

## **PUBLIC WORKS AGREEMENT INSTRUCTIONS**

IT IS THE RESPONSIBILITY OF THE CONTRACT ORIGINATOR TO DO THE FOLLOWING PRIOR TO THE CONTRACTOR PROVIDING SERVICES:

1. **WHEN TO USE THIS CONTRACT:** Use this contract for Public Works. See the [Purchase of Services – Chart of Required Documents](#) for more guidance.
2. **COMPLETE the PWA CONTRACT:** All blank spaces must be completed. Pay particular attention to sections:
  - A. Section 2. Compensation
  - B. Section 3. Term of Agreement
  - C. Section 9. Enter Contractor CSLB and DIR License number and expiration dates.
  - D. If the contract amount is greater than \$25k for Public Works, P&P bonds and PWC-100 are required.
3. **OBTAIN SIGNATURES:**
  - A. Refer to the [Purchasing Approval Matrix](#) for signature authority.
  - B. If there are no changes to the District's template, proceed to obtaining signatures from Contractor and authorized District signers in this order:
    1. Contractor
    2. Department Manager/Dean/Budget Officer (*District Use Only* box on signature page)
    3. Authorized District Signer
  - C. If contract modifications have been requested, email [LegalReview@sjeccd.edu](mailto:LegalReview@sjeccd.edu) for review and approval of changes. Upon approval, route for signature in this order:
    1. Contractor
    2. [LegalReview@sjeccd.edu](mailto:LegalReview@sjeccd.edu)
    3. Department Manager/Dean/Budget Officer (*District Use Only* box on signature page)
    4. Vice Chancellor of Administrative Services
4. **OBTAIN CERTIFICATE OF INSURANCE:** MUST BE COLLECTED BEFORE CONTRACTOR CAN COMMENCE WORK. Refer to [insurance requirements](#).
  - A. For questions related to insurance requirements or to seek exceptions, email [LegalReview@sjeccd.edu](mailto:LegalReview@sjeccd.edu)
5. **CHECK THAT SUPPORTING DOCUMENTS ARE COMPLETE:**
  - A. Fully executed contract
  - B. Proposal or Quote if applicable
  - C. COI – Certificate of Insurance with Endorsement pages ([Insurance Requirements](#))
  - D. Payment & Performance Bonds if applicable
  - E. PWC-100 for Prevailing Wage if applicable ([PWC-100 Instructions](#))
  - F. [W9 Form](#)
  - G. [BEC Form](#)
6. **ENTER REQUISITION AND OBTAIN APPROVALS:** Once supporting documents are complete, you may now open your requisition. Once a requisition number is generated, upload all supporting documents to [Square 9](#). Obtain requisition approval by your department manager and Business Services. Purchasing will review documents and work with the department to correct any deficiencies.
7. **THE FINAL STEP:** Purchasing transmits Purchase Order to Contractor with fully executed agreement and other supporting documents if applicable. CONTRACTOR MAY NOW COMMENCE WORK.

END OF INSTRUCTIONS. THIS PAGE IS INFORMATIONAL AND NOT PART OF THIS AGREEMENT

## PUBLIC WORKS AGREEMENT

**THIS CONTRACT** for Construction Services (hereinafter “Contract”) between **San Jose-Evergreen Community College District**, a public educational agency (“District”) and \_\_\_\_\_ (“Contractor”) is effective this day \_\_\_\_\_ (Date) between the Contractor and District.

1. **Project Scope of Work.** The Project is described as \_\_\_\_\_.  
The Contractor shall provide all work, labor, materials, equipment and services necessary to perform and complete the Scope of Work described:

**Scope of Work:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. **Compensation.** District agrees to pay Contractor a not to exceed amount of:  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) Contract Sum for completion of the Project (“Contract Price”)

3. **Term.** This Agreement will begin \_\_\_\_\_ (date) through \_\_\_\_\_ (date). Completion of the Services must be made to the satisfaction of the District.  
Project Start Date: \_\_\_\_\_  
Project Completion Date: \_\_\_\_\_

4. **Insurance Requirements.** Acceptance of this Agreement constitutes that Contractor understands and agrees it is not covered under District’s general liability insurance and that Contractor agrees, during the full term of this Agreement, to maintain in force, at Contractor’s sole expense, all necessary insurance for its officers, agents, and employees, including but not limited to general liability, errors and omissions, worker’s compensation, disability, unemployment insurance, and any other legally required insurance. District approval of the Insurance contracts required by this Agreement does not in any way relieve the Contractor from liability or monetary liability, or defense/indemnity requirements under this section.

The Insurance obligations under this Agreement shall be: 1—all the Insurance coverage and/or limits carried by or available to the Contractor; or 2—the minimum Insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the District. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.

Prior to commencing its Work hereunder, Contractor shall provide District with proofs of such insurance and shall also supply District with a Certificates of Insurance naming the District as an Additional Insured along with an Additional Insured Endorsement. Contractor shall supply District with proof that Contractor is covered by the following insurance during term hereof:

- A. Commercial General Liability Insurance. (including Bodily Injury or Death and Property Damage) with a minimum limit of one million dollars per occurrence (\$1,000,000), and an aggregate amount of two million dollars (\$2,000,000);
- B. Builder's Risk Insurance. Required for projects greater than \$250,000. Coverage must be in the amount of total project cost specified in Section 2.
- C. Commercial Automobile Liability Insurance. (including owned, non-owned, and hired vehicles) with minimum limit of one million dollars per occurrence (\$1,000,000).
- D. Workers' Compensation and Employers' Liability. Statutory limits required by law.
- E. Additional Insurance Requirements.
  - I. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
  - II. All insurance must be issued by an admitted insurance carrier (licensed to do business in the State of California), carrying a rating of not less than A-VII in the most current A.M. Best's Insurance Rating Guide – or otherwise acceptable to District.
  - III. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance
  - IV. Additional Insureds. Insurance shall name San Jose-Evergreen Community College District and its Board of Trustees, officers, employees, agents, and volunteers as Additional Insured under its Commercial General Liability policy.
    - i. The Additional Insured language in the Description of Operations box of the COI or the Endorsement must read: "San Jose Evergreen Community College District, its trustees, officers, agents, employees, and volunteers, individually and collectively, are named as additional insureds on General Liability policy as per attached endorsement."
    - ii. The Certificate Holder must read: San Jose Evergreen Community College District, 40 South Market St. San Jose, CA 95113.
  - V. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days written notice to the District.

**5. District Representative.** The District Representatives for the Work are:

Construction Manager Name: \_\_\_\_\_ Campus: \_\_\_\_\_

**6. Performance and Payment Bonds.** Not applicable to Projects less than \$25,000 or less, inclusive of all changes. For Projects greater than \$25,000, Performance and Payment bonds are both required.

**7. Terms and Conditions.** Contractor agrees to comply with the attached Terms and Conditions, which are incorporated into this Contract as if set forth in full.

8. **Notice.** All notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmission, email, addressed as follows:

**For the District:**

Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	
Email:	

**For Contractor:**

Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	
Email:	

9. **Entire Agreement.** This Contract, including the Scope of Work, Terms and Conditions, and the Contract Documents, constitutes the sole and entire contract, agreement, and understanding between District and Contractor. This Contract and the Contract Documents replace and supersede all prior contracts or negotiations, whether written or oral. The Contract Documents shall not be modified except in a writing signed by the District and Contractor.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 2600, SACRAMENTO, CALIFORNIA 95826.

Contractor CSLB License# \_\_\_\_\_ Expiration: \_\_\_\_\_

Contractor DIR Registration# \_\_\_\_\_ Expiration: \_\_\_\_\_

\*\*\*\*\*

**IN WITNESS HEREOF**, the District and Contractor have executed this Agreement as of the dates set forth below.

<b>FOR DISTRICT:</b>	<b>FOR CONTRACTOR:</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

<b>*APPROVED Re: Form &amp; Legality</b>
By:
Date:

\*MUST BE SIGNED BY THE DISTRICT IF  
MODIFICATIONS MADE TO THIS AGREEMENT.

*District Use Only:*

**Required Information** (Completed by initiating College/District Department)

District Agreement Originator:	
Manager/Dean/Budget Officer Approval:	
GL Account:	
Requisition Number:	

## TERMS AND CONDITIONS

### 1. CONTRACTOR RESPONSIBILITIES

**1.1. LABOR, MATERIALS, EQUIPMENT AND SERVICES.** The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to complete the Project in accordance with the Contract Documents. Except for existing utility services at the Site made available to the Contractor by the District, the Contractor shall furnish all utilities necessary to complete the Project, including temporary utility distributions. The Work shall be completed in a high quality, workmanlike manner at such times and places as directed by and subject to the approval of the District Representative. All of the Work shall conform to the requirements of the Contract Documents and applicable laws, ordinances, rules and regulations ("the Laws"). If there are conflicts between any portions of the Contract Documents, the Contractor shall furnish and install the more stringent or higher quality requirements.

### 1.2. CONTRACTOR SUPERVISION.

**1.2.1. CONTRACTOR SUPERINTENDENT.** The Contractor shall employ a Superintendent who shall be at the Site at all times during performance of Work at the Site. The Superintendent is the Contractor's Representative for the Project; directions, instructions or other communications to and with the Contractor's Superintendent constitute directions, instructions or communications to or with the Contractor.

**1.2.2. EMPLOYEE COMPETENCY AND DISCIPLINE.** The Contractor shall enforce strict discipline and good order among employees of the Contractor and Subcontractors at the Site. Personnel of the Contractor or any Subcontractor are subject to removal from the Site for violations of the Laws or District Policies. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them and shall dismiss from its employ and direct any Subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform assigned tasks.

**1.2.3. DISTRICT POLICIES; NOISE, DRUGS, TOBACCO, AND ALCOHOL.** Use, possession, consumption or work under the influence of alcohol or illegal drugs at the Site is prohibited. District Board Policies prohibit the use of any form of tobacco products at the Site. Compliance with the California Drug-Free Workplace Act of 1990 (California Government Code §§8350 et seq.) is required. Use of music/audio devices, including radios or wearing any headphone devices for entertainment while performing Work at the Site is prohibited. The Contractor shall implement measures to: (i) notify all personnel at the Site of such prohibitions and (ii) prevent violations of such prohibited conduct. The District expressly reserves the right to remove construction personnel violating the foregoing.

**1.2.4 DISTRICT'S POLICY PROHIBITING HARASSMENT.** The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color, religion, national origin, ancestry, age, medical condition, marital status, sex, sexual orientation, disability, or veteran status. Harassment includes without limitation, unwanted sexual advances; offering employment benefits in exchange for sexual favors; making or threatening reprisals after a negative response to sexual advances; visual conduct: leering, making verbal sexual gestures, displaying of suggestive objects or pictures, cartoons or posters; verbal conduct: making or using derogatory comments, epithets, slurs, and jokes; verbal sexual advances or propositions; verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations; and physical conduct: touching, assault, impeding or blocking movements.

### 1.3. LABOR CODE REQUIREMENTS.

**1.3.1. DIR REGISTRATION.** Work that is valued less than \$25,000 does not require DIR Registration. The Contractor and all Subcontractors must comply with the Labor Code §§1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations ("DIR") and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.

**1.3.2. PREVAILING WAGE RATES; HOURS OF WORK:** If the total value of the work is less than \$1,000, this is not required. If the value of the work exceeds \$1,000, the Contractor and all Subcontractors shall: (i) pay their respective workers wage rates not less than the prevailing wage rate established for the classification, trade or work performed by each worker; and (ii) maintain complete and accurate payroll records for workers engaged in the Work. The Contractor and Subcontractors shall not permit any worker to provide more than eight (8) hours of work per day or forty (40) hours per week without additional compensation as mandated by law. The Contractor shall be subject to all penalties and assessments provided by law or regulation for violation(s) of the prevailing wage rate requirements or hours of work limits. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

**1.3.3. APPRENTICES.** Apprentices, if any, engaged in performing the Work shall be in strict conformity with applicable the Laws, including without limitation, Labor Code §§1777.5 through 1777.7, which are incorporated herein by this reference.

**1.4. SUBCONTRACTORS.** The Contractor is responsible for the acts, omissions and other conduct of Subcontractors and their employees, agents and representatives. Subcontracts between the Contractor and Subcontractors shall incorporate the Contract as far as such terms are applicable to the Subcontractor's work, including, without limitation, all indemnification, insurance, and warranty requirements. Subcontracts shall be made available to the District for review upon request of the District. DIR Registration is only required for work that is more than \$25,000. For work that is more than \$25,000, all Subcontractors must comply with Labor Code §§ 1725.5 and 1771.1 and must be currently registered contractors with the California Department of Industrial Relations ("DIR") and qualified to perform public works pursuant to Labor Code §1725.5 throughout the duration of the Project. Any Subcontractor who is not a DIR registered contractor shall be substituted in accordance with Labor Code §1771.1. . Subcontractors identified in the Subcontractors List shall not be replaced except in strict conformity with requirements of Public Contract Code §4107. The Contractor is responsible for all fees, costs or expenses (including attorneys' fees) incurred by the District to review, evaluate and respond to the Contractor's request to replace a listed Subcontractor. Subcontractors must be a California licensed contractor in the classification(s) required for the portions of the Project completed by the Subcontractor.

**1.5. PROPERTY DAMAGE.** The Contractor is responsible for costs to repair, replace or correct damage or destruction to property arising during the Contractor's completion of Project Work, including without limitation, damage/destruction of other facilities/improvements, landscape materials and irrigation systems.

## **2. PROJECT SITE**

**2.1. SITE EXAMINATION AND SITE CONDITIONS.** The Contractor has examined the Site and accepts conditions at the Site affecting the completion of the Project. By submitting a Proposal for the Project, the Contractor warrants and represents to the District that the Contractor has made all Site examinations that it deems necessary and that the pricing proposed in the Proposal is not subject to adjustment for conditions at the Site.

**2.2. SAFETY AND SECURITY; PROTECTION OF WORK AND PROPERTY.** The Contractor is solely responsible for safety at the Site, including compliance with Laws pertaining to safety at the Site. Contractor shall comply with all District rules and regulations pertaining to safety, security and driving on school grounds, particularly when students are present. The Contractor shall implement safety measures such as fencing, barricades, signs, lights and other precautions to prevent injury or death to persons or damage to property. The Contractor is responsible for securing the Site and Work in place or in progress (including all personal property items situated at the Site) to prevent theft, loss or damage. The District and District employees, officers, agents or representatives are not liable for loss, theft, damage or destruction of personal property items. The risk of such loss, theft, damage or destruction is solely that of the Contractor or Subcontractors.

**2.3. STORM WATER POLLUTION PREVENTION.** There will be a "Zero Tolerance" for unregulated use of storm drains. Do not dump, spill, empty, or wash anything into a storm drain under any circumstances. This restriction includes all wash waters from tools, vehicles or equipment.

**2.4. CONTRACTOR ENVIRONMENTAL/ HAZARDOUS MATERIALS RESPONSIBILITIES.** The Contractor shall comply with Laws relating to construction waste management, materials re-use and/or recycling and the maintenance of records relating thereto. All activities of the Contractor relating to removal, transportation and/or disposal of any hazardous material shall be in strict compliance with the Laws, including compliance with requirements of manifests for the transportation and disposal of hazardous materials. The Contractor's failure to strictly comply with its obligations hereunder shall be a basis for the District's withholding of Contract Price disbursements until the Contractor has complied and performed its obligations hereunder. Upon completion of the Project, the Contractor shall complete, execute and submit to the District the form of Asbestos and Hazardous Materials Certification.

**2.5. CLEAN-UP.** The Contractor shall remove and legally dispose of all waste materials and other debris from the Site. The Site shall be maintained in a neat, orderly and "broom clean" condition. At completion of the Project, the Contractor shall: (i) remove all temporary facilities and installations; and (ii) clean all surfaces, fixtures, equipment at the Site. If the Contractor fails to complete clean up responsibilities, the District may do so, and all costs shall be charged to the Contractor; the District may deduct such costs from the Contract Price then or thereafter due the Contractor.

**2.6. OCCUPANCY.** The District reserves the right to occupy existing facilities and improvements in, at or about the Site at any time before completion of the Project. The District's occupancy does not constitute acceptance or approval of any part of the Project and will not extend the Contract Time nor relieve the Contractor of any duties or responsibilities under this Contract.

**2.7. EMERGENCIES.** In an emergency affecting life, life safety, property damage, the Work or adjoining property, Contractor, without special instruction or authorization from District, shall take such actions reasonably necessary to prevent such threatened loss or injury. Contractor shall immediately report in writing to the District Representative if such action is taken.

## **3. PROJECT REQUIREMENTS**

**3.1. DISTRICT SITE ACCESS.** The District and the District's employees, agents or representatives shall at all times have access to the Site and the Project. The Contractor shall provide safe and proper facilities for such access.

**3.2. CONSTRUCTION SCHEDULE.** If the **Contract Time** is more than thirty (30) calendar days, the Contractor shall prepare a Construction Schedule in such form and format required by the District. The Construction Schedule shall reflect all activities necessary to complete the Work and shall be in such detail as required by the Contract Documents. If a schedule is required, the Contractor shall update the schedule monthly or more frequently as directed by the District or required by the circumstances of Project progress. The Contractor's Construction Schedule shall be submitted to the District for review and acceptance. The Contractor shall complete Project Work in accordance with the District accepted Construction Schedule.

**3.3. SUBSTITUTIONS.** No substitution of any specified item, product, material or system ("Specified Items") will be considered unless the Contractor submits a request to substitute Specified Items along with data substantiating the equivalency of the proposed substitution with the Specified Items not more than seven (7) days after the date of Award of the Contract to the Contractor. The Contractor shall reimburse the District for all costs and expenses incurred by the District to review a proposed substitution for Specified Items. The District's acceptance or rejection of a proposed substitution is final. No substitution accepted by the District shall increase the Contract Price or the Contract Time; provided, however, if the cost to furnish/install an approved substitution of is less than the Specified Item, the Contract Price shall be reduced by such cost difference. If any Specified Items are identified in any portion of the Contract Documents as "District Standard Materials/Equipment" "match existing in use" or similar words/phrases, in accordance with Public Contract Code §3400, the District is deemed to have made a finding that such Specified Items are designated as "sole source" items designed to match existing and in use items. In accordance with Public Contract Code §3400, the District will not consider or accept alternatives or substitutions for any Specified Items so identified.

**3.4. CONTRACTOR WARRANTY.** If within one (1) year, or such other period set forth in the Contract Documents, any part of the Project or workmanship is found defective or not in compliance with the Contract Documents, the Contractor shall promptly correct, repair or replace such part of the Project or workmanship. If the Contractor fails to do so, the District may take necessary action to correct, replace or repair such Work or workmanship at the cost and expense of the Contractor.

**3.5. MANUFACTURER WARRANTIES/OPERATING MANUALS.** The Contractor shall, prior to the release of retention, provide the District Representative with hard copies of all manufacturer warranties and operating manuals for all equipment and materials furnished, installed and incorporated into the Project, and transfer all warranties if in the name of the Contractor.

**3.6. DISTRICT INSPECTIONS AND ACCEPTANCE.** Project Work is subject to District inspection, provided that inspection of any Project Work is not deemed acceptance of defective/non-conforming Project Work. Defective/non-conforming Project Work shall be repaired, replaced or corrected by the Contractor.

#### **4. CONTRACT PRICE.**

**4.1. CONTRACT TIME LESS THAN SIXTY (60) DAYS.** If the Contract Time is sixty (60) days or less, the District will make payment of the Contract Price upon Completion of the Project, the Contractor's full performance of all other obligations under the Contract Documents and the Contractor's submission of a properly itemized invoice and duly executed Verification of Certified Payroll Records Submittal to Labor Commissioner. Upon receipt thereof, the District Representative will promptly verify that the Project has been completed and that the Contractor has performed all other obligations hereunder. Within thirty (30) days of the District Representative confirmation of the completion of Work and the Contractor's performance of other obligations hereunder, the District will make payment of the Contract Price.

**4.2. CONTRACT TIME MORE THAN SIXTY (60) DAYS.** If the Contract Time is sixty (60) days or more, the Contractor may submit invoices on a monthly basis for the value of Project Work completed in the prior month, whereupon the District Representative will promptly verify that the Work has been completed as indicated in the Contractor's invoice. Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by the District and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. Within sixty (60) days of completion of all Project Work and all other of the Contractor's obligations hereunder, amounts previously retained from prior invoices will be released to the Contractor. The District may, in its sole discretion, condition payment of the Contract Price, or any portion thereof, upon: (i) the Contractor's preparation of a Schedule of Values for review and acceptance by the District's Representative; (ii) the submittal of executed Waivers and Releases (on Progress Payment or Final Payment, as applicable) for the Contractor and all Subcontractors/Suppliers receiving any portion of the Contract Price; and/or (iii) delivery of Certified Payroll records of the Contractor and Subcontractors.

**4.3. CERTIFIED PAYROLL RECORDS.** Pursuant to California Labor Code §1776, the Contractor and each Subcontractor shall maintain Certified Payroll Records for labor employed by them to complete Project Work including: name, address, social security number, wage rates, work classification/trades, straight time and overtime hours worked each day and week and, actual per diem wages paid. The Contractor and Subcontractors shall furnish copies of Certified Payroll Records to the District and others in accordance with the Laws.

**4.4. CERTIFIED PAYROLL RECORDS SUBMITTAL TO LABOR COMMISSIONER.** Certified Payroll Records of the Contractor and Subcontractors, in the form, format and within the times established by the Labor Commissioner, shall be submitted to the Labor Commissioner if required. The District's disbursement of any portion of the Contract Price is expressly conditioned on the Contractor's completion and execution of the form of Verification of Certified Payroll Records Submittal to Labor Commissioner for the payment requested.

**4.5. DISTRICT DEDUCTS AND WITHHOLDS FROM CONTRACT PRICE.** The District may deduct from the Contract Price and withhold disbursement of the Contract Price for any of the following: (i) Liquidated Damages; (ii) sums expended by the District to perform the Contractor's obligations under the Contract Documents; (iii) defective or non-conforming Project Work not remedied; (iv) Stop Payment Notice claims; (v) reasonable doubt that the Project can be completed for the unpaid balance of the Contract Price or within the Contract Time; (vi) unsatisfactory prosecution of the Project Work; (vii) unauthorized deviations from requirements of the Contract Documents; (ix) losses, damages or costs arising out of the Contractor's default or breach of obligations; and (x) any other sums which the District is entitled or required to withhold from the Contractor pursuant to the Contract Documents or the Law. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums.

#### **5. CHANGES**

**5.1. DISTRICT AUTHORITY.** The District may direct Changes within the general scope of Project Work. Changes authorized or directed by the District shall be reduced to a written Change Order in the form and content prepared by or on behalf of the District. Adjustments to the Contract Price for District authorized Changes shall be limited to the actual costs of labor, materials, equipment or services necessary to complete the Change. All other costs associated with a Change, including without limitation profit, overhead/administrative costs and impacts are fully compensated by the mark-up established in the Contract Documents on direct costs of a Change. The Contractor shall provide the District with all information requested to substantiate the cost of a Change. The Contractor shall submit, prior to approval of a Change Order, its request for adjustment of the Contract Time (if any) along with data substantiating the Contractor's right to adjustment of the Contract Time and the extent of such adjustment. If Contractor fails to strictly comply with the preceding, the Contractor shall be deemed to have waived any right to adjustment of the Contract Time.

**5.2. CHANGE DIRECTIVE ("CD").** The District may direct a Change prior to and without issuance of a Change Order by a Change Directive ("CD"). The Contractor shall: (i) promptly commence and complete changes incorporated into a CD; and (ii) maintain detailed contemporaneous records of labor, materials and equipment incorporated into or consumed in completing a CD. Adjustment of the Contract Price or Contract Time on account of a CD shall be determined in accordance with the Contract Documents and incorporated into a Change Order.

**5.3 MARK-UPS ON CHANGES.** The mark-up on direct costs for a Change directed or authorized by the District for all overhead (including home and field office overhead), general conditions costs, impacts of the Change and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below.

**5.3.1 SUBCONTRACTOR PERFORMED CHANGES.** For the portion of a Change performed by Subcontractors, the mark-up on actual direct labor and materials costs incurred by the Subcontractors is Ten Percent (10%). In addition, the Contractor may add an amount equal to Five Percent (5%) of the Subcontractor's actual direct labor and materials costs; the Contractor's mark-up shall not be applied to the Subcontractor's mark-up.

**5.3.2 CONTRACTOR PERFORMED CHANGES.** For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change is Fifteen Percent (15%).



**5.3.3 EXCLUSIONS FROM MARK-UP OF ACTUAL COSTS.** Mark-ups on the actual cost of materials/equipment incorporated into a Change or for purchase/rental of Construction Equipment shall not be applied to any portion of such costs which are for sales, use or other taxes arising out of the purchase of materials/equipment and/or for purchase/rental of Construction Equipment.

**6. INDEMNIFICATION.** To the furthest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the District and its governing board, officers, employees, agents, and volunteers ("Indemnified Parties") from and against any and all liabilities, demands, claims, actions, causes of action (including cost of defense, settlement, and reasonable attorneys' fees) (collectively "Claims") which arise out of the negligent, willful misconduct of the Contractor, Subcontractors or the employees, agents or representatives of the Contractor or Subcontractors, including without limitation, Claims for bodily injuries (including death) to any person, damage (including theft or loss of use) to any property, Stop Payment Notice claims and other economic losses, damages or injuries. The Contractor's obligations hereunder shall survive completion of the Work or termination of the Contract until barred by the applicable statute of limitations.

## **7. TERMINATION AND SUSPENSION**

**7.1 TERMINATION FOR CONTRACTOR DEFAULT.** The Contractor's failure to fully and timely perform its obligations under the Contract Documents or to strictly comply with terms and conditions of the Contract Documents shall constitute default of the Contractor; in such event, the District may terminate the Contract upon seven (7) days written notice to the Contractor. Unless the Contractor commences, and diligently thereafter prosecutes to completion, all required actions to cure such default(s), the Contract is deemed terminated without further action of the District; such termination shall be effective the seventh (7th) day after the date of the District's written notice. If the District terminates the Contract for default of the Contractor, the Contractor is liable to the District for all losses, costs and damages arising out of the Contractor's default and costs to complete the Project Work which exceeds the remaining Contract Price at the time of termination.

**7.2 DISTRICT TERMINATION FOR CONVENIENCE.** The District may terminate the Contract, in whole or in part, at any time for the convenience of the District by written notice to the Contractor, in which case, the payment of the Contract Price shall be limited to the value of the Work in place or in progress at the time of the termination for the District's convenience and reasonable demobilization/rental expenses; no payment shall be made or due from the District for the unperformed portion of the Project Work or anticipated lost profits.

**7.3 SUSPENSION.** The District may, by written directive to the Contractor, suspend the Project Work, in whole or in part, for such time as determined by the District. Upon issuance of such directive, the Contractor shall take action as directed to protect work in place, materials/equipment at the Site and other actions relating to Project Work in place, in progress, in storage, in transit or in fabrication ("Contractor Suspension Activities"). The Contractor shall resume Project Work as directed by the District. The District's suspension of Project Work shall not result in adjustment of the Contract Price, except for the direct costs of Contractor Suspension Activities. The Contract Time will be equitably adjusted for District directed suspension of Project Work.

## **8 MISCELLANEOUS**

### **8.1 CLAIMS RESOLUTION.**

**8.1.1 CONTRACTOR CONTINUATION OF WORK.** Notwithstanding any claim, dispute, disagreement or other matter in controversy between the District and the Contractor relating to the Contract Documents or the Project Work, the Contractor shall continue to diligently prosecute and perform the Work, pending any final determination or decision regarding any such claim, dispute, disagreement or matter in controversy.

**8.1.2 PUBLIC CONTRACT CODE §9204 CLAIMS RESOLUTION PROCEDURES.** Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 ("Section 9204").

**8.1.2.1 CONTRACTOR CLAIMS.** Contractor Claims are subject to the Section 9204 procedures provided, however, that the Section 9204 procedures are expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to submittal and resolution of Claims, change orders, disputes and other matters in controversy under the Contract Documents. By this reference, the Section 9204 procedures are incorporated herein.

**8.1.2.2 SUBCONTRACTOR CLAIMS.** Subcontractor Claims are subject to Section 9204 procedures, as modified herein. The District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor's review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq.).

**8.1.3 CONTRACTOR COMPLIANCE WITH GOVERNMENT CODE CLAIMS PROCEDURES.** Disputed Claims and other matters in controversy asserted by the Contractor against the District are a "suit for money or damages" and subject to Government Code §§945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to the Contractor's initiation of Section 20104.4 Dispute Resolution Procedures or Small Claims Court proceedings is the Contractor's compliance with the Government Code Claims Process.

**8.1.4 DISPUTED CLAIMS.** Claims not resolved by the Section 9204 Procedures are subject to Small Claims Court proceedings or binding dispute resolution procedures of Public Contract Code §20104.4 (Section 20104.4 Dispute Resolution Procedures).

**8.1.4.1 CLAIMS WITHIN SMALL CLAIMS COURT JURISDICTION.** Small Claims Court is the exclusive tribunal for binding resolution of Disputed Claims valued at or less than the then current jurisdictional limits of the Small Claims Court. Venue for any Small Claims Court proceeding shall be in Santa Clara County

**8.1.4.2 SECTION 20104.4 DISPUTE RESOLUTION PROCEDURES; CLAIMS LESS THAN \$375,000.** Disputed Claims of \$375,000 or less and more than the then current Small Claims Court jurisdictional limits shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Mediation conducted pursuant to Section 9204 Procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

**8.1.4.3 LIMITATION ON SPECIAL/ CONSEQUENTIAL DAMAGES.** In the event of the District's breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor are limited to general damages directly caused by the breach or default and shall exclude any and all special or consequential damages, if any. The Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District, including but not limited to home and field overhead expenses and potential lost profits.

**8.1.4.4 ATTORNEYS' FEES:** Except as expressly provided for in the Contract Documents, or authorized by the Laws, neither the District nor the Contractor shall recover from the other any attorneys' fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.

**8.2 AUDIT.** The District shall have the right to review, audit, and to copy records and supporting documentation of the Contractor and Subcontractors relating to performance of the Contract. Contractor agrees to maintain such records for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated or required by the Laws. Contractor agrees to allow the District access to these records during normal business hours and to allow interviews of any employees who might reasonably have **information** related to such records. Contractor agrees to include a similar right of the District to audit records and interview staff in any Subcontractor Agreement.

**8.3 GOVERNING LAW; INTERPRETATION; VENUE.** This Contract is governed by the laws of the State of California and shall be interpreted as a whole and not in favor of the District or the Contractor. Venue for any legal proceeding shall be the Superior Court for the County of Santa Clara.

**8.4 FORCE MAJEURE.** The Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

**8.5 SUCCESSORS:** This Contract shall be binding upon and inure to the benefit of the respective successors-in-interest of the District and the Contractor. The foregoing notwithstanding, the Contractor shall not assign by this Contract, any right or obligation hereunder or any portion thereof by the District.

**8.6 DAYS:** Unless otherwise stated in the Contract, all references to "days" shall be deemed references to calendar days.

**8.7 TIME:** Time is of the essence in performance and completion of obligations under the Contract.

**8.8 NO ORAL MODIFICATIONS:** The terms of the Contract shall be modified only by written instrument duly executed on behalf of the Contractor and District Board. No term or condition of the Contract shall be modified or amended except by a subsequent writing executed by the District and Contractor and approved or ratified by the District's Board. Verbal or oral modifications to the Contract are not enforceable.

**8.9 NO DISTRICT WAIVER.** District's purported waiver or delayed enforcement of any term, condition, covenant or obligation of the Contractor under the Contract Documents shall not: (i) constitute the District's waiver or modification of such term, condition, covenant or obligation; or (ii) limit, restrict or impair the District's enforcement of such term, condition, covenant or obligation.

**8.10 PROVISIONS REQUIRED BY THE LAWS DEEMED INSERTED.** Provisions required by the Laws to be incorporated into the Contract Documents are deemed incorporated herein and the Contract Documents shall be read and enforced as though such provisions are incorporated herein.

**8.11 CONFLICTS/INCONSISTENCIES.** In the event of conflict or inconsistency between the Contract and these Terms and Conditions ("Contract") and the terms of Contractor's Quote/Proposal, the terms of the Contract shall prevail over the Contractor's Quote. It is further agreed that District's attachment of the Contractor's Quote/Proposal shall not constitute a modification, amendment or limitation of any term or condition of the Contract unless such term or condition is expressly set forth in writing in this Contract.

**8.12 SEVERABILITY.** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

**8.13 INDEPENDENT CONTRACTOR STATUS.** While engaged in carrying out the terms and conditions of the Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District.

**8.14 DISABLED ACCESSIBILITY AND ELECTRONIC AND INFORMATION TECHNOLOGIES.** Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention and will designate a contact person for expediting any complaints applicable to California Government Code §11135. Contractor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Contractor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement. Contractor and any of their Subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.

**8.15 NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** The Contractor and Subcontractors shall comply with District Policies prohibiting discriminatory practices against employees or prospective employees based on race, color, ancestry, national origin, religious creed, sex, age, sexual preference, marital status or other classification protected by the Laws. Contractor agrees to abide by this policy and to comply with Laws prohibiting discriminatory employment practices, including the California Fair Employment Practice Act.

**8.16 ENTIRE CONTRACT.** The Contract Documents contain the entire agreement and understanding between the District **and** the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed contracts or amendments, whether written or oral.