



ACADEMIC FACILITIES PARTNERSHIP PROGRAM
September 2011
PROJECT AGREEMENT

(Applicable beginning with Partnership Projects for 2013-2015 Biennium)

Project Name: _____

Project Number: _____

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 A.C.A. § 6-20-2507.

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

WHEREAS, the District and the Division have approved a Master Facilities Plan describing the classroom facilities needs of the entire student population of the district, and the total budget for the Public School Academic Facilities Project ("*Project*"); and

WHEREAS, the District and the Division acknowledge that for funding and planning purposes, the Project is anticipated to commence on _____ and be completed on _____.

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. No additional aspect of the project will proceed prior to the signing of this agreement. By signing, the district certifies that it has not begun the project beyond the steps outlined above. 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 Partnership Program. The district further acknowledges by signing that, should it be determined that the Project began prior to the signing 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 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 a variance request by the district cause a change in scope or the final contract price alters 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 timelines and process requirements in the Rules Governing the Partnership 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:

- 1. Campus Name: _____
- 2. Building Name: _____

If this is a warm, safe and dry project, give complete description of the system, or systems, being replaced in the detailed scopes of steps 3 and 4.

3. District inserts detailed scope of the **total** project here:

a. _____

(Do not attach the application as the scope)

b.Total project square feet or appropriate unit : _____

4. District inserts detailed scope of the **funded** portion of work here:

a. _____

Do not attach the application as the scope)

b.Funded project square feet or appropriate unit: _____

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 approved by the Division. 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 (\$_____).

State financial participation of the total Project budget shall be: (\$_____).

State “green building incentive”: (\$_____).

Total state financial participation: (\$_____).

The District’s local share of the total Project budget shall be (\$_____), 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 in accordance with Appendix B, Part 1 of this agreement.

III. RESPONSIBILITIES DURING COURSE OF PROJECT

The division and district shall be responsible for the following:

School District

Determination of project Scope
(*Partnership Project Application*)

Architect/Engineer, Construction
Manager (*if desired*), Construction
Contractor selection process

Submittal of project construction
drawings in PDF format and
full size printed copy (*preliminary
floor plans for space projects
recommended for preliminary review*)

Site selection and request

Request for variance consideration
of the Arkansas Facility Manual

Educational program choices,

Recommend special conditions
documents

Bid procedures

Submission of project approval
forms and state reviews

Recommendation of award,
notification of bids

Fund management in accordance
with Arkansas Department of
Education accounting guidelines

Provide Maintenance Plan/Certification

Division

Review and approval
(*application review*)

Provide guidance as requested
pertaining to procurement laws

Review for conformance with facility
manual

Provide recommended guidelines
contained in the Arkansas Facility Manual

Division plan review and variance
determination

Approval in accordance with design
and material choices with current state law
and Arkansas Facility Manual

Provide recommended contract clauses
for architect and construction contracts

No action

Final project approval

No action

Audit option

Verify new buildings are in the MAPPS
database and the computerized maintenance
management system.

- A. 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.
- B. 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).*
- C. Funded from locally donated contributions: (\$_____). *(To include letters of credit, moneys donated or contributions spent directly by a third party.)*
- 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, as applied by the Rules Governing the Academic Facilities Partnership Program. 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 as allowed in the Partnership Rules.

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. 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. 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 division may recommend contract formats for projects of varying size and estimated cost.
- C. The division may recommend 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 may contain the clauses listed, as applicable, in the Architectural Contract Recommendations Document found on the division website.
- D. The division may recommend an Invitation for Bids and Special Clauses for use by the District. The Construction Contract Recommendations Document can be found on the Division website. 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.
- E. 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.
- F. The District will be responsible for all administrative measures of the bidding procedures.
- G. 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.
- H. 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. All pay requests shall be clearly identifiable and chargeable to the project listed in this agreement. Combining projects under one master contract is allowed as long as each project is billed separately.

- I. 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.

VIII. MAINTENANCE OF COMPLETED FACILITIES

Upon completion of the project, the district will create the preventative maintenance schedules of any new space facility is included in the District’s overall maintenance plan contained in the district’s computerized maintenance management system as required by the Academic Facilities Master Plan prior to final payment by the Division.

IX. AGREEMENT CONSIDERATIONS

- A. All provisions of this Agreement are contingent upon the district’s full compliance with § 6-20-2501 *et. seq.*, the Partnership Rules and the Commission’s determination the Project continues to be a prudent and resourceful use of state funds, and the ability of the district to meet required times or obtain appropriate waivers and raise specified local resources to support the Project. Any failure of the district in these areas shall be grounds for this Agreement to be deemed null and void by the Commission and for the district to be required to reimburse any partnership funds provided to the district for any partnership project the district failed to maintain compliance on.
- B. Nothing in this Agreement shall be construed to waive the provisions of Sovereign Immunity or any other defense or immunity to which the State of Arkansas or its Commissions, Divisions or Agencies may be entitled.
- C. All concerns and issues related to this Agreement are governed by the provisions of § 6-20-2501 *et. seq.*
- D. If the district appeals the determination of the Division as to a partnership project to the Commission, the Commission shall have the authority to fully review all parts of the district’s Partnership Project(s) and may approve, deny, reduce or increase the amount of state financial participation in any or all of the appealed project(s).

In witness whereof, the parties have executed this Agreement on the date(s) set forth below.

By: _____
Superintendent

School District

By: _____
Director, Division of Public School Academic
Facilities and Transportation

Date: _____

Date: _____