as approved by the Division pertaining to

construction costs. The signing of this Agreement certifies that the Commission for Arkansas Public School Academic Facilities and Transportation (“Commission”) has approved the Project and funding under the Academic Facilities Catastrophic Program. The District further acknowledges by signing that, should it be determined that the district has violated any provision of this agreement the Commission may exercise one of the following options: (1) Exercise its authority for Project disapproval, (2) Declare any Project aspects undertaken in contravention to this agreement or prior to the signing date ineligible for Program funds, or (3) Require the District to modify any plans and or contracts such that they are in conformance with the provisions of this Agreement. The district agrees that should any of these options be exercised by the Commission, the agreement will be amended and the State Financial Participation adjusted accordingly. The Commission may also exercise their option to amend the Agreement should the plan review or the approval of any variance request by the District, change the scope or final contract price alter the initial State Financial Participation as stated on the agreement.

Furthermore, if construction of the project has not commenced by (enter date 18 months from Commission approval), this Agreement is null and void and any monies paid by the state to a district shall be subject to immediate recapture by the state. The parties agree to exercise good faith in the execution of this Agreement and the completion of the requirements set forth herein, and that both parties will endeavor to follow and implement the aspects of the Program, the district agrees to comply with all process requirements in the Rules Governing the Catastrophic Program or be subject to those Commission options referenced above.

II. SCOPE OF THE PROJECT

A. The parties agree that the Project shall be described as follows;

District inserts detailed scope of work here.
(Do not attach the application as the scope)

B. The Division and the District agree that the Project will, where applicable, and to the fullest extent possible, comply with the Arkansas Public School Academic Facility Manual and Division policies and rules, unless a variance is requested and it has been determined by the division that it is impractical to conform to current standards. Requests for any variance to the Arkansas Facility Manual will be submitted to the Division prior to or at the time of the signing of this agreement. The District shall not use any of the Project constructed pursuant to this Agreement for any purpose other than as an academic facility, as that term is defined in Ark. Code Ann. § 6-20-2502.

C. Total budget for the Project is (\$ _____).
(This estimate is determined by the school district and reflects all costs associated with the project).

State's share of the total Project budget shall be(\$_____).
(The estimated state share is a function of the qualifying cost and the school districts wealth index).

The amount of insurance assistance available for this loss. ..(\$_____).

The amount of any other public or private emergency assistance available to pay for this project.(\$_____).

The District's local share of the total Project budget(\$_____),
(as set forth in Article IV. of this Agreement).

- D. The District shall provide to the Division, at the time of the signing of this agreement, data on the programmed amounts of budget elements and, at the completion of the Project, data on the actual cost of the Project programmed elements, inclusive of all changes.

III. RESPONSIBILITIES DURING COURSE OF PROJECT

The Division and District shall be responsible for the following:

School District

Determination of Project Scope
(Catastrophic Project Application)
Request for variance consideration
to the Arkansas Facility Manual

Architect/Engineer, Construction
Manager (if desired), Construction
Contractor Selection Process

Submittal of Project Drawings

Educational Program Choices,

Recommend Special Conditions
Documents

Submission of Project Approval
Forms and State Reviews

Division

Division Plan and
Application Review and
Variance Determination

Provide guidance as requested
pertaining to procurement laws.

Review for conformance with
facility manual.

Approval of Design in Accordance
with current state law and
Arkansas Facility Manual

Provide contract clauses for
Architect and construction
contracts

Final Project Approval

Fund Management in Accordance
With Arkansas Department of
Education Accounting Guidelines

Audit Option.

Provide Maintenance Plan/Certification

Incorporated with Maintenance
Plan

- A. The project review and approval schedule will be as outlined in Appendix A.
- B. Any property interest of the State during, and subsequent to construction of the Project, extends only to the extent necessary to facilitate financing the Project. The District will continue to possess all other lawful rights, obligations and interests in the Project.
- C. Site Selection: The District shall be solely responsible for all costs associated with the project site, including acquisition, environmental remediation, and unanticipated site conditions.

IV. SCHOOL DISTRICT SHARE OF THE BASIC PROJECT COST

- A. The signing of this Agreement will serve as certification by the District that the local share amount listed in Section II has been appropriated, budgeted and made available to support the District's share of this Project. It further certifies that funds are of the type indicated below. The Division reserves the right to audit the funds allocated by the District to the Project Fund or any expenditure related to the Fund or the Project at any time. The method of financial accountability for any project funds will be as established by the Arkansas Department of Education.
- B. Funded from bond proceeds:(\$_____).
(The school district is responsible for the administration of the bond sale (if applicable), all necessary notices and cost associated therewith. The proceeds of any such bonds or notes, except any premiums, accrued interest and interest included in the amount of the bonds or notes, shall be used first to retire any bond anticipation notes issued by the District for the Project).
- D. Funded from Grant sources: (\$_____).
(Specify origin of Grant and any special conditions that might affect this Project as a result of the grant award.)
- E. Funded from operational fund balances: (\$_____).
(To include Maintenance Escrow accounts.)

V. STATE SHARE OF PROJECT COST

- A. The Division shall certify to the Department of Education the State's portion of the Project cost, to transfer the State's portion of the Project cost, or the applicable portion thereof, which shall then be transferred to the District as may be necessary to pay obligations incurred pursuant to the terms of this

Agreement. The District will submit payment requests to the Division, in a format provided in Appendix B. Payment requests for the design contract will be submitted in accordance with the design schedule in the contract. Payments to the district, as state share of the construction contract, will begin one month after the Notice to Proceed is issued and each month thereafter with the final payment request being made at final Project closeout. This procedure applies to contracts whose duration is greater than six (6) months. Projects under six months duration will be submitted at the conclusion of the project. The Division will make payments to the District, of its prorated share of the project cost, commensurate with the contract invoices.

- B. The amount of the state's financial participation for the Project in each fiscal biennium shall be determined by the Division based on the Project's estimated construction schedule. In each subsequent biennium, in order to complete the Project per the construction schedule, the approved Project will have priority for state funds over new Projects for which initial state funding is sought.
- C. The State's share of the Project cost is limited to new construction on academic facilities as defined by Arkansas statute. Project funding, if applicable, as may pertain to portions of the scope that are agreed to be maintenance, repair or renovation are the responsibility of the District and will be accounted for separately from Project funds provided pursuant to this Agreement.
- D. The total extent of the State's share will be based on the district academic facilities wealth index and basis of state financial participation applicable at the time the Project is approved. It will not be adjusted during the duration of the Project except as stated in paragraph I, Applicability.
- E. Under no circumstances shall the state's share of project cost exceed the appropriate per square foot funding factor applicable at the time the project is approved.

VI. THE PROJECT CONSTRUCTION FUND

- A. The District shall identify and describe any fund or account, other than the Project Construction Fund (Fund) that is related to the Project. The District shall include in the Fund, sufficient funds as required by law, for issuance of any contracts during the duration of the project.
- B. The District shall be responsible for distributing moneys from the Fund upon receipt and approval of proper invoices.
- C. Transactions involving the Fund shall be restricted to: 1) payments for design and project management services, 2) payments to contractors, 3) purchases related to the project, 4) transactions authorized for establishing and administering the investment accounts and construction administration.
No Fund moneys shall be spent for any items inconsistent with the provisions of the Arkansas School Facility Manual and Division policies, unless a variance is approved by the Division.
- D. The District shall not transfer moneys from the Fund, investment earnings credited to the Fund, to any other fund or account except as permitted by this Agreement or with the written approval of the Division.

- E. The District shall provide a full accounting of the Fund, upon request of the Division. The Division reserves the right to audit the Fund, or any expenditure related to the Fund or the Project.
- F. The contingency reserve portion of the construction budget shall be used to pay only costs resulting from unforeseen job conditions, to comply with rulings regarding building and other codes, to pay costs related to design clarifications or corrections to contract documents, and to pay the cost of settlements and judgments related to the Project, unless otherwise approved by the Division.
- G. If the Fund, including all investment earnings credited to the Fund, and any interest earned through completion of the Project, becomes depleted by payments of proper Project costs, the District shall complete the Project, by contributing additional funds. The state share is limited to the state financial participation as stated in the agreement and any amendments.
- H. This Agreement is contingent on and subject to the district's ability to raise appropriate local resources. The Agreement may be declared null and void and the State will have no further obligation to provide state funds to the District for the Project that is the subject of this agreement if the District fails to raise local resources and apply local resources toward the Project as provided under this agreement.

VII. LOCALLY FUNDED INITIATIVES

- A. Locally Funded Initiatives (LFI) are defined as portions of a project not subject to this Agreement. The LFI may include construction which is determined to exceed the standards in the Facility Manual; maintenance, repair or renovation.
- B. The District agrees to assume all financial responsibility for the LFI and establish a method to account for all the local resources supporting LFI separate from the Project funds. The Division and the District will agree as noted herein to the cost associated with the LFI to include, but not limited to pro-rated: design fees, construction and or construction management fees, reimbursable expenses and operational cost.
- C. The District agrees to locally fund the following scope and budget associated with the LEI.

(The district should include a description of the Locally Funded Initiative.

Statement of district LFI amount: (\$_____)

VIII. CONTRACT ADMINISTRATION

- A. The District shall competitively bid, execute and administer contracts for construction on the Project and all other contracts as necessary, in compliance with State of Arkansas bidding procurement laws in place at the time of bid. The district may, in consult with the Division, exercise procurement authority, allowed by law, for emergency contracts and acquisitions. It further agrees that it will follow all state and local government procurement and construction

codes, Division policies and manuals regarding any procurement actions, and administration and execution of design and construction contracts. Both parties further acknowledge that this Agreement is in addition to and not to replace any state annotated codes, policies or rules governing state procurement practices and contract administration.

- B. The District will submit Appendix A with proposed project schedule dates. These dates may be determined in concert with the design firm. Required submissions to the Division are indentified in the appendix.
- C. The Division will recommend contract formats for projects of varying size and estimated cost.
- D. The Division shall provide contract clauses for the Architect and the Project Manager. If the District chooses to use its own form of Agreement for the Architect/Engineer or Construction Manager, the District's Agreement will contain the clauses listed, as applicable, in Appendix C.
- E. The Division shall recommend an Invitation for Bids and Special Clauses for use by the District (Appendix D). The Standard Conditions of Contracts for Construction in effect at the time of the applicable bid advertisement for the Project shall apply to the Project.
- F. Any proposed changes to the plans or scope of the Project that affects the Project budget cost, Project length or facility standards shall be brought to the attention of the Division. The Division reserves the right to conduct on-site inspections of the new construction as frequently as deemed necessary to insure the prudent and resourceful expenditure of state funds.
- G. The District shall provide to the Division, at the time of bid opening, the bid results and an updated construction schedule that may be recommended as a result of the bidding process. The District will be responsible for all administrative measures of the bidding procedures.
- H. Should the Project not be completed, through no fault of the District, the State and the District will share liability and recovered losses and damages to the extent of the Agreement. Should the Project not be completed due to the fault of the District, the State reserves the right to recover its total loss from district financial balances.
- I. The Division will make final payment to the District upon receipt of the final invoice submitted to the District by the contracted service provider. Final invoice will indicate: (1) original contract price, (2) changes to cost (3) final contract cost and be certified for payment in accordance with District policy.
- J. This Agreement will be declared null and void and the State will not have any obligation to provide State funds to the District for the Project, that is the subject of this Agreement, if the District fails to execute this Agreement or if the District fails to adhere to any of the conditions of the Agreement or if the District fails to comply with any and all state laws regarding school construction.

