

AGREEMENT FOR PURCHASE OF MODULAR BUILDINGS
PURSUANT TO WILLOWS UNIFIED SCHOOL DISTRICT CONTRACT

THIS AGREEMENT, made and entered into this 11th day of December 2018, by and between the Dixie School District, hereinafter called "District" and Enviroplex, Inc., hereinafter called "Contractor".

The parties hereto mutually agree as follows:

1. This Agreement consists of, and hereby specifically incorporates by reference, the Contract between Willows Unified School District and Contractor originally entered into on January 15, 2018, which is attached as Exhibit "A" hereto (hereinafter the "Contract Documents").

2. Contractor agrees to supply, deliver and install two (2) 90x32 classroom buildings and one (1) 150x32 science/classroom/restroom building as ordered by the District in accordance with the terms and conditions of this Agreement. Such buildings are to be installed at the Miller Creek Middle School. In connection therewith, the District and the Contractor shall be bound by all terms and conditions specified in the Contract Documents. Notwithstanding the foregoing, should there be a conflict between this Agreement and the Contract Documents, this Agreement shall govern.

3. Compensation. As full compensation for the Contractor's complete performance of the work in this Agreement, the District agrees to pay the Contractor, and the Contractor agrees to accept the sum of **Five Million Two Hundred Twenty Thousand One Hundred Eight and 88/100 dollars (\$5,220,108.88)** which shall be paid to Contractor according this Agreement.

4. Indemnification. Contractor shall indemnify, defend with counsel acceptable to the District, and hold harmless to the full extent permitted by law, the District and its Board of Education, officers, agents, architect, construction manager, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the project or its failure to comply with any of its obligations contained in these Contract Documents, except such Liability caused by the active negligence, sole negligence or willful misconduct of the District, its Board of Education, officers, agents, architect, construction manager, employees and volunteers. Such indemnification shall extend to all claims, demands, or liabilities occurring after completion of the project as well as during the progress of the work. Pursuant to California Public Contract Code Section 9201, the District shall timely notify Contractor of receipt of any third-party claim relating to this project.

5. Insurance. Contractor shall obtain insurance acceptable to the District from a company or companies acceptable to the District. All required insurance must be written by an admitted company licensed to do business in the State of California at the time the policy is issued. All required insurance shall be equal to or exceed an A VIII rating as listed in Best's Insurance Guides' latest edition. On a case-by-case basis, the District may accept insurance written on a company listed on the State of California Department of Insurance List of Eligible Surplus Lines ("LESLI

List”) with a rating of A XII or above as listed in Best’s Insurance Guides latest edition. Required documentation of such insurance shall be furnished to the District at the time Contractor returns the executed Contract. Contractor shall not commence work, nor shall it allow its employees or subcontractors or anyone to commence work until all insurance required hereunder has been submitted and approved and a notice to proceed has been issued. The District shall be named as additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy shall protect the additional insured, its officers, agents and employees against liability for bodily injuries, deaths or property damage or destruction in the performance of the Contract. The certificates must state that the insurance is under an occurrence based, and not a claims-made, policy. All required policies shall be endorsed with the following language:

“The insurance provided herein is primary and no insurance held or owned by the District shall be called upon to contribute to a loss.”

The Contractor shall take out and maintain at all times during the life of this Agreement, up to the date of acceptance of the work by the District, the following policies of insurance:

1. Public Liability Insurance: Personal injury and replacement value property damage insurance for all activities of the Contractor and its Subcontractors arising out of or in connection with this Contract, written on a comprehensive general liability form including contractor's protected coverage, blanket contractual, completed operations, vehicle coverage and employer's non-ownership liability coverage, in an amount no less than \$2,000,000 combined single limit personal injury and property damage for each occurrence.
2. Workers’ Compensation Insurance: The Contractor shall furnish to the District satisfactory proof that the Contractor and all Subcontractors it intends to employ, have procured, for the period covered by the proposed Contract, full Workers’ Compensation insurance and employer's liability with limits of at least \$1,000,000 with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Insurance and Safety Act, approved May 26, 1913, and all acts amendatory or supplemental thereto (the “Act”).

6. At or before the time of execution of the Contract, the Contractor must file with the District the following bonds:

- (1) Performance Bond: A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract, to guarantee the faithful performance of the Contract.
- (2) Payment Bond: A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract.

Corporate sureties on these bonds and on bonds accompanying bids must be admitted sureties as defined in California Code of Civil Procedure Section 995.120(a), legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties and bond forms must be satisfactory to the District.

7. Prevailing Wage. As required by Labor Code Section 1773.2, the District has on file in its office copies of the general prevailing rate of per diem wages for workers employed on public works as determined by the Director of Industrial Relations. This document shall be available to any interested party on request and shall be posted at the job site by the Contractor.

8. Warranty. Contractor hereby warrants each building supplied, delivered and installed under this Agreement as follows: Contractor hereby guarantees that it will correct, at the sole cost of Contractor, any defects resulting from faulty manufacture or installation of the buildings or from the use of defective material in the manufacture thereof and noted by the District and communicated to Contractor in writing within a period of one (1) year from the date of the recording of the Notice of Completion by the District unless a longer guarantee is specifically called for in the Contract Documents.

9. Financing. The District reserves the right to enter into a lease with option to purchase the portable structures furnished under this contract with a third party of the District's choice. The Contractor hereby consents to any such assignment by the District of the right to purchase or lease with option to purchase as contemplated herein to any third party. The Contractor shall, upon the District's written request, execute any and all documents reasonable or necessary to effectuate the conveyance of title to such portable structures furnished under such a lease with option to purchase.

10. Time for Completion. The parties hereby agree that all buildings required to be supplied delivered and installed pursuant to this Agreement shall be completed, including DSA approval, and all terms and conditions of this Agreement and the Contract Documents shall be performed by **August 19, 2019 [Design & Fabricate 12/12/18 to 06/03/19 and Deliver and Install 06/14/19 to 08/19/19]**. The parties further agree that time is of the essence in the performance of this Agreement, and that the District will incur certain damages in the event Contractor fails to perform in accordance with the aforesaid deadline. The parties further agree that such damages would be difficult to calculate with certainty, and hereby agree that a reasonable estimate of such damages is \$1000.00 per calendar day. In the event Contractor fails to deliver and install the building which is the subject of this Agreement, or fails to perform all other terms and conditions of this Agreement and the Contract Documents in a timely manner, the District shall be entitled to recover from the Contractor liquidated damages in the sum of \$1000.00 per calendar day, based upon the foregoing best and reasonable estimate of the parties, for each calendar day the Contractor has not fully performed after the deadline as set forth above.

11. Determination of Fingerprinting Requirement Application

The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees:

 are subject to the requirements of Education Code Section 45125.2 and Paragraph (a) below, is applicable.

 X **are not subject to the requirements of Education Code Section 45125.2 and Paragraph (b) below, is applicable.**

- (a) Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students (Section 45125.2)

By execution of the Agreement/Contract, the Contractor further acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code Section 45125.2 the Contractor shall, at Contractor's own expense, (1) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (2) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, and/or (3) provide for the surveillance of the Contractor and Contractor's employees by a District employee.

- (b) Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students (Section 45125.2)

By execution of the Agreement/Contract, the Contractor further acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Contractor and Contractor's employees on a school site: (1) Contractor and Contractor's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Contractor and Contractor's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, Contractor and Contractor's employees shall not change locations without contacting the school office; (4) Contractor and Contractor's employees shall not use student restroom facilities; and (5) If Contractor and/or Contractor's employees find themselves alone with a student, Contractor and Contractor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

IN WITNESS WHEREOF, the parties hereto set their hands and seals on the day and year first hereinabove written.

DIXIE SCHOOL DISTRICT

CONTRACTOR

By: Jason Yamashiro, Superintendent

By: Glenn Owens
President
Enviroplex Inc.
License No.: 640557