

# OWNER-CONTRACTOR AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of May 2013 between **California Montessori Project**, a California nonprofit public benefit corporation operating as a charter school, hereinafter referred to as “Owner,” and **Simile Construction Service, Inc.**, a California corporation, hereinafter referred to as “Contractor.” For the consideration stated herein, Owner and Contractor agree as set forth below.

1. **DEFINITIONS.** All capitalized terms not defined herein shall have the meaning ascribed to them in the Project Manual prepared by Anova NEXUS Architects dated August 10, 2012 for Project No. 08-118.

2. **PROJECT NAME AND ADDRESS.** The name of the project is “CMP Elk Grove @ Bradshaw Rd” (the “Project”) and is located at 9649 Bradshaw Road, Elk Grove, CA 95624.

3. **THE CONTRACT.** The Contract Documents listed below, and Modification issued after the execution of this Agreement, form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

The Contract Documents, consist of this Agreement, executed Bid Form (including Subcontractors Form), Noncollusion Affidavit, Workers Compensation Certificate, Performance Bond, Payment Bond, Fingerprinting Certification Form, Advertisement for Bids, Instructions to Bidders, Conditions of the Contract (General and other Conditions) and Specifications, bound together in the Project Manual bearing the DSA approval stamp numbered 02-112664 and dated December 21, 2012; Drawings bound together bearing the DSA approval stamp numbered 02-112664 and dated December 21, 2012; Addendum No. 1 dated February 20, 2013; Addendum No. 2 dated March 1, 2013; Addendum No. 3 dated March 8, 2013; Addendum No. 4 dated March 21, 2013; Addendum No. 5 dated April 1, 2013; and certificates of insurance, endorsements, or certified insurance policies as required by Article 15 of the General Conditions. In reference to Addendum No. 5 within paragraph “TIME FOR COMPLETION;” Sentence Lines #4 through #6 starting with “Milestone Date” . . . and ending with “under separate contract.” are to be stricken and omitted from this Contract, and to be replaced with the following: “Milestone Dates for concrete foundation for Buildings B & C and building pad for Building A to be negotiated at a later date between the Owner and the Contractor. Once such Milestone Dates are agreed upon, such dates shall be deemed to be included within the terms and conditions of this Contract. In the event mutual agreements regarding such Milestone Dates cannot be reached between Owner and Contractor by June 1, 2013, Owner shall unilaterally establish such Milestone Dates as have not been previously agreed upon and such Milestone Dates shall also be deemed to be included within the terms of this Contract.

4. **THE WORK OF THIS CONTRACT.** The Contractor shall provide all tools, equipment, apparatus, facilities, utilities, services, transportation, labor, and material necessary to execute and complete in a conscientious and skillful manner, the entire Work for the Project

described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be provided by the Owner or identified as "Not in Contract" and as follows:

Installation of concrete foundations (building pad for Building A only (approximately 8,000 square feet) and foundations for Buildings B and C (approximately 14,000 square feet)) for approximately 22,000 square feet of relocatable and modular buildings (building provided by Owner under separate contract), flooring and other selected finishes, building low voltage systems and approximately 9 acres of site work, including utilities and off-site road work, as shown on the Drawings and Specifications prepared by Anova NEXUS Architects. Buildings A, B and C to be completed within the 120 days from the commencement date set forth in the notice to proceed in this Contract, and to allow Contractor reasonable time (Standard Working Hours) to complete the Contractor's "Work of this Contract" inside Buildings A, B and C within the 120 days of this Contract. Any time extensions to complete the "Work of this Contract" inside these buildings, beyond the 120 days to be negotiated at a later date between the Owner and the Contractor.

All of said Work to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with the plans, Drawings, Specifications and provisions of the complete Contract as hereinabove defined. The Contractor shall be liable to the Owner 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 Architect, Engineer, Project Inspector, Division of the State Architect, or representative of any of them. Each subcontract shall contain all of the termination provisions set forth in the Contract, which shall be applicable to all Work performed by Subcontractors.

**5. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION.** The Contractor shall prosecute the Work in a prompt, diligent and workmanlike manner. The date of commencement is the date from which the Contract Time, defined in Subsection 8.1.1 of the General Conditions, is measured, and shall be the date fixed in a notice to proceed issued by the Owner.

The Contractor shall achieve Substantial Completion of the entire Work not later than 120 days from the commencement date set forth in the notice to proceed, subject to adjustments of this Contract Time as provided in the Contract Documents.

Should the Work contracted for under this Agreement not be completed within the Contract Time plus, if any, authorized extension of time, there will be deducted from any money due or that may become due the Contractor under the Contract the sum of One Thousand dollars (\$1,000.00) as liquidated damages and not as a penalty, for each day's delay after the expiration of said time until the final physical completion of said Work and its delivery to and acceptance by the Owner.

6. **CONTRACT SUM.**

a. The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of Three Million, One Hundred Forty-Three Thousand dollars (\$3,143,000.00), subject to additions and deductions as provided in the Contract Documents.

b. The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

N/A.

c. Unit prices, if any, are as follows:

N/A.

7. **APPLICATION FOR PAYMENT.** Provided that an Application for Payment is received by the Architect not later than the tenth (10<sup>th</sup>) day of each month following the month covered by the Application for Payment, subject to the review period set forth in Subsection 11.4 of the General Conditions, the Owner shall make payment of the certified amount to the Contractor as set forth in Subsection 11.7 of the General Conditions.

8. **CRIMINAL BACKGROUND CHECK.** Pursuant to state law, including AB 1610, AB 1612 and AB 2101, the Contractor certifies that all employees and all employees of sub-contractors who will potentially come in contact with students have been cleared by a Department of Justice criminal record check or will be so cleared before being assigned to this Project, and said individual(s) has not been convicted of a violent felony (as set forth in subdivision (c) of Section 667.5 of the California Penal Code) or serious felony (as set forth in subdivision (c) of Section 1192.7 of the California Penal Code) nor convicted of, or entered a plea of nolo contendere to, charges of any sex offense as defined in Education Code Section 44010. Said check shall be immediately available to the District upon request.

9. **INDEMNITY.** Contractor agrees to indemnify and hold harmless the Owner, Owner's consultants, Architect, Architect's consultants, the Project Inspector (Inspector of Record (I.O.R)), the State of California, and their respective agents, employees, officers, and directors, as set forth in Article 3, Subsection 3.9 of the General Conditions.

10. **INSURANCE REQUIREMENTS.** Contractor agrees to purchase, maintain and provide proof of insurance as set forth in Article 15 of the General Conditions. Contractor shall maintain such insurance for the life of the Contract plus a period of 24 months thereafter.

a. Builder's Risk/"All Risk" Insurance. With respect to Builder's Risk/"All Risk" Insurance, the Contractor hereby confirms and agrees to provide such insurance as is required by Subsection 15.3.1 of the General Conditions. Additionally, Contractor hereby agrees to the terms set forth in the following paragraph, which is hereby added to Subsection 15.3.1 of the General Conditions:

In addition to the requirements set forth in this Subsection 15.3.1, the Contractor shall maintain Builder's Risk/"All Risk," course-of-construction insurance for that portion of the Project to be performed by JL Modular, Inc. (pursuant to a contract between the Owner and JL Modular, Inc. dated April 24, 2013) and Enviroplex (pursuant to a contract between the Owner and Enviroplex dated July 12, 2012) subject to the same terms and conditions set forth hereinabove. Such insurance shall include the Owner and the Architect as an additional named insured and any other person with an insurable interest designated by the Owner as an additional named insured.

11. **SUBSTITUTION OF SECURITIES.** Pursuant to Section 22300 of the Public Contract Code, and as set forth in Subsection 11.6.2 of the General Conditions, the Contract permits the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract.

12. **PREVAILING WAGES; COMPLIANCE MONITORING UNIT.** The Project and the Work are subject to payment of prevailing wages, as set forth in Article 18 of the General Conditions. The Work to be performed under the Contract is subject to monitoring and enforcement of prevailing wage requirements by the Compliance Monitoring Unit ("CMU") of the Division of Labor Standards Enforcement ("DLSE") as set forth in Chapter 1 of Part 7 of Division 2 of the California Labor Code (commencing at Section 1720) and the accompanying regulations at Subchapter 4.5 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations (commencing at section 16450) (collectively, "CMU Laws"). The Owner, the Contractor, and any subcontractors shall comply with the CMU Laws.

With respect to any provisions of the Contract that refer to the "Labor Compliance Program" or "LCP," the parties hereby acknowledge and agree that such provisions are superseded by the language contained in this section of this Agreement and by the CMU Laws. To the extent of any inconsistencies between the provisions of the Contract related to enforcement of prevailing wage requirements on this Project and this section, the parties shall interpret the Contract in a manner consistent with this section of this Agreement and the CMU Laws in effect as of the date of execution of this Agreement.

The Director of the Department of Industrial Relations of the State of California has determined the general prevailing rate of wages of per diem wages in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Contract. Copies of the applicable prevailing wage rate determinations shall be made available to the Contractor and subcontractors at a pre-job conference meeting. The Contractor shall post a copy of the prevailing wages at each job site, along with a CMU work place poster (available at [http://www.dir.ca.gov/dlse/cmu/Forms\\_Publications\\_and\\_Resources.html](http://www.dir.ca.gov/dlse/cmu/Forms_Publications_and_Resources.html), the office of the DLSE, or by e-mail to [CMU@dir.ca.gov](mailto:CMU@dir.ca.gov)), printed on 8 1/2" X 11" paper or larger, in accordance with California Code of Regulations, Title 8, section 16451(d). It shall be mandatory upon the Contractor and upon any subcontractor under him or her, to pay not less than the said specified prevailing rates of wages to all workers employed by them under the Contract.

A pre-job conference shall be conducted with the Contractor and all subcontractors to discuss federal and state labor law requirements applicable to the Contract.

Contractor and subcontractors shall maintain and furnish to the CMU, a certified copy of each weekly payroll (but no less often than monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports in PDF form shall be transmitted electronically to the CMU after first registering at <https://apps.dir.ca.gov/eCPR/DAS/altlogin>.

The Owner and the CMU shall review, including, but not limited to, by way of job site inspections, and, if appropriate, audit payroll records to verify compliance with the public works requirements of the Labor Code. The CMU will notify the Contractor or subcontractor(s), as appropriate, of any noncompliance in order for the Contractor or subcontractor(s), as appropriate, to correct the noncompliance, and of any penalties to be assessed against the Contractor or subcontractor(s), as appropriate.

The Owner shall cooperate with the CMU and DLSE in any investigation of suspected violations of prevailing wage requirements.

As directed by the Labor Commissioner, the Owner shall withhold Contract payments equal to the payments due or estimated to be due to the Contractor or subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against such Contractor or subcontractors. The Contractor shall be required to withhold payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured such delinquency or deficiency. In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties may be assessed for failure to timely comply with a written request for certified payroll records.

13. **CORPORATE STATUS.** The undersigned authorized officer of the Contractor hereby represents and warrants that the Contractor is a California corporation duly incorporated and in good standing in the State of California, and that the undersigned, whose title is \_\_\_\_\_, is authorized to act for and bind the Contractor.

14. **ATTACHMENTS.** The following fully executed forms are attached:

- a. Bid Form with Subcontractor List
- b. Noncollusion Affidavit
- c. Payment Bond
- d. Performance Bond
- e. Insurance Certificates with Additional Insured Endorsements for each policy
- f. Workers Compensation Certificate

15.     **REQUIRED PROVISIONS.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract 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 correctly inserted, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

*[Remainder of this page intentionally left blank.]*



This Agreement is entered into as of the day and year first written above and is executed in at least 3 original copies of which 1 is to be delivered to the Contractor, 1 to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER:

**California Montessori Project,**  
a California nonprofit public  
benefit corporation, operating as a  
California charter school

CONTRACTOR:

**Simile Construction Service, Inc.**  
a California corporation

By: Gary Bowman  
**Gary Bowman,**  
Superintendent and Executive Director

By: Guy Simile  
Name: Guy Simile  
Title: PRESIDENT

Date: MAY 22, 2013

Date: MAY 22, 2013

Contractor's License No. 794642