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DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Oil and Public Safety

Public School Construction

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CDLE Routing #

MEMORANDUM OF UNDERSTANDING FOR PREQUALIFIED BUILDING DEPARTMENTS FOR PUBLIC SCHOOL CONSTRUCTION

Pursuant to C.R.S. §§ 22-32-124 and 23-71-122

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this ___ day of _____, 2009, between the Colorado Department of Labor and Employment, Division of Oil and Public Safety (“Division”), 633 17th Street, Suite 500, Denver, Colorado 80202 and the [Jurisdiction] (“PBD”), [address], collectively referred to as the “Parties.”

1. RECITALS

1.1 Background

- A. Colorado Revised Statute (“C.R.S.”) §§ 22-32-124 and 23-71-122 requires that all buildings and structures be constructed in conformity with the building and fire codes adopted by the Director of the Division of Oil and Public Safety in the Department of Labor and Employment Division (“Division”). To assure that a building or structure is constructed pursuant to the above, the Division shall conduct the necessary plan reviews and inspections, except at the request of the affected board of education, the state charter school institute, the charter school, or the affected junior college district, the Division may delegate this responsibility to the appropriate prequalified building department of a county, town, city or city and county or to the appropriate fire department, in the location of the building or structure.
- B. After the Division has reviewed the application and determined that the appropriate building department has plan reviewers and inspectors that have the necessary education, training, and experience; the Division may issue and execute a Memorandum Of Understanding (“MOU”) between the local jurisdiction and the Division to conduct the necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, issue temporary certificates of occupancy, and take enforcement action in relation to the building and fire codes adopted by the Division to ensure that a building or structure has been constructed in conformity with Public School Construction Regulations, 7 Code of Colorado Regulators Titles (“C.C.R.”) 1101-7, Article 2, Section 3-2.

1.2 Purpose

The purpose of this MOU is:

- a) For the Division to prequalify the building department to conduct necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, and issue temporary certificates of occupancy to ensure that a building or structure constructed pursuant to §§ 22-32-124 (1) and (1.5) C.R.S. and 23-71-122 (1) (v) (I) through (VII) has been constructed in conformity with the building and fire codes adopted by the director of the Division.
- b) For the prequalified building department (“PBD”) to perform code reviews on building and mechanical plans, issue building permits, perform building inspections and issue certificates of occupancy for school construction projects.
- c) To identify each Parties’ responsibilities for ensuring the construction of safe schools within the State of Colorado through compliance with C.R.S. §§ 22-32-124 and 22-71-122, and promulgated Rules and Regulations;
- d) To formalize the cooperative working relationships between the Parties; and,
- e) To provide procedures for communications, exchange of information and resolution of problems, as necessary, to carry out this MOU and the provisions of promulgated rules and regulations.

2. DEFINITIONS

2.1 “Director” means the Director of the Division of Oil and Public Safety within the Department of Labor and Employment or the Director’s designee.

2.2 Authority Having Jurisdiction (“AHJ”) means a city, county, Colorado political subdivision, or city and county or any other local government entity having authority to regulate building construction within its jurisdictional territory.

2.3 Prequalified Building Department (“PBD”) means an AHJ or an agent thereof that has met the Division’s certification standards for prequalification as a building department to conduct the necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, and issue temporary certificates of occupancy, and has executed this MOU with the Division.

2.4 “Certificate of Occupancy” means an official document issued by the Division or the PBD for a Public School allowing use or occupancy of the building or structure by the school district or by the institute charter school or junior college district.

3. RESPONSIBILITIES

The responsibilities of the Parties are as follows:

3.1 Responsibilities of the Division:

The Division shall:

- a) Adopt nationally recognized codes and standards as promulgated by Rules in 7 CCR 1101-7.
- b) Ensure that the necessary plan reviews, inspections, quality control, and quality assurance checks are performed in compliance with the statutes, Rules, and Regulations of the Division.
- c) Prequalify the building department as having executed an MOU and has met the required certification standards in 7 CCR 1101-7.
- d) Issue and maintain a list of persons the Division has approved as authorized to conduct plan reviews, inspections, and issue certificate of occupancies for public school construction projects. This list of authorized PBD persons is included and incorporated herein by reference as Appendix A of this MOU.
- e) Ensure that copies of the PBD building plans are sent to the appropriate fire department and the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety for review of fire safety issues.
- f) Rescind this “prequalified” status and terminate the terms of the MOU if the PBD fails to comply with this MOU, C.R.S. § § 22-32-124 and 23-71-122, or the rules and regulations of the Division.
- g) Allow the PBD to take enforcement action against a board of education, state charter school institute, charter school or junior college district in relation to the nationally recognized codes and standards adopted in 7 CCR 1101-7.

3.2 Responsibilities of the PBD.

The PBD shall:

- a) Conduct the necessary plan reviews and inspections, issue building permits, perform all necessary inspections including final inspections, and issue certificates of occupancy to assure that a building or structure has been constructed in conformity with the nationally recognized codes and standards adopted in 7 CCR 1101-7. The affected board of education, state charter school institute, charter school or junior college district, at its own discretion may opt to use the PBD that has entered into this MOU with the Division.
- b) Take enforcement action against a board of education, state charter school institute, charter school or junior college district that has violated the nationally recognized codes and standards adopted in 7 CCR 1101-7.
- c) Ensure that the construction project is inspected by a state electrical inspector, per § 12-23-116 C.R.S., notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own

electrical code and inspection authority, any electrical installation in any new construction or remodeling or repair of a public school.

- d) Ensure that the construction project is inspected by a state plumbing inspector, per § 12-58-114.5 C.R.S., notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own plumbing code and inspection authority, any plumbing or gas piping installation in any new construction or remodeling or repair of a public school.
- e) Only use persons within their building department that are listed as authorized by the Division to work on board of education, state charter school institute, charter school or junior college district construction projects. This authorized list of persons is attached as Appendix A.
- f) Cause copies of the building plans to be sent to the certified fire department and the Division of Fire Safety for review of fire safety issues.
- g) Issue the necessary Certificate of Occupancy prior to use of the building or structure by the board of education, state charter school institute, charter school or junior college district, if the building or structure is in conformity with the building and fire codes and standards adopted in 7 C.C.R. 1101-7, and if the affected fire department or the Division of Fire Safety certifies that the building or structure is in compliance with the fire code adopted by the Division in 7 C.C.R. 1101-7.
- h) Issue a Temporary Certificate of Occupancy to allow the board of education, state charter school institute, charter school or junior college district to occupy the buildings and structures, if all inspections are not completed and the building requires immediate occupancy, and if the board of education, state charter school institute, charter school or junior college district has passed the appropriate inspections that indicate there are no life safety issues.
- i) Attest that inspections are complete and all violations are corrected before the board of education, state charter school institute, charter school or junior college district is issued a Certificate of Occupancy. Inspection records shall be retained by the PBD for two years after the Certificate of Occupancy is issued.
- j) Set reasonable fees and may collect these fees to offset actual, reasonable, and necessary cost of plan review and inspection of board of education, state charter school institute, charter school or junior college district construction projects. The board of education, state charter school institute, charter school or junior college district shall be notified of any adjustment of fees a minimum of thirty (30) days prior to the effective date of the change.
- k) In conjunction with the Division set a date for a hearing as soon as practicable before the board of appeals in accordance with section § 22-32-124.5, C.R.S., and the rules adopted by the Division pursuant to § 24-4-105, C.R.S., if the PBD and the board of trustees of a

board of education, state charter school institute, charter school or junior college district disagree on the interpretation of the codes and standards of the Division.

- l) Comply with the written Final Agency decision of the appeals board for the purposes of § 24-4-106, C.R.S.

4. ACCESS TO INFORMATION

Each Party shall, to the extent allowed by law, make available to each other, at no cost, information regarding board of education, state charter school institute, charter school or junior college district construction projects within its possession. Requests for information shall not impose an unreasonable resource burden on the other Party.

5. EFFECTIVE DATE AND TERM

This MOU shall be effective upon signature by the Director of the Division and shall be valid for **three (3)** years from the effective date, unless previously modified or terminated in writing by one of the Parties pursuant to the terms of this MOU.

6. TERMINATION

The PBD may not terminate this MOU until project completion and issuance of a Certificate of Occupancy. An Amendment may be mutually agreed upon in writing by the Parties prior to the termination date of this MOU to extend the date of this MOU to allow for project completion and issuance of a Certificate of Occupancy. If the PBD fails to comply with the terms and conditions of this MOU or the rules and regulations of the Division, the Division may terminate this MOU immediately. For all other reasons, the Division may terminate the MOU upon thirty days written notice.

7. MODIFICATIONS AND AMENDMENTS.

This MOU is subject to such modifications as may be required by changes in applicable federal or state law, or federal or state implementing rules, regulations, or procedures of that federal or state law. Any such required modification shall be automatically incorporated into, and be made a part of, this MOU as of the effective date of such change as if that change was fully set forth herein. Except as provided above, no modification of this MOU shall be effective unless such modification is agreed to in writing by both parties in an amendment to this MOU that has been previously executed and approved in accordance with applicable law.

8. ADDITIONAL PROVISIONS

8.1 Legal Authority

The Parties warrant that each possesses actual, legal authority to enter into this MOU. The Parties further warrant that each has taken all actions required by its applicable law, procedures, rules, or by-laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this MOU and bind that Party to its terms. The person or persons signing this MOU, or any attachments or amendments hereto, also warrant(s) that such person(s) possesses actual,

legal authority to execute this MOU, and any attachments or amendments hereto, on behalf of that Party.

8.2 Notice of Pending Litigation

Unless otherwise provided for in this MOU, the PBD shall notify the Division within five (5) working days after being served with a Summons, Complaint, or other pleading in a case which involves any services provided under this MOU and which has been filed in any federal or state court or administrative agency. The PBD shall immediately deliver copies of any such documents in accordance with Notice Procedures in Section 8.5. of this MOU.

8.3 Assignment and Successors

The PBD agrees not to assign rights or delegate duties under this MOU, or subcontract any part of the performance required under the MOU without the express, written consent of the State.

8.4 Adherence to Applicable Laws

At all times during the term, performance, or execution of this MOU, the PBD shall comply with all applicable federal and state laws, regulations, rules, or procedures, as these provisions currently exist or may hereafter be amended, all of which are incorporated herein by reference and made a part of the terms and conditions of this MOU.

8.5 Notice Procedure

All notices required or permitted to be given pursuant to this MOU shall be in writing and shall be deemed given when personally served or three (3) days after deposit in the United States Mail, certified mail, return receipt requested, and addressed to the following parties or to such other addressee(s) as may be designated by a notice complying with the foregoing requirements.

APPROVED PDB:

(Name)
(Title)
Juris(diction)
(Street Address)
(City, State & Zip Code)
(Phone)

DEPARTMENT OF LABOR AND EMPLOYMENT:

Lisa Eze
Purchasing Director
Colorado Department of Labor and Employment
633 17th Street, 11th Floor
Denver, CO 80202
(303) 318-8054

OPS:

Mahesh Albuquerque
Director
Division of Oil and Public Safety
633 17th Street, Suite 500

Denver, CO 80202-3660
(303) 318-8650

8.6 Entire Understanding

This MOU is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by the Parties.

8.7 Independent Contractor

Neither PBD nor any agent or employee of PBD shall be or shall be deemed to be an agent or employee of the Division.

8.8 Indemnification

To the extent permitted by law, PBD shall indemnify, save, and hold harmless the State of Colorado, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by PBD, or its employees, agents, subcontractors, or assignees pursuant to the terms of this MOU.

8.9 Governmental Immunity Act

No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

8.10 Insurance

If the PBD is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the PBD shall at all times during the term of this MOU maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the Division, the PBD shall show proof of such insurance satisfactory to the Division.

9. APPROVALS

Department of Labor and Employment
Division of Oil and Public Safety

[Jurisdiction]

Mahesh Albuquerque
Director, Division of Oil and Public Safety

[Signor]
[Title]

Date: _____

Date: _____