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- ATTACHMENT 1 Rudolph and Sletten Request for Proposal for Shortlisted Design/Build Entities
for the Biotechnology & Science Building (Project No. 15-012) dated May 27, 2015
(Includes Exhibits A through D)

EXHIBITS.....

- EXHIBIT E PROJECT MILESTONE SCHEDULE
- EXHIBIT F OWNER CONTROLLED INSURANCE PROGRAM (OCIP)
- EXHIBIT G PROJECT LABOR AGREEMENT (PLA)
- EXHIBIT H CLARIFICATIONS TO PROJECT SCOPE

**SOLANO COMMUNITY COLLEGE DISTRICT
BIOTECHNOLOGY AND SCIENCE BUILDING
VACAVILLE, CA**

**SOLANO COMMUNITY COLLEGE DISTRICT
DESIGN / BUILD AGREEMENT**

THIS DESIGN BUILD AGREEMENT (“Agreement”) is entered into on August 5, 2015, between the SOLANO COMMUNITY COLLEGE DISTRICT (“District”), a California community college district, and Rudolph and Sletten, Inc. is a California corporation (“Design/Builder”).

RECITALS

- A. The District wishes to construct the Biotechnology and Science Building (“Project”), located at the SCCD Vacaville Center in Vacaville, California.
- The Project will be a high-performing and architecturally attractive facility that supports the mission of the District. The Project is approximately 32,000 square feet and will house state-of-the-art equipment for Biotechnology Laboratories, Biology Labs including Anatomy and Chemistry labs. The site for this new facility will be on the Solano Community College Vacaville Center Campus, located at 2001 North Village Parkway, Vacaville, CA 95688.
- B. California Education Code Sections 81700 – 81708 authorize a community college district to design and construct the facility on a design-build project delivery basis.
- C. The District issued a Request for Qualification (“RFQ”) on November 14, 2014. A Mandatory RFQ Pre-Submission Conference was held on December 2, 2014. Responses were due at the offices of the SCCD Bond Program Office on December 17, 2014 at 2:00 PM PDT.
- D. The District pre-qualified ten (10) Design Build Entities. The final short list of Design Build Entities were three (3). The finalists were notified on April 9, 2015.
- E. The District issued a Request for Proposal (“RFP”) to the pre-qualified teams on March 20, 2015, with instructions to submit their proposal to the SCCD Bond Program Office by May 26, 2015.
- F. The District issued Addenda to the Requests for Proposals. These Addenda are made part of this Agreement and are listed in Exhibit A, Declaration, of Section 00 41 00 (Proposal Form).
- G. Finalists were interviewed on June 2, 2015.
- H. Notification of the final selection was made on June 19, 2015.
- I. The Design/Builder is Rudolph and Sletten, Inc. The Design/Builder has entered into a design contract with the Smith Group JJR pursuant to which, as the Architect of Record, The Smith Group JJR agreed to perform certain design services required by this Agreement..
- J. The documents included in the District’s Request for Proposal dated March 13, 2015, are listed in Exhibit “B”. The Contract Documents are provided by the Solano Community College District to establish the scope, level of quality and design intent, and the reporting procedures for the development, construction, and acceptance of the entire Project.

The Design/Builder shall not make any exceptions to the Stipulated Sum, the Project Milestone Schedule, the program statement, the Criteria Documents, or any other requirement described in the Contract Documents. The District does not accept any provision of the Proposal that is not in conformance with the criteria of the Request for Proposal.

The Design Builder submitted a Proposal dated May 27, 2015. Notwithstanding the above paragraph, the Design Builder's Proposal is hereby made a part of this Agreement. If there is conflicting language between the Design Builder's Proposal and this Agreement, the Agreement shall take precedence.

- K. It is the intent of this Agreement that the Design/Builder assumes full responsibility for administering, managing, designing, constructing and commissioning the Project to the performance requirements stated in the RFP.
- L. The District and Design/Builder wish to memorialize the intent of the parties and the terms upon which Design/Builder will undertake the Project.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 – DEFINITIONS

Definitions. The definitions below shall have the same meaning throughout all of the Contract Documents.

- 1.1 Act of God: a sudden and unforeseeable event caused by natural forces over which the Design/Builder has little or no control; e.g., windstorms, floods, earthquakes, riots, fires, and lightning strikes.
- 1.2 Addendum: written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued by the District prior to execution of the Agreement, which modifies or interprets the Pre-Qualification Documents, RFP Documents or Contract Documents.
- 1.3 Agreement: this Design Build Agreement and all subsequent amendments and/or modifications to it. The terms “Agreement” or “Contract” shall refer to this Design Build Agreement.
- 1.4 Applicable Laws: all laws, codes, ordinances, rules and regulations of governmental authorities affecting the Site and the Work.
- 1.5 Architect of Record: Design Professional in General Responsible Charge, The Smith Group JJR, who is licensed in the State of California and employed or contracted by the Design/Builder to design and prepare construction documents for the Project and to provide construction phase services during the Project.
- 1.6 Authorized Representatives: see Article 4, Paragraph 4.1, District’s Representative.
- 1.7 Beneficial Occupancy: District’s occupancy or use of any completed or partially completed portion of the Work. See Article 6, Subparagraph 6.11.3, Beneficial Occupancy.
- 1.8 Best and Final Offer (or, BAFO): an offer submitted by the Design/Builder, after submission of its Proposal, in response to a request by District for the final terms on which the Proposer will enter into the Agreement, if it receives the Award.
- 1.9 Board of Trustees: the Governing Board of the Solano Community College District.
- 1.10 Bond Program: the District’s Measure Q Bond Program.
- 1.11 Bond Program Manager: the consultant, Kitchell CEM, retained by the District to serve as a point of contact in coordinating the District’s interests for the Bond Program.
- 1.12 CEQA: the California Environmental Quality Act, located at California Public Resources Code Section 21000 et seq.
- 1.13 Certificate of Compliance: a certificate issued by the City of Vacaville Fire Department stating that the installation of all life safety materials and equipment is in compliance with building and life safety codes. Such equipment includes, but is not limited to: Fire Alarm and Fire Sprinklers, rated construction assemblies, fire exits, paths of egress, etc.
- 1.14 Certificate of Final Completion: a certificate prepared by the Design/Builder and forwarded to the District stating that the Design/Builder believes in good faith that the Project is complete, including all punch list items, close-out activities and commissioning, and that the Design/Builder is entitled to Subparagraph 6.11.7, Final Payment, in accordance with the provisions of Subparagraph 6.11.5, Final Completion.

- 1.15 Change Order: a change to the Agreement and/or Contract Documents signed by the Design/Builder and the District authorizing a change in the Work, which may also adjust the Stipulated Sum and/or the Contract Time. The Stipulated Sum and/or Contract Time may be changed only by Change Order.
- 1.16 Change Proposal: a proposal for a Change Order, submitted by the Design/Builder at the request of the District, or by the Design/Builder's own initiative.
- 1.17 Commissioning: a quality assurance process for achieving, validating and documenting that the new facility and its systems are planned, designed, installed, tested and capable of being operable and maintained to perform in conformity with the Criteria Documents.
- 1.18 Construction Documents: the drawings and specifications prepared and sealed by the Architect of Record on behalf of the Design/Builder for construction of the Project.
- 1.19 Construction Project Manager: the consultant, Swinerton Management & Consulting, retained by the District to serve as a point of contact in coordinating the District's interests on this Project.
- 1.20 Contract Documents: those documents set forth in Exhibit B to this Agreement, Contract Documents, all of which, together with this Agreement, form the entire agreement between the District and the Design/Builder. Any amendments and modifications to the Contract Documents and/or the Design Build Request for Proposal package must be approved by the District prior to incorporation into this Agreement. The Contract Documents include the following:
 - 1.20.1. Division 0 and 1 Specifications;
 - 1.20.2. Criteria Document Technical Specifications – Divisions 2 – 33
 - 1.20.3. Criteria Document Drawings;
 - 1.20.4. Either (1) if no Best and Final Offers have been requested by District, the Design/Builder Proposal or (2) if Best and Final Offers have been requested by District, the Design/Builder's last-submitted Best and Final Offer that includes all District-approved deviations from the Design Builder's Proposal; Other terms, conditions and requirements applicable to the performance of the Agreement and Work (including any Supplementary and/or Special Conditions);
 - 1.20.5. Addenda and other documents listed in the Agreement;
 - 1.20.6. Modifications issued after execution of the Agreement;
 - 1.20.7. Final Construction Documents prepared by Design/Builder in accordance with the requirements and standards of the Contract Documents;
 - 1.20.8. a bilateral Change Order signed in the manner required herein;
 - 1.20.9. a unilateral Change Order signed in the manner required herein;
 - 1.20.10. Project Labor Agreement; (PLA)
 - 1.20.11. Non-Collusion Declaration, executed by Design/Builder.
 - 1.20.12. Owner Controlled Insurance Program (OCIP)
- 1.21 Contract Time: see Paragraph 7.1, Contract Time.
- 1.22 Criteria Architect: the architect, ED2 International Architects and Planners, retained by the District to develop the Criteria Documents and define functional, performance and aesthetic characteristics establishing the design intent for the Project.
- 1.23 Criteria Documents: the Design Requirements, Specifications, and the Drawings prepared by the District's Criteria Architect and incorporated by reference into the Agreement.

- 1.24 Day(s): calendar day(s), unless otherwise specifically designated as a business or working day(s). If a day requiring notice or action falls on a weekend or national or state holiday, then the next non-weekend or non-holiday shall be applicable. Business day(s) are days other than weekend days or national or state holidays.
- 1.25 Design/Builder: Rudolph and Sletten, Inc., a California corporation (License No. 198069 – Classification B) able to provide appropriately licensed construction contracting, and professional architectural and engineering services required hereunder.
- 1.26 District: the Solano Community College District.
- 1.27 District's Project Management Team: all of the District's consultants.
- 1.28 Final Completion: the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents.
- 1.29 Float: the amount of time difference between the Design/Builder's scheduled critical path method (CPM) and the Final Completion date as shown in the Project Milestone Schedule, Exhibit A. Float or slack is not for the exclusive use of or benefit of either the District or the Design/Builder, but its use shall be determined solely by the District.
- 1.30 Indemnified Parties: the District and its officers, elective and appointive officials, employees, attorneys, consultants, agents, subcontractors, successors, volunteers, and assigns.
- 1.31 Liquidated Damages: a stipulated sum of money to make the District whole for Design/Builder's failure to complete the Project on time and payable by the Design/Builder to the District in the event the Design/Builder does not achieve the Certificates of Final Completion for the Project as required in the Project Milestone Schedule (Exhibit A), or as adjusted by Change Order, as more fully described in Paragraph 7.7, Liquidated Damages.
- 1.32 Notice to Proceed: the notice given by the District to the Design/Builder stating that the Design/Builder is authorized to commence Work on the Project.
- 1.33 Project Inspector: one or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA.
- 1.34 Project Labor Agreement (or PLA): . Exhibit C
- 1.35 Project Location: the Project site is located at 2001 North Village Parkway in Vacaville, CA, which currently includes the existing Classroom Building and all other related improvements on Assessor Parcel No. [#] Block 5346, Lot 005, and all off-site improvements required for compliance with CEQA and any other Work required by the Contract Documents.
- 1.36 Stipulated Sum: is the amount established by the District as total compensation to the Design/Builder for the design and construction of the Project.
- 1.37 Substantial Completion: a point in time when (1) the Work or portion of the Work is sufficiently complete in accordance with the Contract Documents so that it can be used for its intended purpose, as evidenced by appropriate certification for occupancy by DSA, and (2) the Work or portion of the Work has been demonstrated to perform in accordance with the Criteria Documents and RFP performance requirements.

ED2 International
1426 Fillmore St, Suite 302
San Francisco, California 94115
Phone: (415) 474-1400

**Biotechnology & Science Building
New Construction – Design/Build Contract
SCCD Project No. 15-012
SOLANO COMMUNITY COLLEGE DISTRICT**

- 1.38 Work: all labor, materials, tools, equipment, and services required to be performed or provided by the Design/Builder pursuant to the provisions of the Contract Documents, as more fully described in Article 3, Design/Builder's Duties and Responsibilities.

ARTICLE 2 – GENERAL PROVISIONS

- 2.1 Scope of Work.
 - 2.1.1 The Design/Builder shall be responsible for the performance of all design and construction services, and provide all materials, labor, tools, and equipment necessary to complete the Work described in and reasonably inferable from the Contract Documents.
- 2.2 Execution, Correlation and Intent:
 - 2.2.1 The Agreement will not be binding on the District until approved by the District's Board of Trustees.
 - 2.2.2 Execution of the Agreement by Design/Builder is a representation that the Design/Builder understands and accepts the methodology under which the Work is to be performed and the requirements of the Contract Documents.
 - 2.2.3 The intent of the Contract Documents is to include all necessary criteria to establish the scope, quality and performance requirements for completion of the Work by Design/Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Design/Builder shall be required to the extent consistent with and reasonably inferable from the Contract Documents.
 - 2.2.4 Organization of the Contract Documents and arrangement of the drawings is not intended to control or guide the division or extent of work.
 - 2.2.5 Unless otherwise stated in the Contract Documents, words and phrases shall be interpreted consistent with construction and design industry standards for California community colleges.
 - 2.2.6 Work shall be accomplished in a workman-like manner by workers, laborers, or mechanics especially skilled in the class of work required. Any persons that the District may deem incompetent or disorderly shall be promptly removed from the Project by the Design/Builder upon written notice from the District, and shall not be reemployed for the duration of the Project.
 - 2.2.7 As a minimum, Work shall be in compliance with applicable laws, codes, ordinances and regulations, including but not limited to Title 24 of the California Code of Regulations. Higher levels of performance, material, and or function, may be required or reasonably inferred from the Contract Documents.
- 2.3 Use of the District's Contract Documents.
 - 2.3.1 The Contract Documents issued by the District are for use solely with respect to this Project. They are not to be used on other Projects, or for additions to this Project without the specific written consent of the District. The Design/Builder is granted limited license to use and reproduce applicable portions of the Contract Documents for use in the execution of the Work.

2.4 Conflicts in the Contract Documents.

2.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict. In the event of conflict in the Contract Documents, the precedence shall be as follows:

2.4.1.1. Addenda shall govern over other sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.

2.4.1.2. The Agreement shall govern over other Contract Documents except for specific modifications stated in amendments to the Agreement and Addenda.

2.4.1.3. In case of conflict between the Criteria Document drawings, Technical Specification Sections 2-48 and the Division 0 and 1 Specifications, the Design/Builder shall obtain written clarification from the District as to the governing document. Such request for clarification shall be submitted on the Request for Clarification (RFC) form provided by the Construction Project Manager.

2.4.1.4. In the case of conflict within the Criteria Document drawings, the following shall govern:

2.4.1.4.1 Schedules, when identified as such, shall govern over all other portions of the drawings.

2.4.1.4.2. Specific notes shall govern over all other notes and all other portions of the drawings, except schedules described in the preceding sub clause.

2.4.1.4.3. Larger scale drawings shall govern over smaller scale drawings.

2.4.1.4.4. Figured or numerical dimensions shall govern over dimensions obtained by scaling.

2.4.1.4.5. In the case of other conflict within the drawings, the Design/Builder shall obtain written clarification from the District as to the governing document. Such request for clarification shall be submitted on the Request for Clarification (RFC) form provided by the Construction Project Manager.

2.4.2 The District and Design/Builder acknowledge that the Contract Documents may differ in some respects from other documents included in the Design/Builder's Technical Proposal upon which Design/Builder based its proposal. The District and Design/Builder agree that the documents that provide the higher quality or performance shall supersede the other inconsistent versions.

2.5 Clarifications and Additional Instructions.

2.5.1 Conflicts, omissions, errors, interpretation or clarification, insufficiency of detail or explanation in the Contract Documents relative to the timely or material execution of the Work shall be immediately brought to the attention of the District in writing to request

interpretation, clarification, or furnishing of additional detailed instructions. Such questions shall be resolved and instructions to the Design/Builder issued within a reasonable time by the District. The District's decision shall be final and conclusive. Should the Design/Builder proceed with the work before receipt of instructions from the District, the Design/Builder shall make adjustments to conform to the District's instructions and Design/Builder shall be solely responsible for any resultant damage, defect or added cost.

- 2.5.2 The District may furnish additional detailed written instructions to explain the work more fully, and such instructions shall become, upon issuance, a part of the Contract Documents requirements. Should additional detailed instructions, in the opinion of the Design/Builder, constitute work in excess of the scope of the Work, the Design/Builder shall submit written notice to the District within ten (10) calendar days following receipt of such instructions, and in any event prior to commencement of the work on that scope of work. After considering the notice, and if justified in the District's judgment, the District will authorize the extra work.

ARTICLE 3 – DESIGN/BUILDER’S DUTIES AND RESPONSIBILITIES

3.1. Performance of Work.

- 3.1.1. Design/Builder shall be responsible for achieving the Occupancy and Final Completion Milestones dates in the Project Milestone Schedule as shown in Exhibit A. The schedule may be modified from time to time pursuant to the provisions of the Contract Documents.

3.2 Design/Builder’s Responsibilities.

- 3.2.1 Design/Builder further agrees to design and construct the Project in consideration for the District’s payment of the Stipulated Sum, in the amount of \$28,930,000.00, which may be adjusted pursuant to the provisions of this Agreement. The duties and responsibilities include, but are not limited to, the following tasks:

3.2.2 General Responsibilities

- 3.2.2.1. Use the District’s web-based project management system, as stipulated in Section 01 31 20 (Project Management Software) to track and manage the Project. Project Management Software shall be utilized to facilitate documentation and real-time exchange of Project information including, but not limited to, Requests for Clarification (RFCs), Requests for Information (RFIs), Substitutions, Deviations, Change Orders, Progress Payments, Submittals, Meeting Agendas, Meeting Notes, Design Decisions, Schedule(s), Drawings, etc. Design/Builder shall meet with the District’s Representative(s) to determine specific requirements for the implementation of Project Management Software.

- 3.2.2.2 Deliver to the District any and all design materials. These materials include, but are not limited to: calculations, preliminary drawings, construction drawings, shop drawings, samples, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

- 3.2.2.3. Design Phase Responsibilities -The Design Phase includes the preparation of the design and Construction Documents for the Project including, but not limited, to all necessary architectural design, specialty consultant services, civil engineering, structural engineering, mechanical engineering, plumbing and HVAC design, fire protection system engineering, landscape architecture, electrical engineering, security system design, telecommunications, data and low-voltage signaling design, geotechnical engineering, topographic and boundary surveying, interior design, modular furniture systems & fixtures, furniture & equipment coordination and space planning, and acoustical engineering. The Design Phase shall also include all plan check and permitting activities required for the construction activities.

3.2.2.4. Design Confirmation Phase

- 3.2.2.4.1. Following receipt of a Notice to Proceed, the Design/Builder shall

meet at least weekly with District and provide such information as necessary to inform District of the Project design status, and obtain District input and approval regarding design issues. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. The Design/Builder shall proceed to develop Design Confirmation documents. These documents shall depict the materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Criteria Documents.

- 3.2.2.4.2. Conduct value engineering analysis on selected building components to determine best value based on initial cost, life expectancy, cost of operation and maintenance. The value engineering analysis shall be performed concurrent with the Design Confirmation effort.
- 3.2.2.4.3. Prepare and update at each document submittal milestone detailed estimates of the cost of construction to substantiate that the Project will not exceed the stipulated sum.
- 3.2.2.4.4. Prepare and update monthly the detailed construction schedule to confirm Project delivery within the stipulated milestones.
- 3.2.2.4.5. Provide services to develop a final space program and prepare plan layouts to reflect the requirements of all tenant departments.
- 3.2.2.4.6. Participate in the Design Confirmation Conference with the District and its consultants within fourteen (14) calendar days of the Notice to Proceed, prior to the development of the Construction Documents. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. The deliverables are defined in the appropriate sections of the Contract Documents.

3.2.3.1. Construction Documents Phase

- 3.2.3.1.1. Prepare Construction Documents for the entire Project as required in Section 01 11 20 Design Services and Deliverables and in full compliance with all applicable laws, building codes, ordinances, and other requirements by regulatory authorities. The Design Builder shall meet at least weekly through the Construction Document phase. Meetings will be held biweekly at the offices of the District. On weeks where the meetings are not held at the offices of the District, the weekly meeting will be held via conference calls. The Construction Documents shall, at a minimum, comply with all applicable California State Building Codes, to include but not be limited to, Title 8 (Industrial Relations), Title 17 (Public Health), and Title 24 (Building Standards); and comply with all requirements of the DSA. The completed Construction Documents are to be delivered to the District and shall consist of the following:

Drawings – Provide one reproducible original, and ten (10) printed copies of all approved construction document drawings. Provide one copy of all approved construction document drawings on compact discs (CD) using Computer-Aided Design (CAD) software, using AutoCAD 2010.

Specifications – Provide original and ten (10) printed copies of approved specifications, bound and organized. Provide approved specifications on CDs for all sections for all work applicable to the Project, using a format that complies with the current edition of the Construction Specifications Institute's "Master Format" as directed by the District and in accordance with the following:

- 3.2.3.1.1.1. Electronic computer software in Microsoft Word, latest version for Windows.
 - 3.2.3.1.1.2. Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by California Public Contract Code section 3400.
 - 3.2.3.1.1.3. All CDs provided shall be indexed and clearly labeled to indicate files contained thereon and the date that the CD was produced. All electronic files shall use fonts and formats used by the District and the discs shall be formatted for easy printing.
- 3.2.3.2.2. Upon receipt of the Notice to Proceed, the Design/Builder shall instruct the Architect of Record to commence with the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality for California community colleges.

The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The Design/Builder shall be responsible to design, prepare construction documents and coordinate all disciplines for the entire Project including, but not limited to: all structural elements, building enclosure, roofing, waterproofing, site work, public right-of-way improvements, new parking lots, hardscape, landscape, utilities, and all building systems.

Responsibilities also include all design coordination necessary for accommodation of interior space construction, modular furniture coordination, finishes, furnishings, fixtures and equipment, and related infrastructure. Refer to paragraph 3.2.4, Construction Phase Responsibilities, for further modular systems furniture workstation requirements. The Project's design shall meet or exceed the design and performance criteria stipulated in the Criteria Documents.

3.2.3.2.3. The District's review of the Construction Documents shall be conducted within the time allotted in the approved Design/Builder's Baseline Schedule and according to the procedures set forth in Article 7, Schedule. Review meetings between the Design/Builder and the District to review the construction document packages shall be scheduled and held so as not to delay the Work. Such review shall not relieve the Design/Builder from its responsibilities under the Agreement. Such review shall not be deemed an approval or waiver by the District of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design/Builder and approved in writing by the District.

3.2.3.2.4. The parties acknowledge that inherent in a Design/Build concept, Criteria or otherwise, the production and review of construction documents may be a continuing process with portions thereof completed at different times. During Project start-up, the Design/Builder, in coordination with the District, will determine the number of design packages and stipulate the number in the Design/Builder's Project Management Plan. The Design/Builder's Baseline Schedule shall indicate the times for the District to review the completion of each such portion of the construction documents and a reasonable time for review of same. The minimum review time for major milestone submittals shall not be less than ten (10) working days.

3.2.3.2.5. The Design/Builder shall submit completed packages of the construction documents, in the quantities required by the District's Measure Q Bond Program, to all applicable authorities having jurisdiction (including but not limited to the Division of the State Architect), at the times indicated on the Design/Builder's Baseline Schedule.

3.2.3.2.6. The construction documents for hazardous material abatement efforts shall be of sufficient clarity and detail and shall be submitted to the District and other applicable authorities having jurisdiction for review.

3.2.3.3. Ownership of Design Materials

3.2.3.3.1. All materials and documents developed in the performance of this Agreement are the property of the District. The District shall have unlimited rights, for the benefit of the District, in all drawings, designs, specifications, notes, and other work developed in the performance of this Agreement, including the right to use same on any other District project at no additional cost to the District.

Design/Builder agrees to and does grant to the District a royalty-free license to all such data that Design/Builder may cover by copyright and to all designs as to which Design/Builder may assert any rights or establish any claim under United States patent or copyright laws. The Design/Builder for a period of three (3) years after completion of the

Project agrees to furnish and to provide access to the originals or copies of all such materials upon the request of the District.

The District agrees to make no demand on Design/Builder and indemnifies the Design/Builder for any damages caused by the District's use of such materials for any other District project that is not the subject of an agreement between the District and Design/Builder for such use.

3.2.3.3.2. The Design/Builder shall perform the work required under this Agreement with Computer-Aided Design (CAD) software, using the latest version of Revit, and shall deliver to the District the CDs containing the electronic files of all approved Construction Document drawings, in both Revit and AutoCAD 2010 format As well as PDF format. The format of electronic documents delivered to the District will be determined in conjunction with the District in order to facilitate retrieval of information.

3.2.3.3.3. The District does not assume any obligation to retain the Design/Builder's services or pay Design/Builder royalties of any type as to future programs.

3.2.3.4. Material Design Errors

The Design/Builder shall be solely responsible for all design errors, including, but not limited to: errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established in the Contract Documents and the Criteria Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Design/Builder from the Contract Documents and the Criteria Documents before commencing Design activities.

3.2.4 Construction Phase Responsibilities

The Design/Builder shall meet weekly at the field offices of the Design Builders and shall provide all labor, materials, equipment, temporary utility services and facilities necessary to construct the entire Project as required by the Contract Documents, including, but not limited to:

3.2.4.1 Prepare an existing conditions survey of all surrounding and adjacent properties, including streets and observable and recorded utilities, prior to the start of construction. The survey shall professionally document existing conditions of surrounding and adjacent properties using a professional video/filming service hired by the Design/Builder and approved by the District prior to the start of work. Video shall be in a digital format transferable onto a writable CD or transferable by electronic mail and contain detailed audio documentary describing property, location and existing conditions in areas of view. Design/Builder will endeavor to gain access to non-District owned properties as necessary. Design/Builder shall submit three (3) copies of the CD to the District ten (10) days prior to the start of construction.

3.2.4.2 The Design/Builder shall provide modular buildings for use as a Project Field Office for both the Design/Builder and the District's Project Management Team.

The field office shall be available and fully operational for the District's Project Management Team no later than forty five (45) calendar days after the date of execution of this Agreement, or by a date agreed to by the District, and shall be vacated in an "as found" condition within sixty (60) days after Final Completion.

The Design/Builder shall design, construct, and maintain all necessary improvements to operate the Project Field Office for the entire duration of the Project. The Design/Builder shall construct and install all improvements to current Code requirements. The size, configuration, and location of the Project Field Office must be approved in writing and in advance by the District. The District will require office space for two full time staff (Project Manager and Inspector of Record) and two hoteling spaces (Project Engineer, Special Inspector, District staff). Design Builder to coordinate with District IT staff for special District required equipment. One phone line will be required in District office area. Design/Builder shall provide Project Manager with a high quality camera. All other on-site facilities shall be as specified.

All costs such as tenant improvements, furniture, furnishings, equipment, utilities, express mail, janitorial services, and other services and amenities as listed in this Article shall be paid for by the Design/Builder. All costs are to be included as part of the stipulated sum, including, but not limited to: modular building leasing and installation; furniture, furnishings and equipment; utilities (including, but not limited to: water, power, sewer, high speed internet, phone and fax lines); express mail, document reproduction, drinking water, and janitorial services.

Office furniture, furnishings, equipment and other items required by the District shall include costs for maintenance agreements, repairs and/or replacement, including owner-furnished items.

The District's Project Management Team will be located in the same facility as the Design/Builder; however, the District's space must be segregated from the Design/Builder's space. The Project Field Office for the Design/Builder and District's Project Management Team shall be secured, alarmed and monitored to detect entry Section 01 52 00 (Construction Facilities) further delineates the field office requirements for the District's Project Management Team.

- 3.2.4.3 All portions of the construction Work awarded by the Design/Builder to a subcontractor not listed in the Design/Builder's proposal shall be awarded by the Design/Builder in conformity with the requirements of California Education Code Section 81704(c) and the District's bidding procedures. All subcontractors bidding on work to be awarded by the Design/Builder shall be afforded the protections contained in Division 1, Part 1, Chapter 4 of the California Public Contract Code Section 4100 et seq. The Design/Builder shall provide public notice of the availability of work to be subcontracted in accordance with state law applicable to the competitive bidding process and provide a fixed date and time on which the subcontracted work will be awarded. Any subcontractor awarded a subcontract for this Project in this manner is then afforded the protections as set forth in California Public Contract Code Section 4107.
- 3.2.4.4 If a discovery is made of items of archaeological interest on site during excavation activities, the Design/Builder shall immediately cease excavation in the area of discovery and shall not continue until directed by the District. Design/Builder shall cooperate with and provide access to the District's

archaeologist or the county coroner pursuant to California Health and Safety Code Section 7050.5. If a discovery is made of archaeological items during excavations, the Design/Builder shall comply with the requirements of Section 3.10, Site Conditions, and Article 8, Changes in the Work.

- 3.2.4.5 Design/Builder shall schedule and coordinate partnering sessions to be held every four (4) months during the Project. The Design/Builder shall include representation from the professional entities preparing the Construction Documents and the designated subcontractors as appropriate. District attendees will include representatives from the Project Steering Committee, Buildings & Grounds Department, Criteria Architect, and Construction Project Management consultants. The Design/Builder may invite representatives from other authorities having jurisdiction over the Project.

These Partnering Sessions shall include the following:

- 3.2.4.5.1. A Project Kick-off Partnering Session immediately following the Notice to Proceed.
- 3.2.4.5.2. A Project Close-out Partnering Session held at approximately 60% construction completion to address occupancy, punch list, commissioning and close-out activities.

These Partnering Sessions will be a series of professionally facilitated off-site meetings involving the representatives of the Project team for the purposes of team building and problem solving. The Design/Builder shall budget the cost of the partnering sessions within the Stipulated Sum. The Design/Builder and the District shall agree on the selection of the partnering facilitator and attendees of no more than fifty (50) people.

- 3.2.4.6 The Design/Builder shall prepare space plans showing all free standing furniture, fixtures, equipment and modular systems furniture (MSF) workstations for the Project. Design/Builder shall conduct furniture inventories of existing furniture and, in consultation with the District, shall indicate the re-use and placement of such existing furniture in the space plans.

The Design/Builder shall coordinate with the District's furniture vendor/installer, staff and stakeholders to confirm dimensions, details, materials and other pertinent information, and coordinate the design and development process with the District's furniture vendor/installer, staff and stakeholders for furniture fixtures, and equipment provided by the District. The Design/Builder will prepare fully dimensioned floor plans including clear dimension requirements, furniture, fixture, and equipment requirements including work surfaces, storage units, computer related components and other accessories.

The District's furniture vendor/installer will utilize the Design/Builder's drawings to prepare installation drawings, which will be reviewed and approved by Design/Builder for conformance to the space plan drawings. The Design/Builder will make available loading dock and elevator operators as needed to support the District's furniture vendor/installer delivering, distributing, and installing the furniture, fixture, and equipment components. Upon installation of the furniture, fixture, and equipment, Design/Builder shall install and connect the necessary

telecommunications cable within the MSF workstations, and connect the electrical power to the MSF workstations as required.

3.2.4.7 The Design/Builder will assist the District in planning and implementing a coordinated Move-In and Occupancy Plan that will include a Move-In Schedule indicating the critical activities for relocation of all personnel that will occupy the Project. The plan will be developed by the District, in conjunction with the District's consultants, moving companies, furniture vendor/installer, telecommunication companies and others. The Move Schedule will include at a minimum:

- (1) mobilization;
- (2) move management;
- (3) pre-move activities including MIS/Telecommunications pre-installation and testing activities;
- (4) move-in dates including building protection; and
- (5) post move-in activities (i.e. punch-list coordination and follow-up).

Design/Builder shall provide all labor necessary to assist the District in managing the process for scope and schedule for FF&E relocation, including elevator operators, electricians, plumbers, furniture installer/vendors, temporary protection of finishes, etc.

3.2.4.8 The Design/Builder shall be required to take daily job site photos with a high quality camera. These photos are to be properly filed in the project management system (EADOC). The Design/Builder shall provide a fixed webcam mounted appropriately for good visibility throughout the duration of the construction. The requirement for a professional photographer to take construction pictures is modified to make the requirement for professional pictures at the completion of the project only. These pictures are to be provided to the District and the Criteria Architect. The Design/Builder shall submit digital copies of color photographs of the building and project site, and shall be comprehensive and sufficient to document all major components of the project. Design/Builder shall not replace the photographer without the District's approval. The Design/Builder shall require the photographer to retain the digital copies for at least four (4) years following Date of Substantial Completion.

Except as otherwise specifically approved by the District, Design/Builder will prepare and submit the photographs monthly from groundbreaking through Project completion, within three (3) calendar days of the date of the Design/Builder's application for progress payment. To the maximum extent practicable, Design/Builder will make photographs at approximately the same time of day throughout the progress of the work. When inclement weather is anticipated, Design/Builder will consult with the District to determine acceptable alternative arrangements.

Design/Builder will identify each location by word description, by marked drawing, or by such other means as acceptable to the District, to enable future photographs to be taken from the same position. When so directed by the District, because of the stage of construction, Design/Builder will change one or more of the locations to new locations inside or outside the buildings. Design/Builder will make each photograph clear, in focus, with high resolution and sharpness, and with minimum distortion. Design/Builder will provide a live

webcam, compatible with and viewable from the District website. The cost of this webcam shall be included in the stipulated sum.

3.3 Standards of Performance.

The Work on the Project shall be performed in accordance with the professional standards and quality of care applicable to Projects, buildings or work of similar size, complexity, quality and scope constructed within a similar California environment.

3.3.1 The Design/Builder shall assign **Kyle Glankler** to be the Project Manager. The Design/Builder shall make assignments of consultants and subcontractors as detailed in the approved staffing plan, attached hereto and incorporated herein as Exhibit "E".

The Design/Builder may make additions or substitutions to personnel and responsibilities provided they are suitably qualified and approved in advance by the District. In the event that personnel assigned by the Design/Builder fail to meet the professional standards required, are persistently uncooperative or violate any provision of the Contract Documents Design/Builder shall substitute such personnel upon District's request. Once notice of such request has been received, the Design/Builder shall have twenty (20) business days to substitute such other personnel as approved by the District.

3.3.2 The Design/Builder shall employ full-time, competent on site Project management, including but not limited to the Project Manager or superintendent(s), who shall be in attendance at the Project Site during the construction of the Project. The Project Manager shall represent the Design/Builder and communications given to and by the Project Manager shall be as binding as if given directly to and by the Design/Builder. The Design/Builder shall confirm all communications in writing.

3.3.3 At any time when the Project Manager is absent from the Project Site, either when work is being performed or when no work is being performed, the Project Manager, or his or her designated representative acceptable to the District, shall be readily reachable and available for consultation at the Project Site at any time.

3.4 Applicable Laws and Codes.

The Design/Builder shall comply with all applicable laws, codes, and ordinances and shall give notices as applicable. Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the work and shall secure and pay as part of the Stipulated Sum, for all plan check and permits fees, licenses and inspections required, including any fees charged by DSA. Notwithstanding the foregoing, the DSA Project Inspector and the third party special inspection and materials testing laboratory services will be paid for by the District.

3.4.1 The Design/Builder shall comply with the current adopted edition of the California Building Code ("CBC"), including any updates up to the date the Design/Builder submits the Project to DSA for plan check. Whenever the Contract Documents require higher standards than the minimum required by applicable laws, the Contract Documents shall take priority. To the extent there is a change in one or more applicable laws after the Design/Builder has submitted the Project for plan check, and such change has the effect of increasing the cost or time of performance of the Work, then such change may be the subject of a Change Order. Nothing in the Contract Documents shall be construed to permit work not conforming to applicable laws.

- 3.4.1.1 Design/Builder shall follow the procedures in DSA PR 13-01 Construction Oversight Process and DSA PR 13-02 Project Certification Process in effect at the time that the Notice to Proceed is issued. The applicable DSA procedures are incorporated herein.
 - 3.4.2 Design/Builder shall submit for review to the District and to other authorities having jurisdiction required calculations and other materials demonstrating the energy use and the life-cycle costs of proposed systems and sustainability as required by Education Code Section 81703(c)(2)(C). The Design/Builder shall demonstrate that all building systems and equipment are selected on life-cycle costs analyses.
 - 3.4.3 No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Design/Builder shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials, including, but not limited to, submission of form DSA 156 (or the most current version) to the Project Inspector at least 48 hours in advance of the commencement and completion of construction of each and every aspect of the Work. Inspection of Work shall not relieve Design/Builder from an obligation to fulfill this Agreement. Project Inspector(s) and the DSA are authorized to suspend work whenever the Design/Builder and/or its subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Design/Builder shall instruct its subcontractors and employees accordingly.
- 3.5 Permits, Fees and Notices.
 - 3.5.1 Unless otherwise provided in the Contract Documents, the Design/Builder shall be responsible for required permits, governmental fees, licenses, registrations, inspections, approvals, notices and actions necessary to complete the Work and to prepare all documents customarily required for regulatory agency approvals, including DSA. Design/Builder shall be responsible for the cost of any permit necessary and such cost shall be included in the Stipulated Sum. Design/Builder shall be responsible for the cost of all other permits, fees and licenses required for the proper execution and completion of the Work and such appropriate costs shall be included in the Stipulated Sum.
 - 3.5.2 Design/Builder shall promptly notify the District, in writing, of variances observed between the Contract Documents and applicable laws. If no notice is provided to the District, the Design/Builder shall bear responsibility for any costs for work performed known to be contrary to applicable laws.
 - 3.5.3 Design/Builder is subject to all laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon District property and shall be solely responsible for meeting these requirements.
 - 3.5.4 Design/Builder shall pay any site de-watering fees and will cooperate with the District in any reasonable measure to limit the quantity of de-watering. It is not anticipated that this site will require extensive de-watering from underground water sources during construction beyond what would be weather related de-watering. If extensive de-watering is required caused by unforeseen conditions. Then the Design Builder shall comply with the requirements of Section 3.10, Site Conditions and Article 8, Changes in the Work.

- 3.5.5 Design/Builder shall assume responsibility for all utility assessments and connection fees levied by all utility service providers. In addition, Design/Builder shall coordinate all applications with the District to ensure the lowest cost, including utilizing any special rate structures available to the District. A CATV system is not required by the District's revised design standards as of August 5, 2015.

3.6 Use of Project Site.

- 3.6.1 Design/Builder shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents.
- 3.6.2 Design/Builder shall perform no operations of any nature on or beyond the limits of the Work or premises, except as such operations are authorized in the Contract Documents, or authorized by the District.
- 3.6.3 Design/Builder shall provide and maintain a temporary construction fence and suitable temporary barriers to prevent public entry; protect the work and existing facilities, persons, trees and plants from damage or injury from construction operations, or trespassers. Temporary barriers shall be maintained in a structurally sound condition and neat appearance.
- 3.6.4 Should regulatory requirements necessitate construction of temporary barriers, barricades, or pedestrian walkways not indicated or specified, Design/Builder shall construct such barriers at no increase to the Stipulated Sum. If required, Design/Builder will paint such items in a color selected by the District.

3.7 Cutting and Patching

- 3.7.1 Design/Builder shall be responsible for all cutting, fitting or patching required to complete the Work, and comply with the requirements of Section 01 73 29 (Cutting and Patching).
- 3.7.2 Design/Builder shall not damage or endanger the existing property or facilities, including but not limited to utilities, by cutting, patching or otherwise altering the construction, and shall not cut nor otherwise alter the construction without prior written consent of District.

3.8 Cleaning

- 3.8.1 Design/Builder shall keep the Project Site safe and surrounding areas free from waste materials and/or rubbish caused by operations under the Agreement and at other times when directed by the District. At all times while finish work is in progress, floors shall be kept clean, free of dust, construction debris and trash. Prior to issuance of the Certificate of Final Completion, Design/Builder shall remove from the Project Site the Design/Builder's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project site thoroughly clean, and ready for the SCCD's final inspection, complying with the requirements of Section 01 77 00 (Cleaning and Closeout Procedures).
- 3.8.2 If Design/Builder fails to clean up as provided in the Contract Documents, the District may do so and the cost thereof deducted from the final payment due to Design/Builder.

3.9 Site Availability.

- 3.9.1 The District shall turn over the Site to the Design/Builder as described in the Notice to Proceed and as further described in EXHIBIT A – PROJECT MILESTONE SCHEDULE, at which time the Design/Builder shall be obligated to take control and responsibility. The Design/Builder shall provide the District, Construction Project Manager and other District consultants with continuous access to the Site.
- 3.9.2 Temporary parking facilities shall meet all applicable regulatory requirements applicable to design and construction. Design/Builder shall be responsible for all permits, design, and construction required including, but not limited to lighting, access, signage, handicap accessibility, and maintenance. At the end of the Project, all temporary parking and utilities shall be removed and those areas of the Project Site restored to its previous condition.
- 3.10 Site Conditions.
- 3.10.1 The Design/Builder represents that it has taken the necessary steps to ascertain the nature, location and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as:
- (a) conditions bearing on transportation, disposal, handling and storage of materials;
 - (b) the availability of labor, water, power and roads;
 - (c) normal weather conditions;
 - (d) physical conditions at the Site;
 - (e) the conditions of the ground; and
 - (f) the character of equipment and facilities needed prior to and during the performance of the Work.
- 3.10.2 To the extent the Design/Builder encounters subsurface conditions or hazardous materials which differ materially from that actually known by the Design/Builder, or from those ordinarily known to exist or could have been reasonably discovered within the time permitted during the Request for Proposals, or generally recognized as inherent in the area, then notice by the Design/Builder shall be immediately given to the District, before conditions are disturbed, and in no event later than two (2) business days after the first observance of the conditions. If such conditions could not have been reasonably identified by Design/Builder's site investigations and available existing data, and the Design/Builder incurs significant additional costs or delays as a result of such concealed conditions, such conditions may be the subject of a Change Proposal.
- Should any existing utilities or services be disturbed, disconnected or damaged during construction, the Design/Builder shall be responsible, at no additional cost or time to the District, for all expenses and consequential damages of whatever nature arising from such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.
- 3.10.3 The Design/Builder is responsible for foreseeable site conditions and hazardous materials to the extent described in the Contract Documents and/or could be reasonably inferred by Design/Builder based on its experience and expertise on similar Projects in similar areas.
- 3.11 Hazardous Materials.

The Design/Builder agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the

Project as can be reasonably implied from previous testing and inspections of the site included in the Request for Proposal and the reference documents. Design/Builder shall comply with the requirements of Section 01 88 20 (Miscellaneous Facility Decommissioning Procedures Requirements).

Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered by the Design/Builder before submitting its Proposal, may properly be the subject of a Change Proposal. The District agrees that the Design/Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

- 3.11.1 "Hazardous materials" means any substance, the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the District; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design/Builder or the District; or as defined in the California Health and Safety Code.
- 3.11.2 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentality's of the State of California and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.
- 3.11.3 The indemnification provision of the Agreement, Paragraph 12.2 Indemnification, is applicable to this paragraph in its entirety.
- 3.12 Shop Drawings, Product Data, Samples, Materials, and Equipment.
- 3.12.1 Shop drawings means drawings, submitted to Design/Builder by, subcontractors, manufacturers, supplier or distributors showing in detail the proposed fabrication and assembly of building elements and the installation (i.e., form, fit, and attachment details) of materials or equipment.

- 3.12.2 Design/Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design/Builder's construction documents, and shall indicate its approval thereon as evidence of such coordination and review.
 - 3.12.3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
 - 3.12.4 Prior to placement of material orders or start of component fabrication, the Design/Builder shall submit to the District all shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products. The Design/Builder is to issue a submittal schedule to the District for comment and the District shall designate the submittals that the Design/Builder is to submit to the District to review for contract compliance. The Design Professional in Responsible Charge (AOR) and Engineer of Record (EOR) approve submittals, the District does not approve submittals, but will review submittals for contract compliance.
 - 3.12.5 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the District.
- 3.13 Field Engineering.
- 3.13.1 The Design/Builder shall retain and pay expenses of a qualified civil engineer or land surveyor to establish on the Site the required reference points and bench marks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California. Design/Builder shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed.
 - 3.13.2 The Design/Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.
 - 3.13.3 Design/Builder shall follow best practices, including but not limited to pot holing to avoid utilities. District shall not be liable for any claim for allowances because of Design/Builder's error, failure to follow best practices, or negligence in acquainting itself with the conditions at the Site.
 - 3.13.4 Design/Builder shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Design/Builder shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

3.14 Geotechnical Data and Existing Site Conditions.

3.14.1 The District has provided the Design/Builder with preliminary geotechnical data and site conditions, and Title Reports that are included in the Reference Documents section of the Request for Proposals. These documents are provided "for information only". Design/Builder shall be responsible to verify the accuracy of the information provided and, at its cost, obtain any additional measurements, verifications, or supplemental geotechnical report or land survey required to perform their work.

3.14.2 Design/Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work and provide a drawing that documents these verified conditions as part of their Construction Documents.

3.14.3 The Design/Builder shall obtain, and pay for, the services of geotechnical engineers licensed in the State of California and other consultants to provide services deemed necessary by the Design/Builder. Such services may include reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional interpretations and recommendations thereof.

3.14.4 By executing this Agreement, Design/Builder agrees that District has responded to and resolved any conflict, error or ambiguity in the Existing Conditions data and Contract Documents that Design/Builder has brought to District's attention. During performance of the Agreement, Design/Builder will be charged with knowledge of all information that it should have learned in performing its required pre-construction services and pre-construction investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design/Builder should have known as a part of this Work. Design/Builder shall be responsible for the resultant losses, including, without limitation, the cost of correcting defective work.

3.15 Meetings and Reports.

3.15.1 Prior to commencement of the Work, the Design/Builder shall attend a Project Kick-off meeting, at a time and a place selected by the District's Representative, to discuss procedures to be followed during the course of the work. Design/Builder shall follow the procedures as set forth by the District's Representative and as provided in the Design/Builder's procedure manual to be supplied at the Kick-off conference. The purpose of the meeting will be to introduce the District's key personnel and to review the contract provisions and any other items pertaining to the Project.

3.15.2 Once a week, or at such interval as mutually agreed to by the parties, the District's Representative will meet with the Design/Builder to review the overall Project progress, the status of the design and/or construction, and to discuss any problems that may arise. Design/Builder and its Architect shall attend all progress meetings. Subconsultants, subcontractors and vendor representatives shall attend the progress meetings as appropriate to the particular stage of the work.

3.15.3 Each month the Design/Builder shall attend a payment meeting with the District's Representative to agree on the percentage of the work completed during the current month to establish an amount to be requested in the Application for Payment.

- 3.15.4 The Design/Builder shall prepare and submit to the District, during design completion, the construction document phase, and the construction phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the District. One (1) bound copy and one (1) electronic copy of the Reports shall be furnished at the time of submission of each monthly application for payment. In addition, Design/Builder shall post electronic copies of the Report on the Project Management Software System (see Section 01 31 20 Project Management Software). The monthly report shall also set forth the Design/Builder's projected progress for the forthcoming month.
- 3.15.5 Thirty (30) days prior to the estimated final completion, the Design/Builder shall hold a meeting to review maintenance manuals, guarantees, warranties, close-out submittals, bonds, and service contracts for materials and equipment. Design/Builder shall also implement repair and replacement of defective items, and extend service and maintenance contracts as desired by the District.
- 3.16 Other Reports.
- 3.16.1 The Design/Builder will cooperate with the District, and as may be requested, assist in preparing periodic Project reports required by the District's Board of Trustees, the District's Citizens' Bond Oversight Committee, or other District committees or boards.
- 3.17 Notices of Labor Disputes.
- 3.17.1 If Design/Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, Design/Builder shall immediately give notice including all relevant information to the District. Design/Builder shall refer to the Project Labor Agreement for additional requirements.
- 3.17.2 Design/Builder agrees to insert the substance of this Article including this Clause in any subcontract to which a labor dispute may delay the timely performance of the Work, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay, by any actual, or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Design/Builder, as the case may be, of all relevant information concerning the dispute.
- 3.18 Guarantee.
- 3.18.1 The Design/Builder unconditionally guarantees the building systems and equipment, including but not limited to the fire and life safety systems and equipment, were installed and will work in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Final Completion. For such equipment or building components started in operation prior to Final Completion, the Design/Builder's guarantee shall, be in force for two (2) full years after Final Completion is declared by the District notwithstanding the components operation began prior to the District's declaration of Final Completion. The completion of LEED Certification and/or other incidental administrative completion items identified by the District shall be completed no later than six (6) months following the date for final completion.

The Design/Builder shall repair or replace any and all guaranteed building systems and equipment, including but not limited to the specialty equipment, fire and life safety

systems and equipment, together with any adjacent work that may have been damaged or displaced by the guaranteed systems or equipment, that may be defective in its workmanship or material or becomes inoperable within the guarantee period specified in the Contract Documents, without any expense whatsoever to the District; ordinary wear and tear excepted.

- 3.18.2 The Design/Builder further agrees, within seven (7) days after being notified in writing by the District, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design/Builder shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the District finds that the Design/Builder fails to perform any of the work under the guarantee, the District will proceed to have the work completed at the Design/Builder's expense and the Design/Builder will pay costs of the work upon demand. The District will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the Design/Builder's refusal to pay the above costs.
- 3.18.3 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate danger to health or safety of District employees, property, or invitees, the District may undertake, at the Design/Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design/Builder not being in accordance with the requirements of the Contract Documents.
- 3.19 Warranty.
- 3.19.1 The Design/Builder warrants, for a period of two (2) years from the date of Final Completion, to the District that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of the District.
- 3.20 Patents, Trademarks, and Copyrights.
- 3.20.1 The Design/Builder shall pay, as part of the Stipulated Sum, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design/Builder shall defend the District for all suits or claims for infringement of patent, trademark, and copyrights against the District, and shall indemnify, defend, and hold harmless the indemnified parties from any claims, causes of action, losses, or costs related to any and all matters arising in connection with Work on the Project (such costs to be paid as part of the Stipulated Sum), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified or required by the District, other than pursuant to the recommendation or suggestion of the Design/Builder; provided, however, if the Design/Builder has reason to believe that the design, process, or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the District with prompt written notice of the Design/Builder's belief, and the District has nevertheless elected to go forward with such design, process, or product so specified.
- 3.21 Taxes.

3.21.1 The Design/Builder shall pay all applicable taxes for the Work, or portions thereof provided by the Design/Builder, which were legally enacted as of thirty (30) days prior to the submission of the Design/Builder's Request for Proposal, whether or not yet effective or merely scheduled to go into effect. Any federal, state, or local taxes payable on any materials, labor or any other thing to be furnished by Design/Builder under the Contract Documents and in effect thirty (30) days prior to the submission of the Design/Builder's Request for Proposal shall be included in the Stipulated Sum and paid by Design/Builder.

3.22 Tests and Inspections.

3.22.1 The Design/Builder shall be responsible for providing a Quality Assurance Manager assigned to the Project, The Quality Assurance Manager shall be subject to approval by the District. The Design/Builder shall provide the District with the detailed qualifications of the Quality Assurance Manager, including but not limited to, a description of previous relevant project experience, and all training, licensing and certifications.

The Design/Builder shall be responsible for requesting and scheduling all tests and inspections necessary to ensure the quality of the Work are in accordance with the terms of the Contract Documents, including Section 01 45 00 (Quality Control) and Section 01 45 23 (Testing and Inspection). The Design/Builder shall at all times permit the District and its agents, inspectors, officers, and employees access to the Project Site and inspect the Work and such other locations where the Work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. When the Contract Documents require a portion of the work to be tested, such portion of work shall not be covered up until inspected and approved. The Design/Builder shall be solely responsible for notifying the District and the Inspector of Record where and when the work is ready for inspection and testing at least forty eight (48) hours in advance of the commencement and completion of construction of each and every aspect of the Work. The District shall provide inspectors to review and verify compliance of the Design/Builder's quality control and assurance teams with the contract documents.

Should any work be covered without the required testing or witnessed by the District, such work shall be uncovered at the Design/Builder's expense. Whenever the Design/Builder intends to perform work on Saturday, Sunday, or a legal holiday, the Design/Builder shall give written notice to the District of such intention at least forty eight (48) hours prior to performing the work, so that the District may make necessary arrangements.

3.22.2 If the District determines that portions of the Work require additional testing or inspection that is not included in the Contract Documents, the District will instruct the Design/Builder, in writing, to make arrangements for additional testing or inspection by an entity acceptable to the District, and the Design/Builder shall give forty eight (48) hours written notice to the District of where and when tests and inspections will be conducted so that the District may observe the procedures. The District will bear the costs except as provided in Subparagraph 3.22.1.

3.22.3 If procedures for testing, inspection or approval under Subparagraphs 3.22.1, 3.22.2 and 3.22.3 reveal failure of a portion(s) of the work to comply with the Contract Documents, the Design/Builder shall bear all costs and time made necessary by such failure(s) including those of repeated procedures and compensation for the District's services and expenses. The Design/Builder shall notify the District in writing within 24 hours of any test conducted by the independent testing agency that reveals work failing to comply with the Construction Documents. Inspection of Work shall not relieve Design/Builder from an

obligation to fulfill this Agreement. Project Inspector(s) and the DSA are authorized to suspend work whenever the Design/Builder and/or its subcontractor(s) are not complying with the Construction Documents. Any work suspension by the Project Inspector(s) and/or DSA shall be without liability to the District.

- 3.22.4 Required certificates of testing and inspection shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and delivered to the District within seven (7) days after each test.
- 3.22.5 Provide qualified on-site personnel to review and record daily construction activities, including subcontract activities, to determine adequacy of work and compliance with the approved plans and specifications. Provide written daily reports including, but not limited to: Project title, date of work, contract day, weather and conditions (temperature, wind, humidity, etc.), a description of the work in progress by corresponding schedule activity number(s), name of each subcontractor on site and work being performed, location of each trade on the Project site, total daily workforce per trade (including the Design/Builder's work force), material deliveries and quantities, equipment deliveries, potential delays and delays encountered, orders of instruction, unsatisfactory work, tests performed, safety concerns, visitors, and any other issues to document work performed and areas of concern.

Daily reports shall be signed by the Design/Builders' Quality Assurance Manager and Project Manager and submitted to the Construction Project Manager no later than 12:00 p.m. following the day work was performed. The Design/Builder shall separately provide written reports to the Construction Project Manager of any noted deficiencies in the installed work and corrective measures taken, and test reports of work being installed.

3.23 Air Pollution.

- 3.23.1 The Design/Builder and each subcontractor shall comply with all State, District and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Agreement. If there is a conflict between the State, District and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.

3.24 Unfair Business Practices.

The Design/Builder agrees, and will require all of the Design/Builder's contractors and subcontractors and suppliers to agree, to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract Documents or any subcontract there under. An assignment made by the Design/Builder, and all additional assignments made by subcontractors and suppliers, shall be deemed to have been made and will become effective at the time the District tenders Final Payment to the Design/Builder, without further acknowledgment of the parties.

ARTICLE 4 – DISTRICT’S DUTIES AND RESPONSIBILITIES

4.1 District’s Representative.

- 4.1.1 The District designates the Construction Project Manager to act on the District’s behalf with respect to the Project. Functions for which this Agreement provides to be performed by the District may be delegated by the District only by written notice to the Design/Builder from the District.

Design/Builder shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person’s authority.

4.2 Communication with the Design/Builder.

- 4.2.1 During the term of this Agreement, the District shall communicate with the Design/Builder, subcontractors, suppliers, and others performing any part of the Work only through the Design/Builder’s Authorized Representatives, as may be amended, subject to any approvals required by the District as described in the Contract Documents.

4.3 District’s Consent.

- 4.3.1 Whenever the District’s consent, review, satisfaction, or determination shall be required or permitted under the Contract Documents with respect to the Design/Builder’s performance of the Work, and this Agreement does not expressly state that the District may act in its sole discretion, such consent, review, satisfaction or determination shall not be unreasonably withheld.

The District shall cooperate fully with the Design/Builder and shall furnish decisions, information, and/or reviews required by this Agreement in a timely manner so as not to delay the Work, provided that the District shall have no less time for review than set forth in the Project Baseline Schedule as developed by the Design/Builder and accepted by the District.

4.4 District Review of Design Materials.

- 4.4.1 The Design/Builder shall be entitled to proceed with all or a part of the construction phase of the Project upon the District’s review of the design and construction documents, and any subsequent submittals or shop drawings, for conformance with the Contract Documents. If the District modifies or otherwise changes in a material way the Scope of Work called for in the construction documents, subsequent submittals or shop drawings, after such review for conformity, the Design/Builder shall be entitled to a Change Order in accordance with Article 8, Changes in the Work, of this Agreement. In no event shall a Change Order be issued to the extent such modification is due to the fault or neglect of the Design/Builder, or in the event the original submittals were not accompanied by annotations showing nonconformance with the Contract Documents, if any.

ARTICLE 5 – SUBCONTRACTING AND LABOR

5.1 Subletting and Subcontracting.

- 5.1.1 The Design/Builder shall adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code Section 4100. Subcontractor substitutions shall be in accordance with the Subletting and Subcontracting Fair Practices Act. Any violation may subject the Design/Builder to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act, including termination of this Agreement.
- 5.1.2 The Design/Builder shall be responsible for all Work performed under this Agreement. All persons engaged in the Project will be considered employees of the Design/Builder. The Design/Builder shall give personal attention to fulfillment of the Agreement and shall keep the Work under the Design/Builder's control. When any subcontractor fails to execute a portion of the work in a manner satisfactory to the District, the Design/Builder shall remove such subcontractor pursuant to the requirements of law immediately upon written notice from the District. Although Specification Sections, Part 4 of the Contract Documents, may be arranged according to various trades or general groupings of work, the Design/Builder is not obligated to sublet work in such manner. The District will not entertain requests to arbitrate disputes among subcontractors or between the Design/Builder and subcontractor(s) concerning responsibility for performing any part of the Work.
- 5.1.3 The District may not permit a subcontractor who is ineligible to bid or work on, or be awarded, a public works Project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

Any contract on a public works Project entered into between a Design/Builder and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by the Design/Builder on the Project shall be returned to the awarding body by the Design/Builder. The Design/Builder shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

- 5.1.4 All subcontractors performing any part of the Work shall be registered as a Public Works Contractor with the Department of Industrial Relations. The Design/Builder shall be responsible for removing, by requesting substitution or otherwise, any subcontractors who are not in compliance.

5.2 Subcontracting Relations.

The Design/Builder shall, by subcontractor agreement, require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Design/Builder by terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities which the Design/Builder, by the Contract Documents, assumes toward the District. Each subcontract shall preserve and protect the rights of the District under the Contract Documents with respect to the work to be performed by the subcontractor.

The subcontractor shall be allowed, unless specifically provided otherwise in the subcontract, the benefits of all rights, remedies and redress against the Design/Builder that the Design/Builder, by the Contract Documents, has against the District. The Design/Builder shall require each

subcontractor to enter into similar agreements with sub-subcontractors. The Design/Builder shall make available to each proposed subcontractor, prior to the execution of the subcontractor agreement, copies of those portions of the Contract Documents to which the subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed second and third tier subcontractors.

5.3 Subcontractor Progress Payments.

Within seven (7) days of receipt of each progress payment, the Design/Builder shall make payment to subcontractors in accordance with Business and Professions Code Section 7108.5.

5.4 Contract Assignments.

Performance of the Contract Documents may not be assigned except upon written consent of the District. Consent will not be given to an assignment that would relieve the Design/Builder or the Design/Builder's surety of their responsibilities under the Contract Documents.

5.5 Project Labor Agreement.

Design/Builder acknowledges and agrees that it is in the best interests of the Design/Builder and the District to avoid labor disputes, strikes, lockouts, work slowdowns, and work stoppages that would result in a delay to the construction of the Project. To that end, the District has negotiated a Project Labor Agreement (PLA) with various applicable building trade organizations. This Project will be subject to that PLA.

Before commencing with construction of the Project, Design/Builder shall acknowledge, by execution of a letter of assent provided by District, its commitment, and the commitment of its subcontractors, to abide by and follow the PLA.

5.6 Drug-Free Workplace Certification.

5.7 Nondiscrimination.

5.7.1 Equal Employment Opportunity. Design/Builder agrees for the duration of this Agreement that it will not discriminate against any employee or applicant for employment because of age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religious creed, sexual orientation or other protected status. The Design/Builder will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or disability. The Design/Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the Nondiscrimination Clause.

5.7.2 Disabled Non-Discrimination. This Project is subject to Section 504 of the Rehabilitation Act of 1973 as amended, (29 U.S.C. 794), the Americans with Disabilities Act of 1990 and all requirements imposed by the guidelines and interpretations issued in furtherance of the ADA. In this regard, the District, its Design/Builder and subcontractors will take all reasonable steps to ensure that disabled individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

5.7.3 Fair Employment and Housing Act Addendum. In the performance of this Agreement, the Design/Builder will not discriminate against any employee or applicant for employment because of age, ancestry, color, gender, marital status, medical condition, national origin,

physical or mental disability, race, religion or sexual orientation. The Design/Builder will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Design/Builder shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

5.8 Wages and Records.

5.8.1 Wage Rates

5.8.1.1. Pursuant to Sections 1770 and 1773 et seq. of the Labor Code of the State of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification, or type of workman needed to execute the Agreement, copies of which are on file and available upon request from the California Department of Industrial Relations.

5.8.1.2. The Design/Builder and any subcontractor under him, must not pay less than prevailing wage rates to all laborers, workmen and mechanics employed in the execution of the Contract. It is further expressly stipulated that the Design/Builder shall, as a penalty to District, forfeit two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic paid less than the stipulated prevailing rates for any work done under this Agreement by him or by any subcontractor under him and Design/Builder agrees to comply with all provisions of Section 1770 et seq. of the Labor Code.

5.8.1.3. Pursuant to Sections 1770 and 1773 of the Labor Code, the general prevailing rate of per diem wages applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work as currently set forth by the Director of the California Department of Industrial Relations and are a part of the Agreement. The Design/Builder is required to post a copy of these prevailing wages rates on the job site.

5.8.1.4 The District will not recognize any claim for additional compensation because of the payment by the Design/Builder of any wage rate in excess of the prevailing wage rate set forth as provided herein. The possibility of wage increases is one of the elements to be considered by the Design/Builder in submitting its Proposal and the Stipulated Sum and will not under any circumstances be considered as the basis of a claim against the District under the Agreement.

5.8.2 Wage Records

5.8.2.1 The Design/Builder and each subcontractor shall keep or cause to be kept an accurate record (certified payroll) showing the names and occupations of all laborers, workers and mechanics employed by him in connection with the execution of this Agreement or any subcontract executed under it and showing also the actual per diem wages paid to each of said workers, using the Public Works Payroll Reporting Form, including certification (DIR [Form A-1-131](#) or current version). The Design/Builder and

each subcontractor shall upload the certified payroll reports, and Statement of Employer Payments (DIR Form PW 26) directly to the California Department of Industrial Relations through the eCPR application using PDF to the DIR at <https://apps.dir.ca.gov/ecpr/DAS/AltLogin> or current application and URL weekly or within ten (10) days of any request by the District or the DIR .

5.8.2.2 Certified Payroll records shall be submitted with each Monthly Progress Payment request showing records within ten (10) days of the billing period. The Design/Builder shall provide all information reasonably required by Building Trade organizations.

5.8.2.3 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Design/Builder shall not be marked or obliterated.

ARTICLE 6 – PAYMENTS AND COMPLETION

6.1 Stipulated Sum.

In consideration of Design/Builder's obligations under the Contract Documents, Design/Builder will be paid the Stipulated Sum, in accordance with the payment procedures set forth herein. Except as otherwise provided in the Contract Documents, the Stipulated Sum will fully compensate Design/Builder for all of the services required under the Contract Documents, including the scope of services described in this Agreement.

6.2 Schedule of Values.

6.2.1 Within thirty (30) days of executing this Agreement and prior to the first Application for Payment, the Design/Builder shall submit to the District a Schedule of Values to complete the Project, supported by such data to substantiate the accuracy as the District may require. This Schedule of Values, unless objected to by the District within fifteen (15) days of receipt, shall be used as a basis for progress payments.

6.2.2 This Schedule of Values may be adjusted from time-to-time as the subcontracting plan is finalized.

6.3 Application for Payment.

The Design/Builder shall deliver to the District on the last business day of each month, or as otherwise agreed by both parties, an Application for Payment, in the format approved by the District, covering that portion of the Stipulated Sum allocated to the Work completed during each month and in accordance with the Schedule of Values. Invoices shall include the contract number, the Project number, the amendment number, Design/Builder's Federal Employer Identification Number (FEIN); and shall be submitted to the District in care of the District's Construction Project Manager.

Application for payment shall not be submitted more frequently than once monthly. The application for payment shall be signed by an officer or designee of the Design/Builder's firm. Provided the Application for Payment is received and approved by the District, the District shall make payment to the Design/Builder not later than thirty (30) days after receipt by the District of a payment application that is strict conformance with the requirements herein. With each Application for Payment, the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred in accordance with the Schedule of Values during such month and the percentage of completion of each category of Work.

6.4 Progress Payments.

The District shall pay the Design/Builder the progress payments through the period covered by the Application for Payment, less five percent (5%) retention. Upon receipt of an Application for Payment from the Design/Builder, the District will promptly review the same to determine if it is a proper Application for Payment based on the approved Schedule of Values. Any Application for Payment determined by the District not to be in strict conformance with the requirements herein set for payment shall be rejected, and returned to Design/Builder to be modified and processed per the Agreement. The District's reason(s) for rejection the Application for Payment shall be stated in writing.

6.5 Withholding of Payment.

- 6.5.1 Notwithstanding the provisions of Subparagraph 6.11.7, Final Payment, the District may withhold payment on account of an Application for Payment to the extent necessary to protect the District from loss because of:
- 6.5.1.1 Defective Work not remedied within forty eight (48) hours of written notice to Design/Builder;
 - 6.5.1.2 Third-party claims filed or reasonable evidence indicating probable filing of such claims;
 - 6.5.1.3 Failure of the Design/Builder to make payments of undisputed amounts to Design Build team consultants or subcontractors for labor, materials, or equipment;
 - 6.5.1.4 Failure to store and properly secure materials;
 - 6.5.1.5 Damage to the District caused by the fault or neglect of the Design/Builder to the extent not covered by insurance;
 - 6.5.1.6 Reasonable evidence that the Work will not be substantially completed within the Contract Time due to delay not considered a Compensable Event, and that the unpaid balance of the Stipulated Sum would not be adequate to cover liquidated damages for the anticipated inexcusable delay; or
 - 6.5.1.7 Design/Builder is otherwise in breach, default, or in substantial violation of any provision of this Agreement.
- 6.5.2 When the above reasons for withholding payment are removed, payment less retention shall be made for amounts previously withheld. In lieu of withholding the Design/Builder may deposit securities equivalent to the amount withheld in accordance with the procedures outlined in Article 6.10.

6.6 Payment for Stored Materials.

Unless otherwise provided in the Contract Documents, payment will be made on account for materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and/or if approved in advance by the District, and at the District's discretion on case-by-case basis, payments may be made for materials or equipment stored at some other bonded or otherwise secure location agreed upon in writing. Payments made for materials or equipment stored on or off-site shall be conditioned upon submission by the Design/Builder of bills of sale or such other procedures satisfactory to the District to establish District's title to such materials or equipment or otherwise protect the District's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off-site.

6.7 Payments as Trust Funds.

Any and all funds payable to the Design/Builder are hereby declared to constitute trust funds in the hands of the Design/Builder to be applied first to payment of claims of subcontractors, sub-subcontractors, architects, engineers, surveyors, laborers, material men or employees arising out of the described Work, to obligations for utilities furnished, tax imposed or such to the payment of premiums on security or other bonds, and to payment of insurance premiums relating to the Project and to payments and contributions to union pension plans and trust funds before application to any other purpose.

6.8 Payment Not a Waiver.

6.8.1 No payment hereunder, including Final Payment to Design/Builder, nor District's use or Beneficial Occupancy of the Work, shall release Design/Builder with respect to design, construction, workmanship, materials, equipment or machinery incorporated in the Work which is found to be defective, unsound or improper.

6.8.2 No payment made under the Design Build Agreement, shall be evidence of performance thereof, either wholly or in part, nor shall it be construed to be acceptance of defective work or improper material, or an approval of any items in any application for payment.

6.9 Waiver of Stop Payment Notice and Payment Bond Rights.

The Design/Builder shall attach to each application for payment, a waiver of all stop payment notice and payment bond rights as provided in Civil Code sections 8132, 8134, 8136 or 8138, with respect to all amounts requisitioned up to and including the then current requisition from the Design/Builder, which waiver of lien and payment bond rights covers all amounts requisitioned from the Design/Builder's subcontractors and all tiers and suppliers. Design/Builder shall make available copies of similar waivers from its subcontractors of all tiers and suppliers.

6.10 Retention.

The District will retain five percent (5%) of such estimated value of all Work completed (including design and other professional services) and a like percentage within limits established by law, of the value of materials so estimated to have been furnished, delivered and unused, as aforesaid, as part of security for fulfillment of the Contract Documents by the Design/Builder. The completion of the design work will be evaluated separately from the construction effort, and redirection of retainage will be evaluated accordingly. The District will pay monthly to the Design/Builder while executing the Work the balance not retained after deducting all previous payments and all sums to be retained under provisions of the Contract Documents.

Investment Alternative:

6.10.1 At the request and expense of the Design/Builder, and in accordance with Public Contract Code Section 22300, the District will make payment of the retention earned directly to a state or federally chartered bank in California, as the escrow agent.

6.10.2 The escrow agreement shall be substantially similar to the form "Escrow Agreement for Security Deposits in Lieu of Retention" found in Public Contract Code Section 22300..

6.10.3 Upon satisfactory completion of the Work, the Design/Builder shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the District, pursuant to the terms of the Escrow Agreement.

6.11 Payment and Completion.

6.11.1 The District reserves the right to occupy all or any part of the Project prior to completion of the Work, upon written notice. In this event, the Design/Builder shall be relieved of responsibility to the District for injury or damage that results from occupancy and use by the District. If, by reason of the District's occupancy, the premium for the Design/Builder's bodily injury and property damage insurance is increased, the Solano Community College District will reimburse the Design/Builder for the additional amount

necessarily incurred allocable to the area and the period of District's occupancy up to the date of Final Completion.

- 6.11.2 The District's occupancy does not constitute acceptance by the District of the Work, or any portion of the Work, nor will it relieve the Design/Builder of responsibility for correcting defective Work or materials found at any time before Final Completion, as set forth in Paragraph 3.18, Guarantee, or during the guarantee period after District's acceptance, as set forth in Subparagraph 6.11.6, Final Payment. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the District, then upon written request by the Design/Builder and by written consent from the District, the guarantee period will commence to run for a building or buildings from the date of the District's Beneficial Occupancy of a building or buildings.
- 6.11.3 Beneficial Occupancy. The District may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design/Builder, provided such occupancy or use is consented to by the insurer of the Project and the City of Vacaville Fire Chief, Notice of Substantial Completion, and a sign-off by the DSA Project Inspector is obtained. Such partial occupancy or use may commence whether or not the portion is complete, provided the District and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Immediately prior to such occupancy, the District and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Work. Unless otherwise agreed, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- 6.11.4 Upon Substantial Completion, the Design/Builder and the District shall collaboratively prepare a single comprehensive punch list. The Design/Builder shall then proceed promptly to complete and correct the punch list items. Failure to include an item on the punch list does not alter the responsibility of the Design/Builder to complete all work in accordance with the Contract Documents.
- 6.11.5 Upon completion of the punch list the District will make an inspection to determine whether the work has been completed. The Certificate of Final Completion shall be issued when all work is complete, and the District has formally accepted the Project.
- 6.11.6 Waiver of Claims. Acceptance of Final Payment by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of Final Payment.
- 6.11.7 Final Payment. Upon execution of the Certificate of Final Completion, providing no stop notices have been filed that have not been discharged or bonded, all amounts unpaid under the Design Build Agreement will be paid to Design/Builder. The District may withhold any reasonable sums payable to Design/Builder for the value of any Work, which the District found defective and ordered to be replaced. Final Payment of withholdings will be made when the Work is completed and/or defective Work replaced.

The District shall pay the remaining amount of the Stipulated Sum to the Design/Builder, after:

- 6.11.7.1 Acceptance and Close-out of the Work.

- 6.11.7.2 Resolution of all stop payment notices.
- 6.11.7.3 Execution by the Design/Builder of a release of all claims against the District pursuant to this Agreement.
- 6.11.7.4 Any and all other requirements in this Agreement that provide for satisfaction prior to final payment.
- 6.11.8 The Design/Builder is required to pay subcontractors from whom retention has been withheld within seven (7) days of receipt from the District of retention proceeds.

ARTICLE 7 – SCHEDULE

7.1 Contract Time.

The “Contract Time” is the period from receipt by Design/Builder of written authorization to begin the Project in the form of a Notice to Proceed from the District, until the scheduled date of Final Completion of the Work. The Design/Builder agrees to design and manage the Work in accordance with the Project Milestone Schedule and approved Baseline Schedule.

7.2 Completion.

By executing this Agreement, the Design/Builder confirms that the Contract Time and Milestones, as stated in the Project Milestone Schedule (Exhibit A) of the Contract Documents, are of the essence of this Agreement. The Design/Builder confirms that the Contract Time and Milestones allow a reasonable period of time for achieving the Certificate of Final Completion of the Work for the Project.

7.3 Schedules.

7.3.1 The Design/Builder shall be responsible for the development and maintenance of the Preliminary Baseline Schedule, the Baseline Schedule, the Progress Schedule and the Short-Term Schedule as described below. The Design/Builder shall submit, as indicated below, each schedule for the execution of the Work for the District's review and response. The District's review of and response to the schedule submissions shall not be construed as relieving the Design/Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Each schedule shall provide an interrelated means for defining activities involved in the planning, design, construction, and completion of the Project, their sequences and elapsed completion time from the date of the Notice to Proceed.

Each schedule shall utilize CPM (Critical Path Method) and shall be submitted in diagram and listed form. The computer generated schedules shall permit the Design/Builder to obtain several print sorts that aid in identifying various activities and requirements. Critical activities are those that require information or review by District, DSA, or the Construction Project Manager. The Design/Builder shall utilize Primavera Project Planner for Windows software (P6) by Primavera Systems, Inc.

The Design/Builder shall make its Authorized Schedule Representative available throughout the contract time and authorize that person to make scheduling commitments binding on the Design/Builder, as required to fulfill the scheduling requirements. The Design/Builder has submitted a preliminary schedule of the work (the “Proposal Schedule”) in bar chart form with its proposal, incorporating all critical path milestones identified by the District or known milestones and critical activities by the Design Builder, as well as the date for contract completion.

Design/Builder's representation that it could comply with the contract milestones, as demonstrated by its Proposal Schedule was an element of consideration in the District's award of the contract. Design/Builder's Proposal Schedule, as submitted with its Proposal and as modified during negotiations and accepted by the District, will be utilized as an interim contract schedule for all purposes until the Design/Builder's submittal of an acceptable Preliminary Baseline Schedule.

- 7.3.2 Design/Builder's Preliminary Baseline Schedule. Within fourteen (14) calendar days from the Notice to Proceed, the Design/Builder shall submit a Preliminary Baseline Schedule to the Construction Project Manager. This schedule shall show, but is not limited to, the general plan for the work to be completed in the first ninety (90) calendar days of the Agreement. The Preliminary Baseline Schedule shall contain, but not be limited to:
- 7.3.2.1 dates established in the District's Project Milestone Schedule;
 - 7.3.2.2 dates to acquire, set up and occupy the field office;
 - 7.3.2.3 dates of all mobilization activities on site, including notices and permits;
 - 7.3.2.4 dates detailing the planned design schedule, including submittals and reviews;
 - 7.3.2.5 anticipated dates for the start and completion of each stage of the design and construction process; and
 - 7.3.2.6 established milestone dates representing important events in the first 90 days and major milestones representing the completion of a group of activities in the first year.

The Preliminary Baseline Schedule shall be in the form of a CPM schedule. Design/Builder will provide all data files electronically by email or on compact disc or flash drive. The District and Construction Project Manager will review the Design/Builder's Preliminary Baseline Schedule for conformance with the Milestone Schedule and interrelationships with other activities requiring coordination that may be outside the scope of this Agreement. Upon completion of the review, the District may make recommendations to the Design/Builder as to adjustments to the Preliminary Baseline Schedule. These recommendations, if accepted by both the District and Design/Builder, will be incorporated into the development of the Design/Builder's Baseline Schedule.

- 7.3.3 Design/Builder Baseline Schedule. Within sixty (60) calendar days after the Notice to Proceed, the Design/Builder, after an initial meeting with the District, shall prepare a proposed Baseline Schedule for the Project. Recognizing that planning activities and design activities need time control to no less degree than construction activities, this schedule shall include, but not be limited to:
- 7.3.3.1 A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, resource-loading, cost loading and other information required for all design, pre-construction and construction activities. Resource loading will be by trade only for each activity. Cost loading will be accomplished through Level of Effort summary activities and not for each schedule activity. The intent of cost loading in this way is to provide a high level comparison of costs and project progress. Each activity shall have a minimum of one predecessor and one successor, with the exception of the first and last activities. The first activity will be denoted as "Notice to Proceed" and the last activity will be denoted as "Final Completion". Both these activities and Substantial Completion shall be shown on the baseline and monthly updates as Project Milestones as stipulated in the Agreement.
 - 7.3.3.2 The CPM format shall include all Contract Milestones defined in this Agreement and/or by the Design/Builder's proposed Baseline Schedule, as well as all engineering, fabrication and delivery dates required to support the Contract Milestones.

7.3.3.3 Activities indicating the start and finish dates for Project design, engineering, preparation of design development and construction documents, government agency plan check and District agency document review.

7.3.3.4 Activities to be integrated and shown in the CPM network shall include all milestones representing the Design/Builder's submittal dates and activities representing the District's review period of each submittal (which review period shall in no case be scheduled for less than ten (10) working days); Design/Builder's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the job-site of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems. A stand-alone submittal schedule will be provided in lieu of all submittals being enumerated in the CPM Project Schedule. Only major equipment and long lead item submittals will be included in the Project Schedule.

7.3.3.5 Activities showing the start and finish dates for all temporary works; all construction of mock-ups, and prototypes and/or samples.

7.3.3.6 Activities showing start and finish dates of owner-furnished items and interface requirement dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.

7.3.3.7 Activities showing start and finish of tenant programming (as appropriate), modular furniture, tenant improvement work and phased occupancy.

7.3.3.8 Close-out activities, including activities required for DSA certification.

7.3.3.9 The schedule shall consider all foreseeable factors or risks affecting, or which may affect the performance of the Work, including historical and predicted weather conditions, applicable laws, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.

7.3.3.10 The Design/Builder shall not use any "float suppression" techniques such as preferential sequencing or logic, special lead/lag constraints or unjustifiably over-estimating activity durations in preparing the schedule. ("Finish no later" constraints will be permissible for contract milestones only.)

7.3.3.11 The Design/Builder shall attach a narrative report which explains assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment in the work.

7.3.3.12 The Design/Builder's Authorized Schedule Representative shall formally present the detailed time-scaled CPM network for the duration of the Contract Time, demonstrating compliance with Contract Milestones and other requirements to the District clearly showing the critical path(s) of the Project (activities with ten (10) days of float or less) through completion.

7.3.3.13 Time units for all schedules shall be in calendar days, and no construction activity scheduled to commence within sixty (60) days of the Data Date shall have a

duration greater than seven (7) calendar days. Activities scheduled to start more than sixty (60) days of the Data Date shall have durations no greater than twenty (20) days.

- 7.3.4 The proposed Baseline Schedule shall be submitted and reviewed by the Construction Project Manager. Changes to the Baseline Schedule shall be reviewed with the Construction Project Manager prior to implementation. The District, at its sole discretion, may allow or require the Design/Builder to more fully detail portions of the Baseline Schedule at a later date.

The Construction Project Manager shall notify the Design/Builder of acceptance or of any necessary changes to the CPM network within ten (10) working days from the formal presentation, after which the Design/Builder shall make the required changes and resubmit it for acceptance within five (5) working days certifying in writing that all information contained in it complies with the contract requirements. Upon notification by the District of acceptance of the CPM network, the Design/Builder shall prepare computer plots (36" x 48") and printouts (8 1/2" x 11"), and complete its submission of the Baseline Schedule, which shall include the following:

7.3.4.1. Bar Charts generated using the format template provided by the District for:

- (1) Contract Milestones only;
- (2) Summary Level (sorted by craft/trade and area)
- (3) Detail (sorted by Early Dates)
- (4) Detail (sorted by Responsibility), and

7.3.4.2 Reports generated separately using the format template provided by the Construction Project Manager for:

- (1) Float (sorted low to high), and;
- (2) Resource histogram
- (3) Cost Summary and Cash flow Projection

7.3.4.3 Activities shall be coded to the activity code structure, provided to the Design/Builder by the Construction Project Manager in electronic format, as coordinated with the Bond Program Manager.

7.3.4.4 Provide all data files electronically by email or on compact disc or flash drive. Once accepted by the District, this schedule shall become the Baseline Schedule for the Project from which all future Progress Schedules will be generated.

- 7.3.5 Design/Builder Progress Schedule. Each month, in conjunction with the application for payment process, the Design/Builder and Construction Project Manager will conduct monthly reviews to determine: "planned" versus "actual" progress to date; compliance with contract submittal requirements, Contract Milestones and the accepted Contract Schedule; and determination of any changes to the work plan or implementation which must be made by the Design/Builder to comply with the Contract Schedule. The monthly schedule review shall include, at a minimum:

- 7.3.5.1 Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.
- 7.3.5.2 Review of “Planned” versus “Actual” work force allocations and progress for the preceding month.
- 7.3.5.3 Reviews of revisions added or deleted work and how those activities are being integrated into the Design/Builder’s work plan.
- 7.3.5.4 Review of Design/Builder’s interface and coordination with other work on the Project.
- 7.3.5.5 Review of all impacts to the work during the preceding month and to date, Design/Builder evaluation of those impacts and any recovery plans or remedial actions required to comply with the contract schedule.

Following the review of the above and all other information relevant to the progress of the work, the Design/Builder shall adjust its work plan as required to insure compliance with the Contract Schedule. The requirement for additional work force allocations, additional shifts, overtime, etc., will not entitle Design/Builder to additional compensation except to the extent expressly provided for by this Agreement or Change Order. The Contract Schedule shall be updated and submitted monthly for the Construction Project Manager’s review concurrent with each payment application submitted by the Design/Builder. The schedule update shall incorporate actual status to date and shall include the following:

- 7.3.5.5.1 Computer plotted time-scaled CPM network (36” x 48”) in color;
- 7.3.5.5.2 Bar Charts generated separately using the format template provide by the District for:
 - (1) Contract Milestones only (Baseline vs. forecast);
 - (2) Summary Level (sorted by craft/trade and area);
 - (3) Detail (sorted by Early Dates);
 - (4) Detail (sorted by Responsibility), and;
- 7.3.5.5.3 Reports generated separately using the format template provided by the District for:
 - (1) Variance (Baseline vs. forecast);
 - (2) Progress Curves (Baseline vs. Earned/Forecast);
 - (3) Float (sorted low to high); and
 - (4) Resource histogram
- 7.3.5.5.4 Provide all data files electronically by email or by compact disc or flash drive, and in hard copy, provided to the Design/Builder by the Construction Project Manager, as coordinated with the Bond Program Manager.

The Construction Project Manager will update the Master Schedule based on information provided in the Progress Schedule and distribute to the appropriate parties. The Progress Schedule will be the basis for the Short-Term Schedule.

- 7.3.6 Design/Builder Short-Term Schedule. The Short-Term Schedule shall address activities over an eight-week period. This schedule shall be maintained on a weekly basis and used as a means of compensating for negative effects of as many variables as possible. It shall be directly derived and electronically tied to the Master Schedule to enable rapid analysis of impacts of short-term schedule changes on the overall Project time line.

The Short-Term Schedule is a dynamic schedule whose activities can vary in both duration and precedence, but only between two sequential milestones as described in the accepted Baseline Schedule. Upon the District's acceptance of the Baseline Schedule, the Design/Builder shall begin providing an updated Short-Term Schedule for all participants at each weekly progress meeting or on a weekly basis if the District decides weekly meetings are not required. The interval format shall be a seven-week projection that shall include one (1) week prior, the week submitted, and six (6) weeks thereafter.

- 7.3.7 Schedule Revisions. The implementation of revised schedule logic and/or activity duration estimates for updating the contract schedule or other interim schedule whether furnished by the Design/Builder or the District do not constitute an extension of Contract Time, relaxation of Contract Milestones or basis for a change to the Stipulated Sum. Such revisions are for the purpose of maintaining the accuracy of the Contract Schedule's representation of the work to be accomplished and to present best duration estimates for work yet to be performed. In updating the Contract Schedule, the Design/Builder shall make no modifications to Activity ID numbers in the accepted contract schedule, schedule calculation rules/criteria, or the Activity Coding Structure provided by the Construction Project Manager without the explicit written permission of the District, which permission the District may withhold at its sole discretion.
- 7.3.8 Graphical Information. The Design/Builder shall prepare professional-quality graphical presentations of such scheduling and/or sequencing information as may be required to communicate its work plans or to effectively implement its coordination obligations under the contract.
- 7.3.9 District's Project Master Schedule. The purpose of the Project Master Schedule is to combine, coordinate, and track schedules produced by the Design/Builder and other Project team members throughout the course of the Project. The Project Master Schedule will also include Contract Milestone dates (Exhibit A) and the Design/Builder's Baseline Schedule, and shall be utilized by the District and the Design/Builder to identify any coordination issues and/or conflicts with other Project team members under separate contract. The Construction Project Manager shall be responsible for maintaining, updating and distributing the Project Master Schedule.

7.4 Float time.

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. All float time contained in the Work shall be shared between the District and Design/Builder, but its use shall be determined by the District. Under no circumstances shall Design/Builder be entitled to maintain a claim against the District for Design/Builder's failure to achieve Final Completion on a date earlier than that set forth on said Project Milestone Schedule as the same may be adjusted by approved Change Orders.

7.5 Compensable Event.

7.5.1 Notwithstanding anything in this Agreement to the contrary, in the event of a “Compensable Event,” as hereinafter defined, Design/Builder shall notify the District in writing within fourteen (14) days, setting forth all of the facts and circumstances relating to the Compensable Event, the expected financial impact on the Stipulated Sum, and any delays to the Contract Time. In the event the District agrees that it is a Compensable Event, the District shall have the option of either:

- (a) adjusting the Contract Time by the delay occasioned by the Compensable Event, if any, and increasing the Stipulated Sum by the financial impact of the Compensable Event, if any, or
- (b) reducing the scope of the Project so that the Stipulated Sum and/or Contract Time will not be exceeded. Design/Builder shall cooperate with the District, and provide information at no additional cost to the District, at the District’s request to identify appropriate program modifications to achieve the desired effect.

"Compensable Event" shall mean any one of the following:

7.5.1.1 material acts or omissions of the District’s agents or contractors (other than Design/Builder and/or its subcontractors) which are inconsistent with the terms of the Contract Documents and result in any delay or cost increase to the Project that results in an extension of the Contract Time;

7.5.1.2 a change in any applicable laws, ordinances, rules, codes, regulations, and lawful orders of governmental authorities relating to the Project after the date of execution of this Agreement by the Design/Builder, which results in a delay or cost increase;

7.5.1.3 acts of God events, as defined in Article 1;

7.5.1.4 labor disputes, strikes, lockouts, work slow-downs or work stoppages not resulting from Design/Builder’s failure to comply with any applicable labor agreement.

7.6 Costs of Compensable Event.

The increased costs occasioned by a Compensable Event shall be limited solely to the direct costs of Design/Builder and shall not include any consequential damages or lost profits. To the extent a Compensable Event increases the time of performance of either design or construction, an extension to the Contract Time shall be granted. Notwithstanding the forgoing, if the Compensable Event is of the type described by clause 7.5.1.4, immediately above, Design/Builder shall not be entitled to recovery of any costs for the first thirty (30) days of delay (in the aggregate), and shall be entitled to file a claim for recovery of costs thereafter, which claim shall be limited to general conditions and overhead costs only.

7.7 Liquidated Damages.

The District and Design/Builder agree that the District will suffer economic damage should the Design/Builder fail to complete the Project in the time required as shown in Exhibit A. In the event that there is a delayed occupancy, the result of such delay may require the District to rent temporary space or extend existing leases/occupancies, plus incur additional administrative costs. The District has determined that the estimated costs due to such delay is Six Thousand Dollars (\$6,000.00) per day of a delay in achieving Substantial Completion and a total of Three

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New Construction – Design/Build Contract
SCCD Project No. 15-012
SOLANO COMMUNITY COLLEGE DISTRICT**

Thousand Dollars (\$3,000.00) per day of delay in achieving Final Completion for the Project, by the date indicated in the Milestone Schedule shown in Exhibit A. Design/Builder agrees that this is a reasonable estimate of such costs.

The District and Design/Builder agree that such amount shall be treated as Liquidated Damages pursuant to Civil Code Section 1671, and that Design/Builder shall accordingly pay the District the sum of Six Thousand Dollars (\$6,000.00) per day of a delay in achieving each of the Substantial Completion and a total of Three Thousand Dollars (\$3,000.00) for each day by which the Certificate of Final Completion are delayed beyond the Contract Time set forth in the Project Milestone Schedule, whether the District's actual damages for such occupancy delays are more or less than the liquidated sum.

However, if the District has taken Beneficial Occupancy of any portion of the Project, said liquidated sum for the Certificate of Final Completion shall be reduced proportionately. For example, if the District takes 10% Beneficial Occupancy of the Project, the amount of the Liquidated Damages shall be reduced by 10%. This paragraph shall not limit the District's right to seek and obtain additional legal remedies or damages that result from breaches of the Contract Documents by the Design/Builder which do not stem from delay in occupancy. These additional damages include, but are not limited to, breach of contract or breach of warranties either express or implied, etc.

ARTICLE 8 – CHANGES IN THE WORK

8.1 General.

- 8.1.1 The District may order changes, including but not limited to, revisions to the Construction Documents, performance of extra work, and the elimination of work. Orders for such changes will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Design/Builder shall notify the District for their evaluation whenever it appears a change is necessary. Contract Time and Stipulated Sum will be adjusted by written Change Order for changes materially increasing or decreasing the time for performance or cost.
- 8.1.2 The Design/Builder, when ordered by the District, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the District records as specified in this Agreement.
- 8.1.3 If the Design/Builder fails to provide such records, the District's records will be used for the purpose of adjustment in Contract Time and Stipulated Sum.

8.2 Change Order.

- 8.2.1 Methods used in determining the value of a Change Order shall be based on one of the following methods:
 - 8.2.1.1. By mutual acceptance of a lump sum increase or decrease in costs. Upon the District's written request, the Design/Builder shall furnish a detailed estimate of increase or decrease in costs, together with cost breakdowns of labor, materials and equipment and other support data within the time specified in such request. Cost breakdowns shall include, but are not limited to: hourly labor rates and hours; materials quantities and unit costs; and equipment hourly rates and hours, as an example. The Design/Builder shall be responsible for any additional costs caused by the Design/Builder's failure to provide the estimate within the time specified.
 - 8.2.1.2. By the District, on the basis of the District's estimate of increase or decrease in the costs.
 - 8.2.1.3. By the District, whether or not negotiations are initiated as provided in this Agreement.
 - 8.2.1.4. By actual and necessary costs, as determined by the District, on the basis of supporting documents submitted by Design/Builder. Beginning with the first day and at the end of each day, the Design/Builder shall furnish to the District detailed hourly records for labor, construction equipment, and services; and itemized records of materials and equipment used that day in performance of the changes. Provide hourly rates for all include design professionals, contractor management staff both on site and office and other consultants performing services on this project. Such records shall be in a format approved by the District. Such records shall be signed by the Design/Builder and verified by the District.
 - 8.2.1.5 By a manner agreed upon by the District and the Design/Builder.

8.2.2 Allowable Costs. If an increase or decrease cannot be agreed to as set forth in Clauses 8.2.1.1 through 8.2.1.6, above, the method for determining the value of the Change Order shall be computed in the following manner:

8.2.2.1. Mark-Ups for Added Work.

8.2.2.1.1 Professional Services: Compensation for professional architectural/engineering services shall be chargeable not to exceed the rates agreed to between the District and the Design/Builder.

8.2.2.1.2. For work by Design/Builder. Design/Builder may add as mark-up to totals of authorized allowable costs, an amount not to exceed the following percentages:

- i. Labor: Fifteen percent (15%)
- ii. Materials and Equipment: Ten percent (10%)
- iii. For subcontractors and professional services performed under contract to D/B: Five percent (5%)

8.2.2.1.3 Subcontractors. Actual cost to the Design/Builder for Work performed by the Subcontractor. The Subcontractor will compute costs as follows, except that the aggregate mark-ups made as all subcontractor tiers must not exceed the following percentages:

- i. Labor: Fifteen percent (15%)
- ii. Material and Equipment: Ten percent (10%)
- iii. Bond: One percent (1%) of the total amount for change including mark-ups per 8.2.2.1.2, 8.2.2.1.3

8.2.2.1.4 For deleted work: When the District is entitled to a credit for deleted work the credit will include direct labor, materials and supervision plus overhead of the Design/Builder or subcontractor, as applicable for the deleted Work. Deleted overhead and reduction in bond must be computed at five percent (5%) of the direct labor, material and supervision.

8.2.2.1.5 For Change Orders that involve both added and deleted work, the Stipulated Sum will be adjusted based on the following computation: Costs before mark-ups of added and deleted work must each be separately estimated. If a difference between costs results in an increase to the Stipulated Sum, a mark-up for Added Work will be applied to the difference. If a difference in costs results in a decrease, then the mark-up for the deleted Work will be applied to the difference.

8.2.3 Direct Costs:

8.2.3.1 Labor

Cost for labor shall include any employer payments to or on behalf of the workmen for health, welfare, pension, vacation and similar purposes. Labor rates will not be recognized when in excess of those prevailing in the locality and time the work is being performed. The costs for all supervision including Project Manager, General Superintendents and Foremen will be included in the markups

established by the Contract. The only exception to this will be working foremen who perform actual manual labor. No labor charges will be accepted for engineering or proposal preparation.

These costs will be included in the markups established by the Contract. A breakdown of the payroll rates for each trade will be provided for all Change Orders fifteen (15) days after Notice to Proceed including the base rate, benefits, payroll taxes and insurance. Overtime and premium time pricing will only be allowed for labor which, based on mutual agreement, shall be performed after normal working hours. Unless otherwise agreed to by both parties, mechanical and electrical changes will be negotiated using productivity factors no greater than those listed in the following manuals:

- (1) Electrical: NECA Column 1 (Normal), Current Edition.
- (2) Plumbing and Piping: MCAA Discounted 30%.
- (3) HVAC: National Mechanical Estimator by Ottaviano, Current Edition.

8.2.3.2 Material

The District shall pay only the actual cost to the Design/Builder for the materials directly required for the performance of the changed work. Such cost of materials may include the cost of transportation and no delivery charges will be allowed unless the delivery is specifically for the changed work. If a trade discount by an actual supplier is available to the Design/Builder, it shall be credited to the District. If the materials are obtained from a supplier or source owned wholly by or in part by the Design/Builder, payment thereof will not exceed the current wholesale price for the materials. The term "trade discount" includes the concept of cash discounting.

If in the opinion of the District, the cost of the materials is excessive or if the Design/Builder fails to furnish satisfactory evidence of a cost to him other from the actual supplier, then, in either case, the cost of the materials shall be deemed to be the lowest current wholesale price at which similar materials are available in the quantities required. The District reserves the right to furnish such materials, as it deems advisable and the Design/Builder shall have no claims for cost or profits on materials furnished by the District.

8.2.3.3. Construction Equipment

The District shall pay only the actual cost to the Design/Builder for the use of equipment directly required in the performance of the changed work. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to the work for rental of such equipment and to return it to the source.

No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed work. Individual pieces of

equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment and no payment will be made therefore.

The rental rate for equipment will not exceed that as recommended by the lower of the rental rates established by distributors or equipment rental agencies or as contained in the Association of Equipment Distributors (AED) book in the locality for performance of the changes. For equipment owned, furnished, or rented by the Design/Builder no cost thereof shall be recognized in excess of the rental rates established by distributors or equipment rental agencies and/or the AED or any tier book in the locality for performance of the changes. The amount to be paid to the Design/Builder for the use of equipment as set forth above shall constitute full compensation to the Design/Builder for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs to the Design/Builder incidental to the use of the equipment.

8.3 Acceptance of Change Orders.

The Design/Builder's written acceptance of a Change Order shall constitute final and binding agreement to the provisions of it and a waiver of all claims in connection with it, whether direct, indirect, or consequential in nature. The District's form shall control, and no annotations or hand-written notes by Design/Builder shall be effective upon its execution.

8.4 Effect on Sureties.

All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of surety(s).

8.5 Covering and Uncovering of Work.

8.5.1 When inspections are required by the Contract Documents the Design/Builder shall notify the District two (2) working days prior to covering any work.

8.5.2 If a portion of the Work is covered prior to the District's review, it shall, if requested in writing by the District, be uncovered for the District's observation and replaced at the Design/Builder's expense without change in the Contract Time.

8.6 Correction of Work.

8.6.1 The Design/Builder shall promptly correct work rejected by the District or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed. The Design/Builder shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the District's services and expenses made necessary thereby.

8.6.2 Notwithstanding Paragraph 3.18, Guarantee, in the event of an emergency constituting an immediate hazard to the health or safety of District employees, property, or licensees, the District may undertake, at the Design/Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the Design/Builder not being in accordance with requirements of the Contract Documents.

8.6.3 The Design/Builder shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents, and are neither corrected by the Design/Builder nor accepted by the District.

8.6.4 If the Design/Builder fails to correct nonconforming work, as per Paragraph 3.18, Guarantee, the District may correct the nonconforming work in accordance with Paragraph 9.3, District Remedies. If the Design/Builder does not proceed with correction of such nonconforming work, within such time fixed by written notice from the District, the District may remove and store all salvageable materials articles and/or equipment at the Design/Builder's expense.

If the Design/Builder does not pay all costs of such removal and storage within fourteen (14) days after written notice, the District may, upon fourteen (14) additional days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds, after deducting costs and damages that would have been borne by the Design/Builder, including compensation for the District's services and expenses made necessary by it. If the proceeds of a sale do not cover all costs that the Design/Builder would have borne, the Stipulated Sum shall be reduced by the deficiency. If payments then or thereafter due the Design/Builder are not sufficient to cover such amount, the Design/Builder shall pay the difference to the District.

8.6.5 The Design/Builder shall bear the cost of correcting destroyed or damaged work executed by the District or separate contractors, whether fully completed or partially completed, which is caused by the Design/Builder's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

8.6.6 Nothing contained in this Paragraph 8.6, Correction of Work, shall be construed to establish a period of limitation with respect to other obligations that the Design/Builder might have in the Contract Documents. Establishment of the time period of two (2) year, as described in Paragraph 3.18, Guarantee, relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

8.7 Acceptance of Nonconforming Work.

If the District prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the District may do so instead of requiring its correction and/or removal, in which case the Stipulated Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment to the Design/Builder has been made.

8.8 Allowances.

Design/Builder shall include in the Stipulated Sum the amount of the allowance(s) as shown on the Proposal Form. Work performed ONLY at the determination and direction under allowances shall be documented by contractor and submitted to the Construction Manager per the requirements specified in Article 8 of the Agreement. Contractor shall include a separate line item(s) in Contractor's Schedule of Values with the value(s) of the allowance(s). At closeout of the contract, all funds remaining in the allowance(s) shall be credited to the District through a Change Order.

ARTICLE 9 – EVENTS OF DEFAULT AND TERMINATION

9.1 District Events of Default.

9.1.1 The following shall be considered the District Events of Default:

9.1.1.1 If the Work is stopped for a period of one hundred eighty (180) consecutive days through no fault of the Design/Builder for any of the following reasons:

- (1) The issuance of an order of a court or other public authority having jurisdiction;
- (2) An act of government, such as a declaration of national emergency, making material unavailable.

9.1.2 Non-payment by the District for approved design and approved work-in-place after 90 days of a properly submitted and approved invoice.

9.2 Design/Builder Events of Default.

9.2.1 The following shall be considered Design/Builder Events of Default:

9.2.1.1 If Design/Builder fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents and fails, after 72 hours notice from the District, unless otherwise agreed upon, to commence a cure to correct such failure or neglect and/or thereafter diligently pursue such cure to completion; or

9.2.1.2 If Design/Builder materially breaches this Agreement after notice from the District and fails, after seven (7) days' notice from the District to commence a cure to correct such breach and/or diligently pursue such cure to completion; or

9.2.1.3 If a custodian, trustee or receiver is appointed for Design/Builder, or if Design/Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due, or makes an assignment for the benefit of creditors, or if Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) days of its institution; or

9.2.1.4 If the Design/Builder changes its corporate identity in a manner different from that described in this Agreement due to merger, takeover, offer, sale or exchange of interest therein, dissolution, whether by operation of law or otherwise, and the change in interest is not approved in advance in writing by the District. In the event such a change does not have the effect of diminishing or impairing the Design/Builder's ability to perform the Work or its financial capabilities, such approval shall not be unreasonably withheld. The District shall have at least thirty (30) days' notice of such a change.

9.3 District Remedies.

9.3.1 Without prejudice to any other rights or remedies of the District, the following remedies shall be available to the District in the case of a Design/Builder event of default:

9.3.1.1 The District shall have the right to terminate this Agreement upon an additional seven (7) days' written notice to Design/Builder, provided that Design/Builder has not commenced a cure within such seven-day period.

9.3.1.2 The District may take possession of the Project site and of all materials, equipment, tools and construction equipment on site owned by Design/Builder.

9.3.1.3 The District may accept assignment of the construction subcontract and/or design subcontract.

9.3.1.4 The District may finish the Work by whatever reasonable method the District may deem expedient.

9.3.1.5 The District may seek such remedies as may be available under existing law.

9.4 Termination.

When the District terminates this Agreement as provided above, Design/Builder shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Stipulated Sum exceeds costs incurred by the District in finishing the Work, then such excess shall be paid to Design/Builder. However, if such costs exceed the unpaid balance of the Stipulated Sum, then Design/Builder shall pay the difference to the District.

9.5 Design/Builder Remedies.

The following remedy shall be available to Design/Builder in the case of the District event of default: Design/Builder may, upon seven (7) days' additional written notice to the District, terminate this Agreement and recover from the District payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and services rendered, including reasonable overhead and profit for the Work performed.

9.6 Multiple Remedies.

Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any event of default or acquiescence to it, and every such right and power may be exercised from time to time as often as may be deemed expedient.

9.7 Termination for Convenience.

The District may terminate this Agreement at any time for convenience if the District determines such termination is in the best interests of the District upon sixty (60) days' advance notice. Design/Builder is not entitled to recover lost profits, incidental or consequential damages in the event the District terminates this Agreement for convenience and subsequently rebids or otherwise completes the Project.

Any stop payment notices or charges encumbering the Project, or which are claimed to encumber the Project, other than those placed by or agreed upon by the District, shall be offset against whatever amount is determined to be owed to the Design/Builder.

9.8 Termination Payment.

In the event the District terminates this Agreement for convenience as set forth above, the District shall pay to the Design/Builder all funds due the Design/Builder for work performed up to the date of termination, plus all demobilization and close-out costs, including any penalties payable to subcontractors for early termination. All funds due pursuant to this Section, including unpaid retainage, shall be released within thirty (30) days of termination of the Agreement for convenience, subject to the provisions of Paragraph 9.7, Termination for Convenience.

9.9 Property Rights.

In the event of termination, all studies, reports, special forms, schedules, designs and any other written information pertaining to the Project shall become the District's property as provided in this Agreement.

9.10 Suspension of Work.

9.10.1 The District may order Design/Builder, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that the District determines appropriate for the convenience of the District.

9.10.2 If the performance of all or any part of the Work is for any period of time, suspended, delayed, or interrupted (a) by an act of the District in the administration of the Agreement, or (b) by the District's failure to act within the time specified in the Agreement (or within a reasonable time if not specified), or (c) for other reasons which Design/Builder is entitled to claim delay under the Agreement, Design/Builder shall provide notice according to the Agreement.

9.10.3 Design/Builder shall be entitled to an increase in the Stipulated Sum and the Contract Time to the extent the cost of performance of the Agreement or the time therefore is increased as a result of suspension, delay, or interruption by the District or as otherwise provided in the Contract Documents. However, no adjustments shall be made under this Article for any suspension, delay, or interruption to the extent that Design/Builder's performance would have been so suspended, delayed, or interrupted by any other cause for which Design/Builder would not be entitled to an increase in the Stipulated Sum or in the Contract Time.

9.11 Non-Compliance with Agreement Requirements.

In the event the Design/Builder, after receiving written notice from the District of non-compliance with any requirement of the Agreement, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the District shall have the right to order Design/Builder to stop all Work in the area affected until Design/Builder has complied with or has initiated such action as may be appropriate to comply within a reasonable period of time. Design/Builder will not be entitled to any extension of Contract Time or Stipulated Sum for any costs incurred as a result of being ordered to stop Work for such cause.

ARTICLE 10 – DISPUTES AND CLAIMS

10.1 Dispute and Claim Procedures.

10.1.1 When the Design/Builder and the District fail to agree whether or not any work is within the scope of Contract Documents, the Design/Builder shall immediately perform such work upon receipt of a written notice to do so by the District. Within fourteen (14) days after receipt of such notice, the Design/Builder may submit a written protest to the District, specifying in detail what particular Contract Documents were exceeded, and approximate change in cost resulting so that the District will have notice of a potential claim.

Failure to submit a protest within the specified period shall constitute a waiver of any and all rights to an adjustment in Stipulated Sum and Contract Time due to such work, and the Design/Builder thereafter shall not be entitled to adjustment of Stipulated Sum or Contract Time. For any such work that is found to exceed Contract Documents, there shall be an adjustment in Stipulated Sum and Contract Time on the same basis as any other change in the Work.

10.1.1.1 The Design/Builder shall provide supporting data and shall provide and maintain records of costs attributable to disputes in similar manner as for Change Orders in Article 8, Changes in the Work.

10.1.1.2 The District and the Design/Builder will make every reasonable effort to resolve the dispute prior to proceeding to the next step.

10.1.1.3 Either the District or the Design/Builder may call a special meeting for the purpose of resolving the dispute. Such a meeting will be held within seven (7) days of the written request.

10.1.1.4 If the dispute as to the Contract Documents has not been resolved, the Design/Builder shall, within fourteen (14) days after the special meeting, take one or more of the following actions:

10.1.1.4.1 submit additional supporting data requested by the District;

10.1.1.4.2 modify the initial dispute;

10.1.1.4.3 notify the District that the initial dispute stands as is; or

10.1.1.4.4 withdraw the dispute. Once withdrawn, the dispute cannot be reopened by the Design/Builder.

10.1.1.5 If the dispute has not been resolved within seven (7) days after the Design/Builder's action in response to section 10.1.1.4, another meeting may be scheduled, at the District's option, with senior management personnel of the District and the Design/Builder. The purpose of this meeting would be to resolve the dispute prior to proceeding to the action under Subparagraph 10.1.2, Dispute and Claim Procedures.

10.1.1.6 Any dispute not resolved by the above meetings shall be settled by the following procedure if the disputed amount is less than \$375,000. If the disputed amount is more than \$375,000, then the parties may proceed to

arbitration unless the District and the Design/Builder agree in writing to waive arbitration and proceed to litigation.

For any disputes \$375,000 or less, the following procedure shall apply: Claims by the Contractor in the amount of \$375,000 or less in the aggregate, and all other disputes between the parties relating to the Contract Documents or the Project in the amount of \$375,000 or less in the aggregate (even if such claims are not expressly covered by the terms and provisions of Section 20104 et seq. of the California Public Contract Code), excluding tort claims, shall be made and processed pursuant to the terms and provisions of, and the procedures outlined in, California Public Contract Code Sections 20104, et seq. (as may be amended or recodified from time to time). All mediations and arbitrations shall take place at a location selected by the arbitrator in the City of Vacaville, California.

- 10.1.2 If a dispute has not been resolved at the time of the SCCD's proposed Final Payment, the Design/Builder shall submit within thirty (30) days a claim along with detailed documentation required by Subparagraph 10.1.1, Dispute and Claim Procedures, for the SCCD's consideration. The Solano Community College District will render a written decision to the Design/Builder relative to the claim. The SCCD's written decision shall be final and binding on the party(ies). The Solano Community College District may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. If there appears to be a possibility of a Design/Builder's default, the Solano Community College District may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- 10.1.3 Maintenance of Existence. Design/Builder covenants that it will remain in existence during the term of the Design Build Agreement and for a period of time five (5) years after Final Completion of the Project (the "Corporate Maintenance Period"). The purpose for which Design/Builder shall remain in existence during the Corporate Maintenance Period is to assure the District that Design/Builder will be able, during the Corporate Maintenance Period, to address and/or pay claims by the District against the Design/Builder if the District deems the Design/Builder to be insufficiently capitalized to be able, on its own to carry out its obligations hereunder (financial or otherwise). In the event a guarantee of the Design/Builder is required by the District, from the date of this Agreement and during the remainder of the Corporate Maintenance Period, then the guarantee shall be in the form of Exhibit C, Design/Builder's Guarantee.

ARTICLE 11 – PROTECTION OF PERSONS AND PROPERTY

11.1 Safety of Persons and Property.

- 11.1.1 The Design/Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The District shall have no responsibility for initiating, maintaining and supervising safety of persons and property.
- 11.1.2 The Design/Builder shall take precautions for safety and provide protection to prevent damage, injury or loss to:
- 11.1.2.1 Workers working under the Agreement and other persons who may be affected by it;
- 11.1.2.2 The Work and materials and equipment to be incorporated in it, whether in storage on or off the Project site, under care, custody or control of the Design/Builder or the Design/Builder's subcontractors or sub-subcontractors; and
- 11.1.2.3 Other property at the Project site, or adjacent to it, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during the course of construction.
- 11.1.3 The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.
- 11.1.4 The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Contract Documents, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the District, other owners (other than the District) and users of adjacent sites and utilities.
- 11.1.5 The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of the Work. The Design/Builder shall employ properly qualified personnel for supervision of same.
- 11.1.6 The Design/Builder shall remedy damage and loss to property referred to in sections 11.1.2.2 and 11.1.2.3 caused in whole or in part by the Design/Builder, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Builder is responsible under sections 11.1.2.2 and 11.1.2.3. The foregoing obligations of the Design Builder are in addition to the Design/Builder's obligations under Paragraph 12.3, Indemnification.
- 11.1.7 When conditions of the Work, in the judgment of the District, present unreasonable risk of injury or death to persons or property damage, the District, may direct the Design/Builder, at the Design/Builder's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.

11.1.8 The Design/Builder, at the Design/Builder's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

11.1.9 Design/Builder shall take all precautions to protect the Work, and all equipment, materials, and supplies related to the Work protected from trespassers, vandals, and protestors, including but not limited to hiring security personnel to guard and patrol the Project site throughout the duration of the Project's schedule until Final Completion is accomplished. Design/Builder shall bear the costs of such security.

11.2 Emergencies.

In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Design/Builder because of an emergency will be reviewed as provided in Article 8, Changes in the Work. The Design/Builder shall maintain emergency vehicle access to the site at all times during the course of the project up to and including Final Acceptance of the work.

ARTICLE 12 – INSURANCE, BONDS, AND INDEMNIFICATION

12.1 Insurance.

12.1.1 The District has elected to implement an Owner Controlled Insurance Program (OCIP) under the Statewide Educational Wrap Up Program (SEWUP). Please reference Exhibit F to this agreement for OCIP.

Professional Liability Insurance. Upon execution of this contract, Design/Builder shall obtain professional liability insurance with limits of at least five million dollars (\$5,000,000) per claim and aggregate which shall cover claims resulting from professional errors and omissions of Design/Builder and any of its consultants in connection with the work provided such claims arise during the period commencing upon the preparation of the construction documents and ending five (5) years following Final completion. Such insurance shall be in form reasonably acceptable to the District's Risk Manager. This requirement shall override the professional liability requirements identified in Exhibit F Section 1.7.

12.2 Indemnification.

12.2.1 The Design/Builder will indemnify and defend with counsel reasonably acceptable to the District, the Solano Community College District and its respective officers, elective and appointive officials, employees and consultants (including the Project Manager) against all loss, expense (including, but not limited to, attorneys' fees and court costs), damage, injury, liability, causes of action or claims of any kind or character (collectively "claims" and individually a "claim"), provided that such claim or claims is/are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself for claims not covered by insurance which is required under this Agreement) including loss of use resulting there from (except loss of use attributable to a claim otherwise insured as provided under this Agreement), in any way arising out of this Agreement or the Work, including but not limited to the acts or omissions of the Design/Builder, its partners, officers, directors, employees, agents, licensees, invitees, consultants, vendors, or subcontractors of any tier (collectively the "Design/Builder"). Such indemnification shall include, but not be limited to any claim arising from or caused by:

- (1) any defect in the construction documents, or the design or construction of or materials used in the Work or in any machine, equipment, appliance, or other item of personal property installed or located therein;
- (2) any defect in the preparation of soils or in the design and accomplishment of grading;
- (3) any violation or alleged violation by any member of the Design/Builder of any law existing as of the date of this Agreement or hereafter enacted (provided that with respect to laws enacted after the date of the Design Build Agreement, the Design/Builder may be entitled to an adjustment in the Contract Sum and/or Contract Time as provided in the Design Build Agreement);
- (4) any negligent acts or omissions or other tortious conduct of the Design/Builder or any member of the Design/Builder's team;
- (5) any accident on the job site or other casualty thereon;

- (6) any other cause whatsoever in connection with the Design/Builder's use of or activities on the job site or the Design/Builder's performance under this Agreement; and/or
- (7) the inaccuracy or incorrectness of any representation or warranty of the Design/Builder to the Solano Community College District under this Agreement. Notwithstanding the foregoing, the obligations of the Design/Builder in this paragraph are intended to apply only to third party claims arising out of the Agreement or the Work, and not to property damage to the SCCD, which damage is treated elsewhere in this Agreement.

12.2.2 Subject to Paragraph 3.20, the Design/Builder will save, keep, and hold harmless the Solano Community College District and its respective officers, elective and appointive officials, employees and consultants (including the Project Manager) from all claims by reason of, or in the course of the performance of, said Work, by reason of any infringement or alleged infringement of the patent rights, copyrights, and/or trademarks of any person or persons, firm, or corporation in consequence of the use in, on or about said Work, of any article or material supplied or installed under this Agreement (except to the extent such article or material was directed to be supplied or installed by the SCCD).

Neither the Solano Community College District and its respective officers, elective and appointive officials, employees and consultants (including the Project Manager and Master Architect) shall be liable for any loss or damage that may happen to the Work, or any part of it; nor to any of the materials or other items used or employed in performing the Work; nor for injury to any person or persons, either workers or the public, for damage to property from any cause which might have been prevented by the Design/Builder, or the Design/Builder's employees or agents, against all of which injuries or damages the Design/Builder must properly guard.

The Design/Builder shall indemnify and hold harmless the Solano Community College District and its respective officers, elective and appointive officials, employees and consultants (including the Project Manager and Master Architect), from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Design/Builder, the Design/Builder's employees or agents, in construction of the Work, or by or in consequence of the Design/Builder's failure to properly guard the same, or by or as a result of any act or omission of the Design/Builder, the Design/Builder's employees or agents.

In addition to any remedy authorized by law, moneys due the Design/Builder under the Design Build Agreement, as considered necessary by the SCCD, may be retained until disposition has been made of such suits, actions, or claims for damages; however, this provision shall not be construed as precluding the Solano Community College District from enforcing any right of offset the Solano Community College District may have to any such moneys. These obligations shall apply to any claim or action asserted by a private party or by a governmental agency, including, but not limited to, any claim or action for multiple or punitive damages; and these obligations are intended to apply with respect to claims arising during the term of this Agreement or following any expiration or other termination of this Agreement, and shall survive the expiration or other termination of this Agreement.

12.2.3 The Design/Builder's obligations as described above shall apply regardless of fault or negligence (whether active or passive) on its part or on the part of the indemnified parties to the extent allowed by law; it being the intent of this Agreement that these obligations

be interpreted in the broadest possible manner provided that, as to any indemnified party, said obligations shall not apply to injury, death, or damage to property to the extent arising from the negligence or the willful misconduct of said indemnified party or its officers, agents, servants, or independent contractors who are directly responsible to the indemnified party, or for defects of design furnished by such persons but provided further that the foregoing limitations shall not apply to the extent reimbursable through any insurance required by this Agreement.

12.2.4 These obligations of the Design/Builder shall not be construed to negate, abridge, or otherwise reduce any right of indemnity or any other rights to which the Solano Community College District would otherwise be entitled

12.2.5 The Design/Builder shall cause all subcontracts to include the indemnification and hold harmless requirements set forth in this Article, in a form satisfactory to the SCCD.

12.3 No Personal Liability.

No officer, elective and appointive official, employee, or consultant of the Solano Community College District will be personally responsible for liabilities arising under this Design Build Agreement.

12.4 Performance Bond and Payment Bonds.

12.4.1 The Design/Builder shall furnish to the SCCD, prior to the execution of any contract, surety bonds in favor of the Solano Community College District in the amounts of not less than one hundred (100%) of the amount of Contract, to guarantee faithful performance of Contract and a payment bond, each in the form attached to the Design Build Agreement.. The Bonds shall be issued by a California admitted surety with a rating classification of "A XIII" or better according to Best's Rating Service.

12.4.2 The Solano Community College District acknowledges that any faithful performance and payments bonds provided by the Design/Builder shall not apply to errors or omissions in the furnishing of professional services in connection with architecture or engineering services provided by the Design/Builder or its consultants. The Solano Community College District waives and releases all claims against such sureties arising out of or relating to such professional errors and omissions; such release, however, does not apply to a failure to provide professional services where required under the Contract, and the performance bonds shall include the costs of such services. Professional Liability insurance shall be primary insurance in settling claims related to Errors and Omissions.

ARTICLE 13 – SEPARATE CONTRACTS

- 13.1 District's Right to Perform Construction and to Award Separate Contracts.
- 13.1.1 The District reserves the right to perform work or operations related to the Project with the District's own work force, and to award separate contracts in connection with other portions of work or other construction or operations on the Project site.
- 13.1.2 When separate contracts are awarded for different portions of work or for other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate agreement.
- 13.1.3 The District will provide for coordination of the activities of the District's own work force and of each separate Contractor with the Work of the Design/Builder, who shall cooperate with them. The Design/Builder shall participate with other separate Contractors and the District in reviewing and revising their Baseline Schedules when directed by the District. The resulting Baseline Schedules shall then constitute the schedules to be used by the Design/Builder, separate Contractors and the District.
- 13.1.4 The District reserves the right to perform other work in connection with the Project or adjacent to the Project site by separate contract or otherwise. The Design/Builder shall at all times conduct the Work so as to impose no hardship on the District or others engaged in separate work on the Project site, nor to cause any unreasonable delay or hindrance to the separate work.
- 13.2 Mutual Responsibility.
- 13.2.1 The Design/Builder shall afford the District and other Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractors construction and operations with theirs as required by the Contract Documents.
- 13.2.2 If part of the Design/Builder's work relies on proper execution or results upon construction or operations by the District or separate Contractors, the Design/Builder shall, prior to proceeding with that portion of the work, report to the District apparent discrepancies or defects in other construction that would render it unsuitable for proper execution and results. Failure of the Design/Builder to report any discrepancies or defects shall constitute an acknowledgment that the District's or separate Contractors' complete or partially completed construction is fit and proper to receive the Design/Builder's work.
- 13.2.3 The Design/Builder shall promptly remedy damage wrongfully caused by the Design/Builder to any completed or partially completed construction or to any property of the District or separate Contractors.
- 13.2.4 The District and each separate Contractor shall have the same responsibilities for cutting and patching as are described in Paragraph 3.7, Cutting and Patching.

ARTICLE 14 – MISCELLANEOUS

14.1 Governing Law.

This Agreement shall be governed by the laws of the State of California. The venue for any action or proceeding, in law or equity, which may be brought in connection with this Agreement is the county in which the District administration office is located.

14.2 Successors.

The District and the Design/Builder respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other party and to shareholders, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party shall assign the Agreement as a whole without the written consent of the other party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all of its obligations under the Agreement and the Contract Documents.

14.3 Notice.

Written notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, by electronic mail including delivery receipt, by facsimile, by registered or certified first class U.S. mail, return receipt requested with postage pre-paid, or by commercial courier. Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, by electronic mail, or by facsimile, on the first working day after deposit if delivery by overnight courier, or two (2) working days after deposit of delivery by placing in the U.S. mail as provided herein. All notices shall be addressed to the appropriate Authorized Representative, as follows:

Design/Builder:

Rudolph and Sletten, Inc.
1600 Seaport Boulevard # 350
Redwood City, CA 94063
FAX: (650) 599-9912

District:

Leigh Sata
Executive Bonds Manager
Solano Community College District
4000 Suisun Valley Road, Building 600
Fairfield, CA 94534
FAX: (707) 646-2098
EML: leigh.sata@solano.edu

With a mandatory copy to:

Yulian Ligioso
Vice President, Finance & Administration
Solano Community College District
4000 Suisun Valley Road, Building 600
Fairfield, CA 94534
FAX: (707) 646-2056
EML: yulian.ligioso@solano.edu

14.4 Modifications.

No modifications or Change Orders shall be valid unless in writing and signed by the District and the Design/Builder or their respective permitted successors and assigns.

14.5 Meaning of Words.

Any and all headings used in this Agreement are for convenience only and do not modify, define or limit the provisions of it. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms of this Agreement. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement or to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

14.6 Severability.

If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering any other provision contained herein to be inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement, or any part of it, and the remaining portions shall otherwise remain in full force and effect.

14.7 Whole Agreement.

This Agreement and any and all exhibits, the Design/Builder's Proposal which is incorporated by reference, and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed in this Agreement. By incorporating the Design/Builder's Proposal as part of this Agreement, the District does not accept any provision of the Proposal that is not in conformance with the criteria of the Request for Proposal.

14.8 Record Retention and Audits.

Design/Builder agrees that the District, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Design/Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be reasonably satisfactory to the District and shall be in accordance with generally accepted accounting standards.

Design/Builder shall retain all records, books, correspondence, instructions, drawings, receipts, subcontracts, vouchers, memoranda and other data relating to this Design Build Agreement for a period of five (5) years after Final Payment under this Agreement, or for such longer period as may be required by law. Design/Builder agrees to allow the District to audit this Agreement, including all financial and performance records, and to allow access to all records to District's auditor(s) during normal business hours and to allow interviews of any employees who might reasonably have information related to such records, and not withhold relevant information. Further, Design/Builder agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Agreement.

14.9 Deliverables.

The Design/Builder is responsible for delivery to the District certain drawings, schedules, reports, samples and other documents as described in the Contract Documents.

14.10 Waiver.

No waiver of any condition, requirement or right expressed in this Agreement shall result from any forbearance of the District to declare a default.

14.11 Attorneys' Fees and Costs.

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

14.12 Computer Software.

Design/Builder certifies that it has appropriate systems and controls in place to ensure that District funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

14.13 Independent Contractor Status.

While engaged in the performance of this Agreement, the Design/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Design/Builder shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Design/Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

ED2 International
1426 Fillmore St, Suite 302
San Francisco, California 94115
Phone: (415) 474-1400

**Biotechnology & Science Building
New Construction – Design/Build Contract
SCCD Project No. 15-012
SOLANO COMMUNITY COLLEGE DISTRICT**

ARTICLE 15 – EXECUTION OF THE AGREEMENT

The parties have executed this Agreement the day and year first written above.

Rudolph and Sletten, Inc., a California corporation

By: _____

Print Name, Title

Solano Community College District, a California Community College District

By: _____
Leigh Sata, Executive Bonds Manager

ED2 International
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San Francisco, California 94115
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EXHIBIT E – PROJECT MILESTONE SCHEDULE

The Project Milestone Schedule below identifies the major events for the Project. The Design/Builder confirms that the Contract Time and Milestones allow a reasonable period of time for completing the work under the Project.

Start of Construction on site	281 calendar days following NTP
Completion of 100% Construction Documents	191 days following NTP
Substantial Completion	707 days following NTP
Final Completion	60 days following Substantial Completion

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EXHIBIT F – OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

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EXHIBIT G – PROJECT LABOR AGREEMENT (PLA)

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END OF SECTION