

**COUNTY OF SAN MATEO  
AGREEMENT WITH INDEPENDENT CONTRACTOR FOR CONSTRUCTION  
AGREEMENT NO. CMO 05 12A**

This Agreement entered this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the County of San Mateo, a political subdivision of the State of California, hereinafter called "County" and Modtech Holdings, Inc., hereinafter called "Contractor".

WITNESSETH

WHEREAS, the County has the authority to engage independent Contractors to perform sundry services for the County, with or without the furnishing of materials; and

WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of performing services and/or purchasing material hereinafter described:

IT IS AGREED BETWEEN THE COUNTY AND CONTRACTOR as follows:

1. Scope of Work. Contractor shall provide all labor, material, and incidentals, in accordance with the terms of this Agreement, necessary to provide all work indicated on the plans and specifications titled: Gateway Community School and in accordance in Contractor's proposal dated November 21, 2005, included herein as Exhibit "A", and Modtech's Open Contract Bid #46-04/05 FB with Coachella Valley Unified School District.
2. Schedule and Term. Contractor shall perform the work in accordance with Modtech's letter dated November 21, 2005, included herein as Exhibit "A". The facility shall be ready for occupancy by July 21, 2006.
3. Payments. In consideration of the Work performed in accordance with the terms, conditions and specifications set forth herein and in attached exhibits, if any, County shall make payment to Contractor as follows. County shall withhold 10% retention from progress payments. Total cost for the project is \$581,780

The first payment will be made within fourteen calendar days of delivery of the modular units to the site and acceptance by County. Acceptance shall be determined by inspection by County of the modular units and confirmation of conformance to the order. Should a nonconformance be determined, a reasonable cost allowance will be withheld from the payment of the modular units until the defect is repaired. Thereafter, progress payments will be made for work completed and accepted by the County. Within 30 days of execution of this Agreement Contractor will submit a schedule of payments to the County.

4. Performance of the Work. The term "Work" as used herein means all of

Contractor's obligations and responsibilities under the terms of this Agreement. All Work shall be in accordance with the best trade practices and shall be in accordance with all applicable regulations and codes. Contractor has satisfied himself as to the scope of Work and the conditions under which it is to be performed and no additional cost will be claimed by Contractor because of existing conditions. Contractor shall be responsible for coordinating the Work with County operations and shall notify the County's Project Manager 48 hours prior to beginning Work at the site. Contractor is responsible for reviewing and accepting the work of others that is required for proper completion of the Work. Contractor shall protect Owner's property in the execution of the Work. Contractor shall remove all debris and properly dispose of it off site. Should any dispute arise in the performance of this Agreement, Contractor shall continue to expeditiously prosecute the Work while the dispute is being resolved. It is understood that periodic review of Contractor's Work will be necessary and the right to review is reserved to the County.

5. Changes. County may require changes in the scope of Work to be performed by Contractor and Contractor agrees to perform said changes. Contractor shall commence with the Work as changed immediately upon receipt of written direction from County and agreement between the Contractor and the County as to the approximate additional costs or time involved and a basis for payment. Any adjustment in the contract amount and contract time warranted by the change shall be subsequently made by written amendment to this Agreement. Changes will be paid for at a lump sum amount agreed to by the parties or at an amount based on the actual labor hours and expenses incurred in the performance of the change. If Contractor encounters an unexpected condition and wishes to request an adjustment in the contract amount or contract time, Contractor shall give County written Notice of Claim within seven calendar days of the occurrence or beginning of the event giving rise to such claim. Contractor shall not rely upon verbal instructions.

6. Relationship of the Parties. It is understood that this is an Agreement by and between County and Contractor and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other relationship whatsoever other than that of independent contractor.

7. Non-Assignability. Contractor shall not assign or subcontract this Agreement or any portion thereof to a third party without the prior written consent of County. All assignees and subcontractors approved by the County shall be subject to the same terms and conditions applicable to Contractor under this Agreement. Contractor shall be liable for the assignee's and subcontractor's acts and omissions.

8. Termination of Agreement. Either party may terminate this Agreement after giving the other party written notice of a violation of this Agreement and the violating party does not correct the violation within 15 calendar days after receiving said notice. Said notice shall specify what Work other than correcting the violation may be performed after receipt of such notice. Violations of this Agreement include failure to perform obligations required by this Agreement in a timely and proper manner and

failure to adhere to the covenants, terms, conditions or stipulations of this Agreement. In the event of such termination for cause, all finished or unfinished Work, documents, data, studies, surveys, drawings, reports, and specifications by Contractor shall become the property of County, and Contractor shall be entitled to receive just and equitable compensation for Work completed in accordance with this Agreement. Notwithstanding the above, Contractor shall not be relieved of any liability to County for damages, incidental and consequential damages excluded, sustained by County by reason of Contractor's breach of this Agreement and County may withhold payment to Contractor until such time as the exact amount of damages due the County from Contractor has been determined. Damage assessment shall not include any costs for incidental or consequential damages.

County may terminate this Agreement at any time without cause upon ten calendar days written notice to Contractor, and thereupon all Work, documents, data, studies, surveys, drawings, estimates, reports and specifications prepared by Contractor shall become the property of County and shall be delivered to County upon demand. Said notice shall specify what Work may be performed after receipt of such notice. In the event of such termination by County without cause, County shall pay Contractor for services actually performed pursuant to this Agreement prior to the date of termination.

9. Mutual Hold Harmless. Contractor shall indemnify and hold harmless the County, its officers, agents, employees, and servants from all claims, suits or actions of every name, kind and description, including those of third parties, brought as a result of the negligent performance of Work required pursuant to this contract. This indemnification and hold harmless shall include but not be limited to all claims, suits, or actions brought for or on account of (1) injuries to or death of any person, including Contractor; or (2) damage to property or any kind whatsoever and to whomsoever belonging; or (3) any other loss or cost as a result of this Work; or (4) the concurrent active or passive negligence of the County, its officers, agents, or employees and servants. This indemnification and hold harmless shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of the Contractor to indemnify and hold harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Contractor to indemnify the County, its officer, agents, employees and servants against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

10. Insurance. Contractor shall not commence Work under this Agreement until all insurance required under this section has been obtained. Contractor shall furnish County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall be endorsed to provide 30 calendar days written

notice to County of any change in the limits, cancellation or other modification of the insurance.

The Contractor shall have in effect during the entire life of this Agreement Worker's Compensation and Employer Liability Insurance providing full statutory coverage in accordance with Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code.

Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability Insurance and Property Damage Liability Insurance as shall protect him while performing Work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations are by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below:

A.	Comprehensive General Liability	\$1,000,000
B.	Motor Vehicle Liability Insurance	\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any policies of insurance, which shall also contain a provision that the insurance shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

11. Non-Discrimination. Contractor, with regard to this Agreement, shall not discriminate on the grounds of age, ancestry, creed, color, disability, marital status, medical condition, national origin, political or religious affiliation, race, sex, sexual orientation or any other non-job-related criteria. This shall apply to Contractor's organization and in the selection and retention of subcontractors and vendors. In regard to contracts over \$5,000 with respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

12. Records. Documents developed, produced or provided under this contract shall become the sole property of the County. Contractor shall maintain all required records for three years after the County makes final payment and all other pending matters are closed, and shall be subject to examination and audit by the County, a federal grantor agency, and the State of California.

13. Notices. Notices are valid only if written. Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail to the last business address known to him who gives the notice.

Notices to the County shall be addressed to:

James Sowerbrower, Project Manager  
County of San Mateo  
County Manager's Office/Capital Projects Division  
455 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063  
Phone: 650/363-4658 Fax: 650/363-4832

Notices to Contractor shall be addressed to:

Gary G. Ganz  
Business Development Manager  
Modtech Holdings, Inc.  
517 Fyffe Avenue, Suite A  
Stockton, CA 95203  
Phone: 209/941-6193 Fax: 209/941-6197

14. Interest of Contractor. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no persons having such interest shall be employed.

15. Commencement of Work. Contractor shall commence performance of the services and duties required to be performed under this Agreement immediately upon receiving a signed copy of the Agreement and furnishing the County with insurance certificates. Contractor shall obtain, through the Architect of Record, applicable DSA approvals and shall accommodate In-Plant Inspectors, contracted for by the County and acceptable to DSA during manufacturing of the building components. Contractor shall maintain proper licensure during in plant and on-site assembly of the structures. Contractor shall ensure that transportation of the building units shall be properly licensed and permitted. Any other license, permit or approval from any agency whatsoever for any services required shall be the responsibility of the County. Contractor shall expeditiously complete all Work required by this Agreement with no periods of nonperformance. If, however, Contractor encounters unforeseen hazardous material, he will stop Work and contact the Project Manager.

16. Compliance with Laws. This Agreement shall be governed by the laws of the State of California. In performing this Agreement, the Contractor shall comply with applicable federal, state, and local codes, statutes, regulations and ordinances currently in effect. Where requested, Contractor shall provide engineering calculations and other information (limited to Contractor's scope of work) necessary for compliance. Contractor shall pay prevailing wages in conformance with Sections 1720 through 1861 of the California Labor Code.

17. Guarantee. Contractor shall warranty all Work for a period of one year after County acceptance of the Work. Contractor shall provide County with written guarantee in a form prescribed by the County.

18. Merger Clause. This Agreement, including exhibits, if any, constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each part of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing. In the event of a conflict between the terms, conditions or specifications set forth herein and those in exhibits attached hereto or contractor's proposal, the terms, conditions or specifications set forth herein shall prevail.

19. Additional Provisions: The provisions of Modtech's Open Contract Bid #46-04/05 FB with Coachella Valley Unified School District are included in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective duly authorized agents on the day and year first above written.

COUNTY OF SAN MATEO

By \_\_\_\_\_

President, Board of Supervisors

Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk, Board of Supervisors

Date: \_\_\_\_\_

MODTECH HOLDINGS, INC.

By James W. Gasper

Print Name James W. Gasper

Title Director of Contract Administrator

Date November 30, 2005