

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This contract is entered into this ___ day of _____ 2018, and is made by and between Caldwell Flores Winters, Inc. and the Acton Agua Dulce Unified School District of Los Angeles County.

RECITALS

WHEREAS, Caldwell Flores Winters, Inc. (hereinafter, "CFW") provides professional consulting services for State aid, planning, facilities assessments, financial advisory, and program implementation services throughout the State of California;

WHEREAS, the Acton Agua Dulce Unified School District (hereinafter, "District"), a California Public School District located in Los Angeles County, is seeking to retain the services of a professional consulting firm for the purpose of providing professional consulting, advice, strategic planning and solicitation of State financial grants through the State School Facilities Program and other related programs offering funding to California public school districts for facilities programs (hereinafter, "State Aid Services");

WHEREAS, the District has previously engaged CFW to provide State Aid Services and Financial Advisory Services and the District wishes to renew CFW's services;

WHEREAS, the District desires, where appropriate, to submit applications to receive grant funds through the School Facilities Program pursuant to Proposition 51 including the State's matching program for eligible projects and desires to retain the services of CFW to guide the District through the application and approval process;

WHEREAS, CFW will also assist the District in establishing or updating its baseline eligibility for grant funding from the State;

WHEREAS, the District desires to retain the professional services of CFW to provide consulting with respect to the State's School Facilities Program, as approved by the District and more particularly described in this Contract;

WHEREAS, the District has determined that it cannot provide through its own personnel the services to be performed by CFW under this Agreement, the services provided by CFW are exempt from Public Contract Code section 20111, and the District has fully complied with its policies, bylaws, rules, and/or procedures for entering into this Agreement;

NOW THEREFORE, for good and valuable consideration of the covenants set forth herein and other good and valuable consideration, the receipt and adequacy of which is acknowledged by the District and CFW (hereinafter, "Parties"), the Parties hereby agree as follows:

I. PROFESSIONAL CONSULTANT SERVICES

CFW agrees to provide the District with professional consulting services in the form of State Aid Services as more fully set forth and specified in Exhibit A, incorporated herein and made a part of this Contract by reference.

II. DISTRICT COOPERATION

In order to perform the professional State Aid Services, CFW will require complete and accurate information. The District understands and agrees to cooperate with CFW by furnishing all necessary District information and records in a timely, diligent and accurate basis to the extent practicable and upon the request of CFW. On occasion, CFW may require the opportunity to consult with District staff to obtain information that is not readily available from District records and to clarify information that is not otherwise self-evident. The District agrees from time to time to make its staff available for these consultations.

From time to time, when necessary and appropriate, CFW may request that the District authorize access to consultants that the District is currently working with in order to complete the scope of work contemplated herein. The District agrees to provide or authorize access to these additional professional services as necessary to carry out the scope of work, if needed.

III. CONFIDENTIALITY OF INFORMATION

CFW recognizes that much of the information related to the services provided by CFW is public information that must be published and/or disclosed to the public upon request. It is the responsibility of the District to make the determination of whether a particular document or other tangible information is subject to disclosure and to disclose said information at the appropriate times. While the District makes that determination, CFW shall regard all information received during the performance of services pursuant to this Contract and all information produced by CFW as confidential and shall not disclose such information to any other person without prior consent of the District. Upon determination by the District, CFW will cooperate to disclose or publicize those documents requested or determined to be public.

IV. TERM

The Parties recognize and acknowledge that it often takes many years for the District to secure grant funding through the State School Facilities Program and other grant programs. In light of this consideration, the Parties have agreed to a term of five (5) years, a period of time recognized as necessary to develop a strategy, update a District's eligibility, submit applications and advocate on the District's behalf to secure funding—the scope of work contemplated by the Parties. The Term of this Contract shall commence upon approval by the Board of the District and shall

continue through April 30, 2023. The District may choose to extend or renew the term of this Contract by a written instrument, mutually agreed to by the Parties and approved by the Governing Board of the District. The Parties further recognize that the payment of the fee to CFW is contingent on the District receiving a grant. It is intended that the obligation to pay the fee shall survive beyond the term of this Contract for (1) any application submitted by CFW to the Office of Public School Construction or any other grant agency and/or (2) work or advocacy performed by CFW on behalf of the District to secure grant funding. In these cases, payment of the fee shall be consistent with the terms set forth in Article XII of this Contract.

V. INTEGRATED CONTRACT

This Contract in its entirety represents a full and complete understanding of every kind or nature whatsoever between the parties hereto related to the proposed professional State Aid consulting services and replaces or supersedes any and all preliminary negotiations, representations or implied covenants inconsistent with the terms of this Contract related to professional State Aid consulting Services.

VI. TERMINATION

In the event CFW fails or refuses to reasonably perform the provisions of the scope of work, the District may declare a default in the performance of the terms of this Contract by providing written notice specifying the nature of the default and the steps necessary to cure the default. CFW shall be provided a period of no less than twenty-one (21) calendar days from the date of the notice to cure the default.

In the event that the District terminates this Contract after the expiration of the cure period, CFW shall be entitled to compensation at such time that the District receives grant funding for any application prepared by or submitted on behalf of the District by CFW to the Office of Public School Construction or any other grant agency. Recognizing that this contract is a contingency contract and that professional advice and consultation is being provided and that CFW is providing substantial work on a contingency basis with the full expectation of being compensated for those services when funding becomes available to the District, often years after the work is performed, this obligation shall survive any termination, whether by expiration of the contract, termination for cause or termination for convenience by mutual termination of the parties.

The Parties may also agree to mutually terminate this Contract by a writing reflecting the agreement.

VII. NOTICES

All notices, demands, requests or approvals to be given under this Contract shall be given in writing and shall be deemed served when delivered personally or on the fifth business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as provided below.

Acton Agua Dulce Unified School District
ATTN: Lawrence King, Superintendent
32248 Crown Valley Road
Acton, CA 93510

Caldwell Flores Winters, Inc.
ATTN: Emilio A. Flores, Chief Executive Officer
6425 Christie Avenue, Suite 270
Emeryville, CA 94608

VIII. DISPUTE RESOLUTION

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall first be submitted to mediation, and if the matter is not resolved through mediation then to arbitration in Los Angeles County before one arbitrator. The arbitration shall be administered by an organization mutually agreeable by the parties or pursuant to CA Code of Civil Procedure section 1280 et. seq. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from an appropriate court. The prevailing party in the arbitration shall be entitled to its reasonable attorneys' fees and costs. All fees and costs for mediation and arbitration shall be split equally.

IX. CONSULTANT NOT AN EMPLOYEE OF THE DISTRICT

CFW shall have no authority to contract on behalf of the District and shall not represent itself as having such authority. It is expressly understood and agreed by the Parties that CFW, while engaged in carrying out and complying with any terms and conditions of this contract, is an independent contractor and not an officer, agent or employee of aforesaid District.

X. PREVAILING LAW

This agreement shall be interpreted and shall be governed by California law.

XI. ASSIGNMENT

CFW reserves the right to assign this contract in whole or in part to any successor or assignee with the approval of the District. Such approval shall not be unreasonably withheld by District.

XII. ATTORNEY'S FEES

In the event that any action or proceeding, including any arbitration, is brought to enforce the provisions of this Contract for Services, the prevailing party shall be entitled to all costs of enforcement, including but not limited to, said party's actual attorney fees. As used herein, the term "actual attorney's fees" shall mean the fees actually charged for the services rendered by legal counsel to the prevailing party in

connection with the enforcement of this Agreement, and shall not be limited to “reasonable attorney’s fees” as determined by the court or any statute.

XIII. FEE FOR STATE AID SERVICES

The District agrees to compensate CFW for those services set forth in Exhibit A, Professional State Aid Services, at a rate equal to two percent (2%) of the principal amount of any and all State funds received for facilities by the District as a result of an application prepared by CFW on behalf of the District, or any grant for which CFW had provided professional consulting services or professional advocacy services. The fee shall be payable in lump sum within 30 days of receipt of State grant or other grant funds by the District.

XIV. APPROVAL

In executing this Contract, persons signing on behalf of CFW or District represent that each has the authority to do so. This Contract shall not be executed by the District until such time as the Governing Board has approved and authorized its execution. In executing this contract, persons signing on behalf of CFW or District represent that each has the authority to do so.

This contract is hereby agreed to and executed on this the _____ day of _____ 2018.

AGREED:

Emilio A. Flores, Chief Executive Officer
Caldwell Flores Winters, Inc.

Lawrence King, Superintendent
Acton Agua Dulce Unified School District

EXHIBIT A
SCOPE OF WORK

CFW will provide State aid services to analyze and secure funding from available State aid programs the District is eligible for and to develop a strategy to garner funding from programs suitable to the District. Once eligibility has been established, CFW agrees to assist the District through the formal application processes.

CFW will assist the District in filing applications with the State, as needed, including the California Department of Education (CDE) and the Office of Public School Construction (OPSC). CFW agrees to provide State aid processing services pursuant to the following scope of work for the District. Specific services include:

1. Review educational goals and facilities assessment background materials provided by the District to CFW
2. Establish District's eligibility to receive funding pursuant to Proposition 51; assist the District in applying for funding that it is eligible to receive and assist the District in securing these funds
3. Analyze District's eligibility under the State's School Facilities Program
4. Establish, update, or re-establish the District's baseline eligibility for funding with the State as required
5. Develop strategy to establish available eligibility suitable to District needs
6. Assist District in submitting necessary applications
7. Meet with State representatives if required
8. Attend necessary informational and decision-making meetings, both locally and at the State, including OPSC and SAB meetings as requested by the District
9. Assist District in the securing and receipt of State funds