

**REQUEST FOR PROPOSAL (RFP) #1415-94  
ENERGY MANAGEMENT SYSTEM UPGRADES AT  
SANTIAGO CANYON COLLEGE**



**Request for Proposal must be received no later than  
Monday, April 13, 2015 at 2:00 PM**

**CARRI M. MATSUMOTO**  
Assistant Vice Chancellor,  
Facility Planning & District Construction and Support Services  
**Rancho Santiago Community College District**  
2323 North Broadway  
Suite 112  
Santa Ana, CA 92706-1640

**RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT**  
**2323 N. Broadway – Santa Ana CA 92706**

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**ENERGY MANAGEMENT SYSTEM UPGRADES AT**  
**SANTIAGO CANYON COLLEGE**

**I. INTRODUCTION AND PROJECT BACKGROUND**

Rancho Santiago Community College District (RSCCD) desires to engage a qualified energy management systems contractor for a turnkey energy management system (EMS) upgrade at the Santiago Canyon College campus. The turnkey installation shall include a complete site investigation of existing mechanical systems, review of existing sequence of operations, design services, installation services, and commissioning support. This project has been identified as an energy efficiency improvement to the District's campus. The District has undertaken a Request for Proposal (RFP) and solicitation process utilizing a best value criteria review as defined in Public Contract Code 20133(c)(1) including compliance with Government Code 4217.10 - 4217.18.

**II. SCOPE OF WORK**

**Energy Management Control System**

The Contractor shall survey the exiting building and provide a report identifying mechanical deficiencies for district evaluation. The report shall be used to identify problems prior to start of system implementation. Depending on the budget the District may choose to repair said deficiencies under this contract through an allocated allowance budget.

The District is interested in implementing an automatic demand (ADR) response feature integral to the EMS coordinated with Southern California Edison (SCE). The contractor shall review the feature with the District and the ability to implement ADR in designated buildings. When a demand response event occurs, a central system shall send an event or price signal through the internet, directly to the automated control system (energy management system). The District preset load reduction strategy shall then be applied throughout designated buildings. The District shall have the option to override Auto-DR signals as needed or revise the program strategy. Through SCE's Auto-DR Express or Customized Technology Incentive programs, the District may qualify for incentives.

The energy management control system shall consist of a high-speed, peer-to-peer network of DDC controllers and a web-based operator interface. The mechanical system and building floor plan shall be controlled by a point-and-click graphic. A web server with a network interface card shall gather data from this system and generate web pages accessible through a conventional web browser on each PC connected to the network. Operators shall be able to perform all normal operator functions through the web browser interface. The systems shall fully integrate into all

our mechanical system and shall contain powerful reporting, trending and scheduling capabilities with tools that enable the District to manage the relationship between energy consumption and comfort both easily and effectively.

The control systems shall have dynamic thermographic color floor plans that provide an immediate understanding of conditions in the building. Graphics shall be customized for the Districts specific information needs. The system shall have hierarchical and group scheduling that supports customized, graphically displayed schedules for building, floors, zones or equipment groups to flexibly manage energy use. The system shall have logical alarming where alarm conditions are graphically represented and sorted by source, type and criticality. The system shall provide logging/reporting. The system shall provide for monitoring and storing your energy usage data to manage the District utility consumption. The system shall have graphical control to define appropriate zone control setpoints with a simple graphical adjustment.

The EMS system shall have an open architecture and support for industry standards with ability for integration with third party mechanical and electrical building subsystems. The system shall be capable of supporting multiple protocols over a TCP/IP network allowing many equipment items to be connected directly to the main EMS backbone. Equipment using BACnet can be connected to an IP, ARCNET, MS/TP, or Point to Point (PTP) network segment. The system shall have an open protocol architectural for seamless interconnection to equipment using BACnet, Modbus, N2, JBUS, or LonWorks, as well as other proprietary protocols.

The system shall directly control HVAC equipment as per a Sequence of Operations designed per the Contractor for HVAC Controls. Each zone and equipment controller shall provide occupied and unoccupied modes of operation by individual zone. The systems shall have energy conservation features such as optimal start and stop, night setback, request-based logic, and demand level adjustment of setpoints as specified in the sequence, trim and respond, VFD monitoring and control, Cooling and heating coil water supply temperatures reset, Enthalpy economizer controls, Carbon dioxide sensors calibration, Chilled and circulating hot water pump speed control, and lighting control integration as per the existing configuration, and automatic demand response and load shedding programming.

The Contractor shall use trending and energy consumption data to verify, document, and improve a building's operation and identifying broken components, recalibrating sensors, and correcting control functions that have been disabled by building operator in error.

Buildings covered under this project include (See enclosed exhibit A for specific scope of work):

Building A

Building B

Building C

Building D

Building E

Building L

Building M

**Specific Scope Items - Refer to Scope of Work Exhibits A for Buildings Covered Under This Project**

1. Review the enclosed Newcomb Anderson McCormick (NAM) energy study for guidelines on intended EMS energy conservation measures.
2. Provide a work plan describing the investigation phase, the design phase, the installation, the commissioning phase, and the warranty phase.
3. Provide complete plans & system data sheets with specifications.
4. Provide a complete specification, system plan, system architectural map, and points list.
5. Provide a complete set of as-built, AutoCAD files (or any other electronic software used to develop the design and as-built), PDF, and hardcopy.
6. Design and complete sequence of operations specific to each building.
7. The front end graphics shall be coordinated in detail with the District's project manager and the Maintenance and Operations staff to ensure ease of use while also keeping detailed system diagnostic information. Provide a complete submittal on the graphical user interface and collaborate with M&O staff on the desired visuals and level of control.
8. Remove existing American Automatrix Autopilot and salvage equipment and components as much as possible.
9. Provide all necessary equipment, hardware, adapters, and any other materials necessary for a complete installation. The Contractor may reuse the existing infrastructure as much as possible required for a complete functional system.
10. The campus EMS preference is Automated Logic Control with WebCtrl (latest Version).
11. No separate server is required for the EMS. The contractor will be required to work with District's Information Technology Services Department to virtualize the EMS server onto the District's network. Coordination will be required during the implementation and commissioning to ensure the operation of system is fluid and efficient with minimal disruptions. Be advised the campus currently has an ALC WebCtrl installed at the Athletics Buildings, Science Center, and Humanities Building. The existing license shall be used to build and scale up the campus.
12. Contractor shall warrant all labor and replace defective EMS components and parts thereof for a period of two years from the date of project acceptance.
13. The Contractor shall provide service pricing for a period of 3 years as a separate line item for evaluation. The service pricing shall be used for campus evaluation should the campus want to enter into a service agreement with the Contractor for servicing and

maintenance of the EMS. This is separate from the warranty outlined herein in the contract.

14. The project will require commissioning of the existing systems. The commissioning of the existing system will be limited to the new EMS system to ensure operational functionality.
15. Contractor shall coordinate and work with the District to avoid disruptions to existing operations.
16. As part of the RFP response the Contractor shall provide an itemized and detailed breakdown of the Contract Price per building in accordance with the enclosed exhibit.
17. All work shall be performed under a written energy services agreement, which shall be in a form provided by and acceptable to the District. See enclosed sample for reference.
18. The contractor shall complete the work during off-hours and shut down periods as much as possible to prevent disruptions to the campus operations. The District will provide a campus schedule once the contract is issued for coordination.

#### **Post Installation Energy Activities Including**

19. Coordinate with the CCC/IOU Partnership for a final review of all energy savings and construction cost estimates to ensure accuracy and compliance.

### **III. CONTRACTOR QUALIFICATIONS & BID REQUIREMENTS**

#### **A. General Proposal Requirements.**

1. Proposals shall be submitted in accordance with the instructions outlined in this RFP.
2. Proposals received by the District that omit any portion of these submittal requirements may be deemed non-responsive.
3. Respondent warrants upon submission of Proposal that the Respondent has visited and observed the site conditions to provide a complete and operational system in accordance with this RFP.

#### **B. Respondent Qualifications**

1. The Respondent shall be a licensed contractor, in good standing, pursuant to the California Business and Professions Code, and licensed to perform the work called for in the contract documents. The successful Respondent must possess a valid active Class C-10 (Electrical), C-7 (Low Voltage), and Class C-20 (HVAC) license at time of award of contract. The Contractor's State License number shall be clearly stated on the Respondent's proposal.
2. The Respondent shall show credentials related to sustainable construction and/or energy efficiency standards (e.g. Coalition for High Performance Schools and Leadership in Energy and Environmental Design).
3. The Respondent shall show experience related to sustainable construction and/or energy efficiency standards, including a list of specific projects the firm has

- completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm.).
4. The Respondent shall show experience related to Community College Districts including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
  5. The Respondent shall show experience on projects involving campus-wide EMS upgrades throughout a campus, including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
  6. The Respondent shall provide letter of bondability from the firm’s surety identifying bonding capacity.
  7. The Respondent shall identify any disputes in the past five (5) years and any liquidated damages paid under a construction contract with a public entity. Please exclude ‘pass-through’ claims.
  8. Experience and knowledge working with the CCC/IOU Partnership in project auditing and measuring energy savings

**IV. SCHEDULE OF EVENTS:**

|                           |  |
|---------------------------|--|
| Friday, March 6, 2015     | Distribute RFP   |
| Friday, March 13 , 2015   | Campus Job Walk at 9:00 A.M. at Santiago Canyon College in Front of Flag Poles (Chapman Entrance)  |
| Wednesday, March 25, 2015 | RFI and Inquiries Due  |
| Wednesday, April, 1, 2015 | Response to Inquiries  |
| Monday, April 13, 2015    | Proposals due at 2 p.m.  |
| Friday, April 17, 2015    | Interviews (District will call selected firms prior to interview)  |
| Monday May 11, 2015       | Proposal Award/ Board Approval   |
| Monday May 25, 2015       | Notice to Proceed (Procurement of Materials) – This date is tentative depending on contractor’s ability to obtain insurance, payment, and performance bonds in a timely fashion after issuance of District award letter. |
| Monday June 1, 2015       | Preconstruction and Campus Survey  |
| June 15, 2015             | Construction Starts  |
| February 29, 2016         | Construction Complete  |
| March 1, 2016             | Start Measurement and Verification Phase with Newcomb Anderson and McCormick (SCE Utility Rebates)   |
| March 30, 2016            | Complete Measurement and Verification (SCE Utility Rebates)  |

## **V. AWARD OF CONTRACT:**

The District reserves the right to reject any or all proposals, or to waive irregularities or informalities in any proposals. The award of the contract will be by action of the governing board and will be based on the determination, made in the good discretion of the District, as to which Proposal offers the best value for the District and meets the requirements of Government Code sections 4217.10 through 4217.18. Each proposal must conform and be responsive to the contract documents as defined in the General Conditions.

## **VI. EVALUATION OF SUBMITTALS:**

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Firm Information
2. Firm Approach and Methodology
3. Current Workload and Availability
4. Project Team
5. Specific Project Experience
6. Billing Rates
7. Review of Draft Agreement
8. RFP Proposed Fee
9. Complete Response to the RFP
10. Meet Schedule Requirement
11. Meet Minimum Savings Outlined in Newcomb Anderson McCormick Report
12. M&V Support

## **VII. MANDATORY JOB WALK:**

There will be a mandatory job walk and conference on **Friday, March 13, 2015**. The job walk will be held at the Santiago Canyon College, 8045 East Chapman Avenue., Orange, CA 92869 at 9:00 A.M. by the flag pole in front of the quad.

## **VIII. SUBMISSION**

Submit the Response to this RFP. Responses failing to address the listed requirements will be deemed non-responsive.

**Submit responses in sealed envelopes to:**

**Carri M. Matsumoto  
Facilities Department  
Energy Management System Upgrades at Santiago Canyon College  
Rancho Santiago Community College District  
2323 N. Broadway, Room 112  
Santa Ana, CA 92706**

**Submittals must be received not later than 2:00 p.m. on Monday April 13, 2015**

## **IX. INFORMATION FOR SERVICE PROVIDERS**

### **1.1 Response Format**

Each Contractor is required to submit an RFP they deem appropriate to the following requests. Submittals should be brief and concise, but provide sufficient clarity to meet the criteria to be used in the evaluation process. Contractor's response shall not exceed twenty (20) pages, excluding Exhibits. Each hardcopy of the RFP must be bound individually, single-sided, tabbed, and organized in order. Each Consultant shall submit **four (4)** bound hard copies and **one (1)** electronic copy, in PDF format with bookmarks, of the RFP. The District will evaluate the RFP based on the responsiveness to District requirements listed.

NOTE for Exhibits: All Exhibits should be tabbed, labeled and included as part of the appendix. It is at the Firm's discretion to determine how to reference, in the body of the RFP, the location of the Exhibits in the appendix. All Exhibits may be recreated in another program as long as the formatting and information requested mirrors the PDF forms attached to this RFP. The intent of the PDF forms is to keep all the requested information in a uniform format.

NOTE for Firms teaming with Sub-Consultants: Each responding firm shall select their proposed sub-consultants based on their own criteria. However RSCCD reserves the right to approve sub-consultants proposed for any projects that may be awarded. Sub-Consultants do not need to complete all the Exhibits in this RFP. Carefully read each section to determine which forms the Sub-consultants need to submit.

### **1.2 Information for Service Providers**

1. Preparation of RFP Form. Proposals under these specifications shall be submitted on the blank forms furnished herewith at the time and place stated in the RFP. All blanks in the Proposal form must be appropriately filled in, and all proposed prices must be stated clearly and legibly in both words and numerals. All Proposals must be signed by the Respondent in permanent blue ink and submitted in sealed envelopes, bearing on the outside, the Respondent's name, address, telephone number, and California Contractor's License number, and the name of the project for which the Proposal is submitted. The DISTRICT reserves the right to reject any Proposal if all of the above information is not furnished. Any Proposal received after the scheduled closing time for receipt of Proposals will be returned to the Respondent unopened. It is each Respondent's sole responsibility to ensure its Proposal is timely delivered and received at



the location designated as specified above. Any Proposal received at the designated location after the scheduled closing time for receipt of Proposals shall be returned to the Respondent unopened.

2. Signature. The Proposal form, all bonds, all designations of subcontractors, the Contractor's Certificate, the Agreement, and all Guarantees must be signed in permanent blue ink in the name of the Respondent and must bear the signature of the person or persons duly authorized to sign the Proposal.

If Respondent is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from the President and one from the Secretary or Assistant Secretary. Alternatively, the signature of other authorized officers or agents may be affixed, if a certified copy of the resolution of the corporate board of directors authorizing them to do so is provided to the DISTRICT. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal.

If Respondent is a partnership, the true name of the firm shall first be set forth, together with the names of all persons comprising the partnership or co-partnership. The Proposal must be signed by all partners comprising the partnership unless proof in the form of a certified copy of a statement of partnership acknowledging the signer to be a general partner is presented to the DISTRICT, in which case the general partner may sign.

Proposals submitted as joint venturers must so state and be signed by each joint venturer.

Proposals submitted by individuals must be signed by the Respondent unless an up to date power- of-attorney is on file in the DISTRICT office, in which case, said person may sign for the individual.

The above rules also apply in the case of the use of a fictitious firm name. In addition, however, where a fictitious name is used, it must be so indicated in the signature.

3. Modifications. Changes in or additions to the Proposal form, recapitulations of the work Proposal upon, alternative proposals, or any other modification of the Proposal form which is not specifically called for in the contract documents may result in the DISTRICT's rejection of the Proposal as not being responsive to the Notice Inviting Proposals. **No oral or telephonic modification of any Proposal submitted will be considered.**

4. Erasures, Inconsistent or Illegible Proposals. The Proposal submitted must not contain any erasures, interlineations, or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the signature or signatures of the person or persons signing the Proposal. In the event of inconsistency between words and figures in the Proposal price, words shall control figures. In the event that the DISTRICT determines that any Proposal is unintelligible, inconsistent, or ambiguous, the DISTRICT may reject such Proposal as not being responsive to the Notice Inviting Proposals.

5. Examination of Site and RFP Documents. Each Respondent shall visit the site of the proposed work and become fully acquainted with the conditions relating to the construction and labor so that the facilities, difficulties, and restrictions attending the execution of the work under the contract are fully understood. Respondents shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any Respondent to receive or examine any contract documents, form, instrument, addendum, or other document or to visit the site and become acquainted with conditions there existing shall not relieve any Respondent from obligations with respect to the Proposal or to the contract. The submission of a Proposal shall be taken as prima facie evidence of compliance with this section. Respondents shall not, at any time after submission of the Proposal, dispute, complain, or assert that there were any misunderstandings with regard to the nature or amount of work to be done.

6. Withdrawal of Proposals. Any Proposal may be withdrawn, either personally or by written request, at any time prior to the scheduled closing time for receipt of Proposals. The Proposal security for Proposals withdrawn prior to the scheduled closing time for receipt of Proposals, in accordance with this paragraph, shall be returned upon demand therefor.

**No Respondent may withdraw any Proposal for a period of ninety (90) calendar days after the date set for the opening of Proposals.**

7. Agreements, Insurance, and Bonds. The Agreement form which the successful Respondent, as CONTRACTOR, will be required to execute, and the form of the bonds and insurance endorsements which such CONTRACTOR will be required to furnish, are included in the contract documents and should be carefully examined by the Respondent. Payment bond and performance bonds in the amount of one hundred percent (100%) of the amount of the contract and insurance endorsements must be furnished as required in the contract, all prior to execution of the contract.

8. Interpretation of Plans and Documents. If any prospective Respondent is in doubt as to the true meaning of any part of the contract documents, or finds discrepancies in, or omissions from the drawings and specifications, a written request for an interpretation or correction thereof may be submitted to the Architect. The Respondent submitting the request shall be responsible for its prompt delivery. **Any interpretation or correction of the contract documents will only be made by addendum duly issued, and a copy of such addendum will be mailed or delivered to each contractor receiving a set of the contract documents.** No person is authorized to make any oral interpretation of any provision in the contract documents, nor shall any oral interpretation be binding on the DISTRICT. If discrepancies on drawings, or in specifications, or conflicts between drawings and specifications are not covered by addenda, Respondent shall include in the Proposal methods of construction and materials resulting in the higher Proposal.

9. Respondents Interested in More Than One Proposal. No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one prime Proposal for the same work unless alternate Proposals are specifically called for. A person, firm, or corporation that has submitted a proposal to a Respondent, or that has quoted prices of materials to a Respondent, is not thereby disqualified from submitting a proposal or quoting prices to other Respondents or making a prime proposal.

10. Award of Contract. The DISTRICT reserves the right to reject any or all Proposals, or to waive any irregularities or informalities in any Proposals or in the bidding. The award of the contract, if made by the DISTRICT, will be by action of the governing board and based on the “Best Value Criteria”. **Each Proposal must conform and be responsive to the contract documents as defined in the General Conditions.**

10.1 Alternate Proposals. The Governing Board of the District is not calling for alternate Proposals for this project.

10.2 RFP Evaluation and Clarification. The District reserves the right to obtain clarification of any point in a Service Provider’s submittal or to obtain additional information. The District reserves the right to conduct on District site, telephone or email, conversations with the Service Provider to clarify proposals and other documents, ask questions or obtain additional information. The Service Provider’s inability to respond to this request may be cause of disqualification of their proposal.

11. Alternates. If alternate Proposals are called for, the contract may be awarded at the election of the governing board to the lowest responsible and responsive Respondent using the method and procedures outlined in the Notice Inviting Proposals.

12. Evidence of Responsibility. Upon the request of the DISTRICT, a Respondent whose Proposal is under consideration for the award of the contract shall submit promptly to the DISTRICT satisfactory evidence showing the Respondent’s financial resources, surety and insurance claims experience, construction experience, completion ability, workload, organization available for the performance of the contract, and other factors pertinent to a project of the scope involved.

13. Listing Subcontractors. Each Respondent shall submit with his Proposal, on the form furnished with the contract documents, a list of the names, license numbers and locations of the places of business of each subcontractor who will perform work or labor or render service to the Respondent in or about the Project, or a subcontractor who under subcontract to the Respondent, specially fabricates and installs a portion of the work, in an amount in excess of one-half of 1 percent of the Respondent’s total Proposal as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, et seq.). If alternate Proposals are called for and the Respondent intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate.

14. Workers’ Compensation. In accordance with the provisions of Labor Code Section 3700, the successful Respondent as the CONTRACTOR shall secure payment of compensation to all employees. The CONTRACTOR shall sign and file with the DISTRICT the following certificate prior to performing the work under this contract: “I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.” The form of such certificate is included as a part of the contract documents.

15. Contractor's License. To perform the work required by this notice, the CONTRACTOR must possess a Class C-10 Contractor's License, and the CONTRACTOR must maintain the license throughout the duration of the contract. If, at the time of award of the contract, Respondent is not licensed to perform the Project in accordance with Division 3, Chapter 9, of the Business and Professions Code for the State of California and the Notice to Contractors calling for Proposals, such Proposal will not be considered and the CONTRACTOR will forfeit its Proposal security to the DISTRICT.

16. Anti-Discrimination. It is the policy of the DISTRICT that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The CONTRACTOR agrees to comply with applicable federal and California laws, including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code section 12900 and Labor Code section 1735. In addition, the CONTRACTOR agrees to require like compliance by any subcontractors employed on the work by such CONTRACTOR.

17. Disqualification of Respondents and Proposals. More than one proposal for the same work from any individual, firm, partnership, corporation, or association under the same or different names will not be accepted; and reasonable grounds for believing that any Respondent is interested in more than one proposal for the work will be cause for rejecting all proposals in which such Respondent is interested and the Respondent will forfeit their Proposal security to the DISTRICT.

18. Unbalanced or Altered Proposals. Proposals in which the prices are obviously unbalanced, and those which are incomplete or show any alteration of form, or contain any additions or conditional or alternate Proposals that are not called for or otherwise permitted, may be rejected. A proposal on which the signature of the Respondent has been omitted may be rejected.

19. Employment of Apprentices. The CONTRACTOR and all Subcontractors shall comply with all applicable provisions of the California Labor Code including, but not limited to sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices. The CONTRACTOR and any Subcontractor under him shall comply with the requirements of said sections, including applicable portions of all subsequent amendments in the employment of apprentices; however, the CONTRACTOR shall have full responsibility for compliance with said Labor Code sections, for all apprenticeable occupations, regardless of any other contractual or employment relationships alleged to exist.

20. Non-Collusion Declaration. Public Contract Code Section 7106 requires Respondents to submit a declaration of non-collusion with their Proposals. This form is included with the Proposal package and must be signed and dated by the Respondent under penalty of perjury.

21. Wage Rates, Travel and Subsistence.

(a) Pursuant to Labor Code Sections 1770 et seq., the DISTRICT has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per

diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the DISTRICT to any interested party on request and are also available from the Director of the Department of Industrial Relations. The CONTRACTOR shall obtain copies of the above-referenced prevailing wage sheets and post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

(b) Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

(c) Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

(d) These per diem rates, including holiday and overtime work, and employer payments for health and welfare, pension, vacation, and similar purposes, are on file at the administrative office of the DISTRICT, located as noted above and are also available from the Director of the Department of Industrial Relations. It is the CONTRACTOR's responsibility to ensure the appropriate prevailing rates of per diem wages are paid for each classification. It shall be mandatory upon the CONTRACTOR to whom the contract is awarded, and upon any subcontractor under such CONTRACTOR, to pay not less than the said specified rates to all workers employed by them in the execution of the contract.

22. Failure to Provide Requested Information. Failure of a Service Provider to provide any required documentation or information requested in this package may result in the rejection of their proposal.

23. No Telephone or Facsimile Availability. No telephone or facsimile machine will be available to Respondents on the DISTRICT premises at any time.

**\* NONCOLLUSION DECLARATION**  
**(Prime Respondent)**

The undersigned declares:

I am the \_\_\_\_\_ [title] of \_\_\_\_\_ [name of company],  
the party making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham Proposal. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any Respondent or anyone else to put in a sham Proposal, or to refrain from bidding. The Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the Respondent or any other Respondent, or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Respondent. All statements contained in the Proposal are true. The Respondent has not, directly or indirectly, submitted his or her Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Proposal depository, or to any member or agent thereof, to effectuate a collusive or sham Proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], California.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

**\* PROPOSAL FORM**

TO: Rancho Santiago Community College District, acting by and through its Governing Board, herein called "DISTRICT".

1. Pursuant to and in compliance with your Request for Proposals and other documents relating thereto, the undersigned Respondent, having familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, hereby proposes and agrees to perform within the time stipulated, the contract, including all of its component parts, and everything required to be performed, including its acceptance by the DISTRICT, and to provide and furnish any and all labor, materials, tools, expendable equipment, and utility and transportation services necessary to perform the contract and complete all of the work in a workmanlike manner required in connection with the LED Lighting project for the Santiago Canyon College and the District Operations Center in the DISTRICT described above, all in strict conformance with the drawings and other contract documents on file at the Purchasing Office of said DISTRICT for amounts set forth herein.
  
2. ADDENDA: The undersigned has thoroughly examined any and all Addenda (if any) issued during the Proposal period and is thoroughly familiar with all contents thereof and acknowledges receipt of the following Addenda: (Respondent to list all addenda).

|                    |                     |
|--------------------|---------------------|
| ADDENDUM NO. _____ | DATE RECEIVED _____ |
| ADDENDUM NO. _____ | DATE RECEIVED _____ |
| ADDENDUM NO. _____ | DATE RECEIVED _____ |
| ADDENDUM NO. _____ | DATE RECEIVED _____ |

3. **\*PROPOSED PRICE**

TOTAL CASH PURCHASE PRICE IN WORDS & NUMBERS:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_)

**\*Allowance cost must be included in the Proposed Price.**

**Allowance # 1: Provide a \$50,000 allowance used specifically for materials and equipment for miscellaneous components and any unforeseen conditions.**

**Allowance expenses shall be used solely at the Owners discretion, any monies not used will be refunded to the District.**

4. **TIME FOR COMPLETION:** The DISTRICT may give a notice to proceed within ninety (90) days of the award of the Proposal by the DISTRICT. Once the CONTRACTOR has received the notice to proceed, the **CONTRACTOR shall complete the work within**

**two hundred eight-nine (289) consecutive calendar days.** Time is of the essence. The undersigned agrees that failure to complete the work within the time set forth herein will result in the imposition of liquidated damages for each consecutive calendar day of delay per building in the amount of **Five Hundred Dollars (\$500)**. (Government Code Section 53069.85)

5. In the event that the DISTRICT desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the CONTRACTOR, giving the notice to proceed may be postponed by the DISTRICT. It is further expressly understood by the CONTRACTOR, that the CONTRACTOR shall not be entitled to any claim of additional compensation as a result of the postponement of giving the notice to proceed.

If the CONTRACTOR believes that a postponement will cause a hardship to it, the CONTRACTOR may terminate the contract with written notice to the DISTRICT within ten (10) days after receipt by the CONTRACTOR of the DISTRICT's notice of postponement. It is further understood by the CONTRACTOR that in the event that the CONTRACTOR terminates the Contract as a result of postponement by the DISTRICT, the DISTRICT shall only be obligated to pay the CONTRACTOR for work performed by the CONTRACTOR at the time of notification of postponement. Should the CONTRACTOR terminate the contract as a result of a notice of postponement, the DISTRICT shall have the authority to award the contract to the next lowest responsible Respondent.

6. It is understood that the DISTRICT reserves the right to reject any or all Proposals and/or waive any irregularities or informalities in this Proposal or in the Proposal process. The CONTRACTOR understands that it may not withdraw this Proposal for a period of ninety (90) days after the date set for the opening of Proposals.
7. The required Non-collusion Declaration is attached hereto.
8. It is understood and agreed that if written notice of the acceptance of this Proposal is mailed, telegraphed, or delivered to the undersigned after the opening of the Proposal, and within the time this Proposal is required to remain open, or at any time thereafter before this Proposal is withdrawn, the undersigned will execute and deliver to the DISTRICT a contract in the form attached hereto in accordance with the Proposal as accepted, and that he will also furnish and deliver to the DISTRICT the Performance Bond and Payment Bond, all within five (5) calendar days after receipt of notification of award, and that the work under the contract shall be commenced by the undersigned Respondent, if awarded the contract, by the start date provided in the DISTRICT's Notice to Proceed, and shall be completed by the CONTRACTOR in the time specified in the contract documents.
9. Notice of Intent to Award Contract or other correspondence should be addressed to the undersigned at the address stated below.
10. The names of all persons interested in the foregoing proposal as principals are as follows:



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(IMPORTANT NOTICE: If Respondent or other interested person is a corporation, state the legal name of such corporation, as well as the names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state the true names of the firm, as well as the names of all individual co-partners comprising the firm; if Respondent or other interested person is an individual, state the first and last names in full.)

11. The undersigned Respondent shall be licensed and shall provide the following information:

Respondent's California Contractor's  
License Number: \_\_\_\_\_  
License expiration date: \_\_\_\_\_  
Name on License: \_\_\_\_\_  
Type of License: \_\_\_\_\_

If the Respondent is a joint venture, each member of the joint venture must include the above information.

12. Time is of the essence regarding this contract, therefore, in the event the Respondent to whom the Notice of Intent to Award Contract is given fails or refuses to post the required bonds and return executed copies of the Agreement form within five (5) calendar days from the date of receiving the Notice of Intent to Award Contract, the DISTRICT may declare the Respondent's Proposal deposit or bond forfeited as damages.
13. Pursuant to Government Code Section 4552, in submitting a Proposal to the DISTRICT, the Respondent offers and agrees that if the Proposal is accepted, it will assign to the DISTRICT all rights, title, and interest in, and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Business and Professions Code Sections 16700, et seq.), arising from the purchase of goods, materials, or services by the Respondent for sale to the DISTRICT pursuant to the Proposal. Such assignment shall be made and become effective at the time the DISTRICT tenders final payment to the Respondent.
14. The Respondent declares that he/she has carefully examined the location of the proposed work, that he/she has examined all component parts of the RFP and all information provided by DISTRICT related thereto, including the proposed Design-Build Agreement, and read the accompanying instructions to Respondents, and hereby proposes and agrees, if this Proposal is accepted, to furnish all services, equipment, and materials and do all work required to complete the said Project in accordance with the RFP, in the time and manner therein prescribed for the unit cost and lump sum amounts set forth in this Proposal Form.

15. The Respondent is familiar with Government Code Sections 12650, et seq., and Penal Code Section 72 and understands that false claims can lead to imprisonment.

I, the below-indicated Respondent, declare under penalty of perjury that the information provided and representations made in this Proposal are true and correct.

---

Proper Name of Respondent

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Address

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Respondent

**NOTE:** *If Respondent is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if Respondent is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Respondent is an individual, his signature shall be placed above.*

**All signatures must be made in permanent blue ink.**

**\* CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations, of ability to self-insure and to pay any compensation that may become due to employees.

**I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provision before commencing the performance of the work of this contract.**

\_\_\_\_\_  
Proper Name of Respondent

By: \_\_\_\_\_

\_\_\_\_\_

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and submitted with the Contractor's Proposal.

**\* ACKNOWLEDGMENT OF PRACTICES REGARDING INDEMNITY**

TO: Rancho Santiago Community College District

RE: Project Number \_\_\_\_\_

Construction Contract for \_\_\_\_\_

Please be advised that with respect to the above-referenced PROJECT the undersigned CONTRACTOR on behalf of itself and all subcontractors hereby waives the benefits and protection of Labor Code Section 3864, which provides:

“If an action as provided in this chapter is prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in the absence of a written agreement to do so executed prior to the injury.”

This Agreement has been signed by an authorized representative of the contracting party and shall be binding upon its successors and assignees. The undersigned further agrees to promptly notify the DISTRICT of any changes of ownership of the contracting party or any subcontractor while this Agreement is in force.

\_\_\_\_\_  
Contracting Party

\_\_\_\_\_  
Name of Agent/Title

**PAYMENT BOND**

**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Rancho Santiago Community College District (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the “Public Work”); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 9550;

NOW, THEREFORE, We, \_\_\_\_\_, the undersigned Contractor, as Principal; and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Rancho Santiago Community College District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys’ fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact



**CONTRACT PERFORMANCE BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Rancho Santiago Community College District (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the “Public Work”); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated \_\_\_\_\_, (hereinafter referred to as the “Contract”), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Rancho Santiago Community College District in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates



approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a Proposal or Proposals for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible Respondent, arrange for a contract between such Respondent and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a Proposal from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged: \$\_\_\_\_\_ (This must be filled in by a corporate surety).

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_



**GUARANTEE**

Guarantee for \_\_\_\_\_ . We hereby guarantee that the \_\_\_\_\_, which we have installed in \_\_\_\_\_ has been done in accordance with the Contract Documents, including without limitation, the drawings and specifications, and that the work as installed will fulfill the requirements included in the Proposal documents. The undersigned and its surety agree to repair or replace any or all such work, together with any other adjacent work, which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of \_\_\_\_\_ (\_\_\_\_\_) years from the recordation date of the Notice of Completion of the above-mentioned structure by the DISTRICT, ordinary wear and tear and unusual abuse or neglect excepted.

In the event the undersigned or its surety fail to comply with the above-mentioned conditions within a reasonable period of time, as determined by the DISTRICT, but not later than ten (10) days after being notified in writing by the DISTRICT, the undersigned and its surety authorize the DISTRICT to proceed to have said defects repaired and made good at the expense of the undersigned and its surety, who will pay the costs and charges therefor upon demand. The undersigned and its surety shall be jointly and severally liable for any costs arising from the DISTRICT's enforcement of this Guarantee.

Countersigned

\_\_\_\_\_  
(Proper Name)

\_\_\_\_\_  
(Proper Name)

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Subcontract or Contractor)

\_\_\_\_\_  
(Signature of General Contractor if for Subcontractor)

Representatives to be contacted for service:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

## **ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Rancho Santiago Community College District, 2323 North Broadway, Santa Ana, CA 92706-1640, hereinafter called "OWNER", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "CONTRACTOR", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Escrow Agent".

For the consideration hereinafter set forth, the OWNER, CONTRACTOR and Escrow Agent agree as follows:

(1) Pursuant to section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by OWNER pursuant to the Construction Contract entered into between the OWNER and CONTRACTOR for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the OWNER shall make payments of the retention earnings directly to the escrow agent. When CONTRACTOR deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the OWNER within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the OWNER and CONTRACTOR. Securities shall be held in the name of the OWNER, and shall designate the CONTRACTOR as beneficial owner.

(2) The OWNER shall make progress payments to the CONTRACTOR for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the OWNER makes payments of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the OWNER pays the Escrow Agent directly.

(4) CONTRACTOR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the OWNER. These expenses and payment terms shall be determined by the OWNER, CONTRACTOR, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to the OWNER.

(6) CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the OWNER to the Escrow Agent that OWNER consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

(7) The OWNER shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven (7) days' written notice to the Escrow Agent from the OWNER of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the OWNER.

(8) Upon receipt of written notification from the OWNER certifying that the Contract is final and complete, and that the CONTRACTOR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the OWNER and the CONTRACTOR pursuant to Sections (5) to (8), inclusive, of this agreement and the OWNER and CONTRACTOR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the OWNER and on behalf of CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

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Title

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Name

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Signature

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Address

On behalf of Contractor:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

On behalf of Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the OWNER and CONTRACTOR shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date set forth above.

OWNER

CONTRACTOR

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature





**INSURANCE DOCUMENTS & ENDORSEMENTS**

The following insurance endorsements and documents must be provided to the Rancho Santiago Community College District within five (5) calendar days after receipt of notification of award. If the apparent low Respondent fails to provide the documents required below, the District may award the contract to the next lowest responsible and responsive Respondent or release all Respondents, and the Respondent’s Proposal security will be forfeited. All insurance provided by the Respondent shall fully comply with the requirements set forth in Article 11 of the General Conditions.

1. General Liability Insurance: Certificate of Insurance with all specific insurance coverages set forth in Article 11 of the General Conditions, proper Project description, designation of the District as the Certificate Holder, a statement that the insurance provided is primary to any insurance obtained by the District and minimum of 30 days’ cancellation notice. Respondent shall also provide required additional insured endorsement(s) designating all parties required in Article 11 of the General Conditions. The additional insured endorsement shall be an ISO CG 20 10 (11/85), or an ISO CG 20 10 (10/93 or 07/04) and ISO CG 20 37 (10/93 or 07/04) or their equivalent as determined by the District in its sole discretion.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
(Title) (Department)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

(\_\_\_\_\_) \_\_\_\_\_  
(Telephone Number)

2. Workers’ Compensation/ Employer’s Liability Insurance: Certificate of Workers’ Compensation Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum of 30 days’ cancellation notice, proper Project description, waiver of subrogation and any applicable endorsements.

3. Automobile Liability Insurance: Certificate of Automobile Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum 30 days' cancellation notice, any applicable endorsements and a statement that the insurance provided is primary to any insurance obtained by the District.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
(Title) (Department)  
\_\_\_\_\_  
(Company)  
\_\_\_\_\_  
(Street Address)  
\_\_\_\_\_  
(City) (State) (Zip Code)  
(\_\_\_\_\_) \_\_\_\_\_  
(Telephone Number)

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Signature

## **CONTRACTOR'S CERTIFICATE REGARDING DRUG-FREE WORKPLACE**

This Drug-Free Workplace Certification form is required from all successful Respondents pursuant to the requirements mandated by Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the CONTRACTOR or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition;
- b) Establishing a drug-free awareness program to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace;
  - 2) The person's or organization's policy of maintaining a drug-free workplace;
  - 3) The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - 4) The penalties that may be imposed upon employees for drug abuse violations;
- c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the Rancho Santiago Community College District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Sections 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code Sections 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Signature

**CONTRACTOR’S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE and  
TOBACCO-FREE CAMPUS POLICY**

The CONTRACTOR agrees that it will abide by and implement the DISTRICT’s Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on DISTRICT-owned or leased buildings, on DISTRICT property and in DISTRICT vehicles. The CONTRACTOR shall procure signs stating “ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED” and shall ensure that these signs are prominently displayed in all entrances to DISTRICT campus property at all times.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Signature

**STATEMENT OF ANTICIPATED DISABLED  
VETERAN BUSINESS ENTERPRISE PARTICIPATION**

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

Project: \_\_\_\_\_

- Our firm anticipates using Disabled Veteran Business Enterprise (DVBE) participation on this project to the maximum degree possible and will, following execution of an agreement, make a Good Faith Effort to invite and encourage DVBE participation.

At the conclusion of the project, we will report to the District the total dollar amount of DVBE participation (service/materials) used under our contract in compliance with the District's Policy.

OR

- Our firm anticipates using Disabled Veteran Business Enterprise (DVBE-supplied services/materials amounting to \$\_\_\_\_\_ or \_\_\_\_\_% on this project. Attached is the DVBE Certification Letter(s) for the DVBE firms/individuals we anticipate using.

At the conclusion of the project, we will report to the District the total dollar amount of DVBE participation (service/materials) used under our contract in compliance with the District's Policy.

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**CERTIFICATION – PARTICIPATION OF  
DISABLED VETERAN BUSINESS ENTERPRISES**

The Rancho Santiago Community College District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds expended each year by the District for all contracts. At the time of execution of the contract, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises pursuant to the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual DVBE participation at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
F

## EXHIBIT A – DETAILED SCOPE

### Buildings Covered:

The District's Energy Management System configuration for each building is listed below. The final design may change depending on the components and capability of the existing equipment to provide the level of control indicated herein. This is a general guideline.

**Bldg. A Existing Configuration:** (23) VAVs with HHW reheat, (1) AHU SF and (1) RF (with SF and RF VFD Control). (1) Boiler and (1) Chiller with Pumps and multiple EFs

*Note: The chiller and boiler were replaced with new high efficiency units in summer 2009.*

- AHU DDC controller Optimum Start w/SA Temperature control of CHW Supply Temperature
- Chiller Power Demand Limiting and Cooling Control Valve
- Cooling lockout based on OSA Temperature
- SF VFD control based on duct static pressure
- RF VFD control based on building static pressure
- 100% economizer damper control, minimum OSA Flow control with demand ventilation override based on Zone CO2 (or other DVC device)
- Heating System DDC Controller Optimum Start
- HWS Temperature control reset by OSA
- Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level
- DDC Zone control with dual max Heating/Cooling CFM control reduced
- Zone CFM checked by CO2 Demand Ventilation (or other DVC device)
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting Control based on operating schedule and astroclock algorithm. Pick up existing interior and exterior lighting control points from American Automatrix AutoPilot System and integrate into new system

**Bldg B Existing Configuration:** (23) VAVs with HHW reheat, (1) AHU SF and (1) RF (with VFD Control). (1) Boiler and (1) Air Cooled Chiller with Pumps and multiple EF units

*Note: The chiller and boiler were replaced with new high efficiency units in summer 2009.*

- AHU DDC controller Optimum Start w/SA Temperature control of CHW Supply Temperature



- Chiller Power Demand Limiting and Cooling Control Valve
- Cooling lockout based on OSA Temperature
- SF VFD control based on duct static pressure
- RF VFD control based on building static pressure
- 100% economizer damper control, minimum OSA Flow control with demand ventilation override based on Zone CO2 (or other DVC device)
- Heating System DDC Controller Optimum Start
- HWS Temperature control reset by OSA
- Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level
- DDC Zone control with dual max Heating/Cooling CFM control reduced
- Zone CFM checked by CO2 Demand Ventilation (or other DVC device)
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting Control based on operating schedule and astroclock algorithm. Pick up existing interior and exterior lighting control points from American Automatrix AutoPilot System and integrate into new system.

**Bldg C Existing Configuration:** (6) split system units DX Condensers and gas heat units and fans (No VFD). Multiple EF units

*Note: Existing split units to be upgraded to premium efficiency summer 2015 under a separate contract.*

- DDC controller Optimum
- Start w/Zone Temperature control of Cooling and Heating Stages
- Cooling lockout based on OSA Temperature
- Reduction of operating hours with ability to override zone to occupied after or before hours.
- Building internal and external Night Lighting Control of (5) circuits - with spare for (8), based on operating schedule and astroclock algorithm.

**Bldg D:** (44) Fan Coils with 4 pipe system -HHW and CHW, (1) Chiller and (1) Boiler with pumps (no existing VFD), 2 heat pumps, and multiple EF

*Note: Existing air cooled chiller to be replaced with premium efficiency chiller (same size) with new pumps and VFD control as part of a Year 3 Prop. 39 project to take place Winter 2015. All VAV units have new Belimo HHW and CHW 3-way valves replaced Fall 2014. Boiler and pumps replaced with premium efficiency equipment in Winter 2014.*

- Air-Cooled Chiller/Pumps DDC controller w/Optimum Start
- CHW Supply Temperature reset based on Zone Demand
- Chiller Power Demand Limiting Cooling lockout based on OSA Temperature
- Heating System/Pumps DDC Controller w/Optimum Start
- HWS Temperature control reset by OSA Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level
- Control of Ventilation and Exhaust Fans per Occupancy Schedule or After-Before Hours Override
- DDC Fan Coil Unit Zone control w/Optimum Start. Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting and SF/EF Ventilation Control based on operating schedule and astroclock algorithm. Pick up existing interior and exterior lighting control points from American Automatrix AutoPilot System and integrate into new system.

**Bldg E Existing Configuration:** (17) VAV with Reheat Coils, (1) Boiler and Pump, (1) DX AHU Unit with SF and RF (VFD Controlled), (1) Split System Unit (serving MDF)

- Air-Cooled DX AHU DDC controller w/Optimum Start
- Supply Air Temperature reset based on Zone Demand
- DX Staged Cooling w/lockout based on OSA Temperature
- Dual Boiler Heating System/ Dual HW Pumps DDC Controller w/Optimum Start
- HWS Temperature control reset by OSA Temperature and zone Heating demand  
Minimize simultaneous heating and cooling at the zone level
- Control of Exhaust Fans per Occupancy Schedule or After-Before Hours Override
- DDC Zone control with dual max Heating/Cooling CFM control, reduced Zone CFM checked by CO2 Demand Ventilation
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting Control based on operating schedule and astroclock algorithm
- EMS to pick up interior and exterior lighting control points from existing American Automatrix AutoPilot System and integrate into new system

**Bldg L Existing Configuration:** 41 VAV ( with reheat), (1) DX AHU with SF and RF (with VFD) , (1) Boiler with pump and 3-way valve, (1) split system CRAC unit (Server Room), multiple EF units.

- Air-Cooled DX AHU DDC controller w/Optimum Start
- Supply Air Temperature reset based on Zone Demand
- DX Staged Cooling w/lockout based on OSA Temperature
- Single Boiler Heating System/ HW Pump DDC Controller w/Optimum Start
- HWS Temperature control reset by OSA Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level. Control of Exhaust Fans per Occupancy Schedule or After-Before Hours Override
- DDC Zone control with dual max Heating/Cooling CFM control
- Reduced Zone CFM checked by CO2 Demand Ventilation
- Reduction of operating hours with ability to override zone to occupied after or before hours.

**Bldg M Existing Configuration:** (3) split system HP and FC units, (1) split system AC (Server Room), multiple EF units

- M&O Bldg - (3) small Split System Heat Pump Units serving Individual Zones
- DDC controller Optimum Start w/Zone Temperature control of Cooling and Heating Stages
- Cooling lockout based on OSA Temperature
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Monitor Space Temperature in Server Room and alarm if High Temperature
- Building internal and external Night Lighting Control of (5) circuits - with spare for (8), based on operating schedule and astroclock algorithm

**EXHIBIT B – BILLING RATE**

| <b>BUILDING A</b>                                 | <b>Costs</b> |
|---|--------------|
| Investigation                                     |              |
| Design  |              |
| Installation hardware and software implementation |              |
| Commissioning                                     |              |
| Building Training                                 |              |
| <b>Subtotal</b>                                   |              |

| <b>BUILDING B</b>                                 | <b>Costs</b> |
|---|--------------|
| Investigation                                     |              |
| Design  |              |
| Installation hardware and software implementation |              |
| Commissioning                                     |              |
| Building Training                                 |              |
| <b>Subtotal</b>                                   |              |

| <b>BUILDING C</b>                                 | <b>Costs</b> |
|---|--------------|
| Investigation                                     |              |
| Design  |              |
| Installation hardware and software implementation |              |
| Commissioning                                     |              |
| Building Training                                 |              |
| <b>Subtotal</b>                                   |              |

| <b>BUILDING D</b>                                 | <b>Costs</b> |
|---|--------------|
| Investigation                                     |              |
| Design  |              |
| Installation hardware and software implementation |              |
| Commissioning                                     |              |
| Building Training                                 |              |
| <b>Subtotal</b>                                   |              |

| <b>BUILDING E</b>                                 | <b>Costs</b> |
|---|--------------|
| Investigation                                     |              |
| Design  |              |
| Installation hardware and software implementation |              |
| Commissioning                                     |              |
| Building Training                                 |              |
| <b>Subtotal</b>                                   |              |

**BUILDING L**

|   |  |
|---|--|
| Investigation                                     |  |
| Design  |  |
| Installation hardware and software implementation |  |
| Commissioning                                     |  |
| Building Training                                 |  |
| <b>Subtotal</b>                                   |  |

**BUILDING M**

|   |  |
|---|--|
| Investigation                                     |  |
| Design  |  |
| Installation hardware and software implementation |  |
| Commissioning                                     |  |
| Building Training                                 |  |
| <b>Subtotal</b>                                   |  |

|   |                           |              |
|---|---------------------------|--------------|
|   | SUMMARY ALL BUILDINGS     | \$ -         |
|   | DISTRICT ALLOWANCE BUDGET | \$ 50,000.00 |
| (Include allowance of \$50,000 to be used at District's discretion) | <b>GRAND TOTAL</b>        |              |

Campus Support Services (Not part of this contract)

|                        |  |
|------------------------|--|
| WebCTRL Support Year 1 |  |
| WebCTRL Support Year 2 |  |
| WebCTRL Support Year 3 |  |

Hourly Billing Rates:

Project Manager  
 Engineering  
 Control Technician  
 Software Support

## **EXHIBIT C – FTP DOWNLOAD INSTRUCTIONS**

**Please refer to the following directory to download the following documents:**

Building As-Builts

American Automatrix Systems Drawings and AutoCAD files

List of exiting mechanical equipment for each of the buildings

<https://remote.rscdd.edu/dana/fb/smb/wfb.cgi?t=p&v=6.1314376372.466163.0&si=0&ri=0&pi=0&sb=name&so=asc&dir=SCC-EMS%20Upgrades>

User: plans2

Password: Facilities2013!

## EXHIBIT D – TEMPLATE AGREEMENT

The agreement below is a **DRAFT** agreement, and may be subject to change.

### **AGREEMENT FOR ENERGY MANAGEMENT SYSTEM SERVICES CONTRACTOR**

This Agreement for Energy Management Systems Services Contractor ("Agreement") is made as of \_\_\_\_\_, 20\_\_, between the Rancho Santiago Community College District ("District") and [CONTRACTOR] ("EMS Contractor") (together, "Parties").

- 8. Services.** EMS Contractor shall furnish to the District the labor, equipment, material, and services set forth in this Agreement and as otherwise reasonably required to complete all services and objectives described herein, along with all tools, equipment and supplies reasonably required to complete all services and objectives described herein, described in Exhibit A-1 "Services," attached hereto and incorporated herein by this reference, to ensure that the specified Building Systems described in Exhibit A-2 ("Systems"), attached hereto and incorporated herein by this reference, are tested, optimized and capable of being operated and maintained to perform in conformity with (i) the Owner's goals and requirements as expressed in the Facilities Program, (ii) the design professional's basis of design, and (iii) any additional requirements set forth herein ("Services" or "Work").
- 9. Completion Date.** EMS Contractor shall commence providing Services under this Agreement upon execution of the Agreement by both Parties, and will diligently perform such Services as described herein and as otherwise reasonably required to achieve Substantial Completion of the Services on or before \_\_\_\_\_, (the "Guaranteed Substantial Completion Date") and Final Completion of the Services (as defined below) on or before \_\_\_\_\_ (the "Scheduled Final Completion Date"). The Guaranteed Substantial Completion Date and the Scheduled Final Completion Date shall each be extended on a day for day basis due to any Force Majeure Event or action or delay in the Services or Work that results solely from any action or omission of the District.
- 9.1. Substantial Completion.** Substantial Completion means that each of the following has been achieved in accordance with the requirements of this Agreement:
- 9.1.1. Mechanical Completion-** defined as the point at which Work to be installed and all Work of every kind necessary to render the Services measurable by and beneficial to the District for the intended function(s) is actually complete and any and all fire/life safety Work is completely installed and fully operational;
  - 9.1.2. Testing Capability,** defined as the point at which all Systems have completed testing, regardless whether further Services are indicated by the testing completed, sufficient to demonstrate intended enhancements in performance of the Systems as described in this Agreement; and

- 9.2. Punch List.** Upon achieving Substantial Completion with respect to the Services, EMS Contractor shall provide the District with a list of items still outstanding which are necessary to complete the Services in accordance with this Agreement and the related specifications and to achieve Final Completion ("Punch List"). Within five (5) working days after receipt of a proposed Punch List, the District shall either (a) approve the Punch List or (b) request that certain amendments or modifications be made to the Punch List. The Parties shall meet and negotiate in good faith and shall promptly agree on and execute an amended Punch List to be completed by the EMS Contractor before Final Completion is achieved.
- 9.3. Final Completion.** Final Completion shall occur after Substantial Completion, when each of the following has been achieved in accordance with the requirements of the Contract Documents:
- 9.3.1.** all Punch List items are completed;
  - 9.3.2.** all required training as detailed in Exhibit A-1 has occurred; all documentation as detailed in Exhibit A-1 has been provided to the District, including, without limitation, all warranties, final record drawings in Auto-CAD format that incorporates all as-built revisions and comments and operation and maintenance manuals; and
  - 9.3.3.** All objectives of the Services described in this Agreement have been achieved;
  - 9.3.4.** Pending Final Completion, the Parties agree and acknowledge that the District may withhold from the final payment an amount not to exceed 150 percent of the reasonably estimated value of any disputed items and/or all obligations of the EMS Contractor due and remaining to be performed following Substantial Completion. District shall comply with all prompt payment laws, including, without limitation, Public Contract Code sections 7107 (final payment) and 20104.50 (progress payments for construction) and Civil Code 3320 (progress payments for architectural and engineering services).
- 9.4. District's Acceptance of Work.** Upon achievement of Substantial Completion or Final Completion, as applicable, EMS Contractor shall deliver notice thereof to the District. The District shall inspect the Work and notify EMS Contractor that either (a) Substantial Completion or Final Completion has been achieved or (b) the relevant Work has not been completed, stating in reasonable detail the reasons for such determination, including, without limitation, issues remaining undetermined, which may require additional time for evaluation by District. In either event the applicable notice from the District shall be delivered within fifteen (15) calendar days from the next regularly scheduled Board meeting after receipt of the notice from EMS Contractor. If the District fails to provide such notice within such period, Substantial Completion or Final Completion (as applicable) shall be deemed to have occurred as of the date of the applicable notice. If District notifies EMS Contractor that the relevant Work has not been completed, EMS Contractor shall take action to promptly complete the relevant Work and shall deliver to District a notice once completed. This procedure shall be repeated until the relevant Work shall have been accepted by the District.



**9.4.1.** The Project shall be deemed complete for purposes of Public Contract Code section 7107 only upon acceptance by the District's governing Board of Final Completion.

**9.5.** Within five (5) business days after the Effective Date, EMS Contractor shall furnish District with a reasonably detailed CPM (Critical Path Method) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of the Work and Services to be performed by EMS Contractor pursuant to this Agreement ("Schedule"). The EMS Contractor shall submit the proposed Schedule to the District for acceptance and update the Schedule as necessary and appropriate on at least a monthly basis. The EMS Contractor shall incorporate all Services and Work. The EMS Contractor shall also include the District's occupancy requirements reflecting the coordination of scheduling required under Section 30, below. It is specifically understood that District will rely upon the Schedule as it is revised from time to time, in coordination with and subject to the approval of the District for purposes of educational, financial and logistical planning.

**10. Liquidated Damages.** Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of EMS Contractor's delay; therefore, EMS Contractor agrees that it shall pay to the District the sum of ONE THOUSAND DOLLARS (\$3000) per day as liquidated damages for each and every day's delay beyond the Guaranteed Substantial Completion Date that Substantial Completion is not achieved.

It is hereby understood and agreed that this amount is not a penalty, but is a reasonable estimate of the damages that District will incur.

In the event any portion of the liquidated damages is not paid to the District, the District may deduct that amount from any money due or that may become due the EMS Contractor under this Agreement, the District may seek recovery of Liquidated Damages from the Respondent's Performance Bond Surety and/or the District may seek recovery of Liquidated Damages from the Respondent or the Performance Bond Surety without having exhausted remedies against the other.

**11. Grants/Rebates/Incentives.** EMS Contractor shall use commercially reasonable efforts to support the District in obtaining or maintaining grants/rebates/incentives available for the Systems. EMS Contractor shall use commercially reasonable efforts to support the District in obtaining an extension for the rebates, if allowed and if necessary.

**12. Submittal of Documents.** EMS Contractor shall not commence the Work under this Agreement until the EMS Contractor has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

Signed Agreement  
Noncollusion Affidavit  
Prevailing Wage Certification  
Workers' Compensation Certification  
Drug-Free Workplace Certification  
Tobacco-Free Environment Certification  
Insurance Certificates and Endorsements  
Performance Bond  
Payment Bond  
Project Schedule

The above-referenced Contract Documents shall be presented to the District for approval within fourteen (14) days after execution of the Agreement.

**13.Compensation.** As compensation for the Work, the District shall pay to the EMS Contractor in the amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) ("Total Services Price"). Such amount shall not be increased without the express approval of the Board.

**14.Expenses.** District shall not be liable to EMS Contractor for any costs or expenses paid or incurred by EMS Contractor in performing services for District.

**15.Payment.** The Total Services Price shall be paid in periodic partial payments in accordance with this section.

**15.1.** Processing of Progress Payments; Retention: Each month while EMS Contractor is providing the Work under this Agreement, the District shall pay to EMS Contractor a sum equal to ninety-five percent (95%) of value of the Work performed and the value of equipment and material integrated into one or more of the Services, delivered to one or more Sites, or stored subject to or under the control of the District, up to the last day of the previous month, less aggregate of previous payments (the "Progress Payments"). The remaining five percent (5%) of such amounts shall be held as the Retention Amount and shall be released in accordance with Public Contract Code section 7107. If all of the necessary information is submitted and accurate (including the schedule of values and certified payrolls), District shall approve the Progress Payment within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such Progress Payment within fifteen (15) days after the District's approval of the periodic estimate for partial payment.

**15.2.** Option for Escrow or Securities in Lieu of Retention. Pursuant to the requirements of Public Contract Code Section 22300, upon EMS Contractor's request within ten (10) days of execution of this Agreement, District will make payment to EMS Contractor of any earned retention funds withheld from payments under this Agreement if EMS Contractor deposits with the District or in escrow with a California or federally chartered bank acceptable to District, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

- 15.2.1.1.** EMS Contractor shall be the beneficial owner of any securities substituted for retention funds withheld and shall receive any interest thereon.
- 15.2.1.2.** All expenses relating to the substitution of securities under said Section 22300 and under this Article 8.2 , including, but not limited to District's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the EMS Contractor.
- 15.2.1.3.** If EMS Contractor shall choose to enter into an escrow agreement, such agreement shall be in the form as set forth in Public Contract Code section 22300(f) attached hereto as part of the Project Documents and which shall allow for the conversion to cash to provide funds to meet defaults by the EMS Contractor including, but not limited to, termination of the EMS Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Project Documents.
- 15.2.1.4.** Securities, if any, shall be returned to EMS Contractor only upon satisfactory completion of the Agreement.
- 15.2.2.** To minimize the expense caused by such substitution of securities, EMS Contractor shall, prior to or at the time EMS Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement . Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the District determines to withhold, EMS Contractor shall immediately, and at EMS Contractor's expense, deposit additional security qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.
- 15.2.3.** In the alternative, under Section 22300, EMS Contractor, at its own expense, may request District to make payment of earned retention funds directly to the escrow agent. Also at the expense of EMS Contractor, EMS Contractor may direct investment of the payments into securities, and EMS Contractor shall receive the interest earned on the investment upon the same conditions as shown in paragraph (a) for securities deposited by EMS Contractor. Upon satisfactory completion of the Agreement, EMS Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from District, pursuant to the terms of Section 22300.
- 15.2.4.** If any provision of this Article 8.2 shall be found to be illegal or unenforceable, then, notwithstanding, this Article 8.2 shall remain in full force and effect, and such provision shall be deemed stricken.
- 15.3.** Waiver and Release Upon Payment. Each Progress Payment shall be conditioned upon EMS Contractor providing to District with the corresponding Progress Payment Application a conditional waiver and release of claims for payment upon payment from the EMS Contractor and each of its subcontractors and materials suppliers in the form required by Civil Code Section 8132, covering all sums

requested in such Progress Payment Application, and an unconditional waiver and release of claims for payment from each party, in the form required by Civil Code Section 8132, covering sums disbursed pursuant to the most recently preceding Progress Payment Application. Failure to provide either a condition waiver and release, or unconditional waiver and release shall result in the subject sums being in dispute, and thus withheld from payment.

- 15.4.** Estimated Progress Payments. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by EMS Contractor on a form approved by District and certified by the Project Inspector and QA Engineer, or any other approved representative of the District, and filed before the fifth (5) Day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release EMS Contractor or any Surety from such work or from enforcing each and every provision of the Agreement and Construction Documents. The District shall have the right subsequently to correct any error made in any estimate for payment.
- 15.5.** Corrective Work and Progress Payment: EMS Contractor shall not be entitled to payment for non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by the District lacks correction by EMS Contractor. District may withhold from the Progress Payments one hundred fifty percent (150%) of the estimated value of any amount in dispute between District and EMS Contractor. This provision shall also apply in the event that a portion of non-complying Work may impact other completed Work, resulting in a need to reconstruct or rework related Work. The District shall not unreasonably withhold payment for unrelated and uninvolved Work in the event of dispute over non-complying Work without entering into negotiations to arrive at settlement of said conflict, unless withholding pursuant to a Stop Payment Notice.
- 15.6.** Title to Delivered Materials. Title to new materials and/or equipment for the Work of this Agreement shall vest in the District upon achievement of Substantial Completion. However, responsibility for such new material and/or Work of this Agreement shall remain with EMS Contractor until incorporated into the Work and accepted by District pursuant to this Agreement; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Agreement; and EMS Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the District or his authorized representative. EMS Contractor shall maintain all course of construction and other insurance as necessary to protect said equipment and Work. The District shall not become responsible for risk of loss or other insurable risk until Substantial Completion of each Phase of the Project.

**16. Independent Contractor.** EMS Contractor, in the performance of this Agreement, shall be and act as an independent contractor. EMS Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. EMS Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to EMS Contractor's employees. EMS Contractor 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.

**17. Standard of Care.** EMS Contractor shall perform its obligations under this Agreement using its best professional skill and judgment, acting with due care and in accordance with the standard of care applicable to the Work and Services to be provided by EMS Contractor, the covenants, terms and conditions of this Agreement, and all applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code (Title 24), the California Code of Regulations, ASHRAE Standard 202-2013 (Commissioning Process for Buildings and Systems), ASHRAE Guideline 0-2005 (The Commissioning Process), the requirements of the Division of State Architect (DSA) and the California Department of Education, the District's Design Guides and Technical Specifications, and all other federal, state, and local jurisdictions having authority. EMS Contractor represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

**18. Originality of Services.** EMS Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall either be the property of EMS Contractor, or EMS Contractor shall have all necessary rights to use such formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions and to provide the same and derivative works thereof to the District in connection with this Agreement, and shall not otherwise be copied in whole or in part from any other source.

**19. Copyright/Trademark/Patent.** All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data (other than Services performance data provided during operation, which shall not be deemed "Work Product") furnished by EMS Contractor to District under this Agreement ("Work Product") shall be and remain the property of the District pursuant to Education Code Section 17316 for the purposes of repair, maintenance, renovation, modernization, and all other purposes related to the Services, including, without limitation, additions, alignments, or other development on the Site. EMS Contractor, or the author of such works, if other than EMS Contractor, will retain all common law, statutory and other reserved rights, including copyrights in the Work Product. Upon Substantial Completion, EMS Contractor will grant the District, and its successors and assigns, a perpetual, royalty-free license to use the Work Product for all pedagogical uses, including without limitation, use in instructional materials. In the event that rights, including copyright, to Work Product

are held by a third party, the use of such material by the District for pedagogical uses, including without limitation, use in instructional materials within the District, shall be understood and deemed by the parties to be a fair use thereof.

**20. Notice to Proceed.** Execution of this Agreement by both Parties shall serve as a Notice to Proceed with the Services. EMS Contractor shall first ensure that the reschedule of Services conforms with all requirements of this Agreement, including, without limitation, all requirements for coordination with the District.

**21. Site Examination and Basis of Design.** Within [ \_\_\_\_\_ ] after the Effective Date, EMS Contractor will conduct detailed examinations of the Site and confirm all measurements, specifications and conditions affecting the Work to be performed at the Site and shall review all original design and engineering documents for the facilities and the Systems and be familiar with the original Basis of Design. Following these detailed site examinations (which will include underground surveys as necessary), EMS Contractor shall either (a) provide written notification to District that it warrants that it has made Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and EMS Contractor's ability to protect existing surface and subsurface improvements, or (b) request specific changes to the Services, Work, Guaranteed Substantial Completion Date, Scheduled Final Completion Date and Total Services Price that are actually and reasonably required in light of such examinations. No allowances shall be made for Site factors or Basis of Design known to EMS Contractor prior to the Effective Date, or of which EMS Contractor has actual or construction notice prior to the Effective Date. If the District does not agree with these changes, the District may terminate the Agreement within five (5) Business Days of receipt of such request, without liability to either Party. Thereafter, no claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site, unless permitted pursuant to Public Contract Code section 7104.

**21.1. Disclaimer of Warranty:** District does not warrant any conditions at the Site. Any information on the conditions of the Site is provided for informational purposes, only, and is expressly understood to reflect the professional judgment of the entity that prepared it based on limited sampling and observation and may not be comprehensive or accurate. EMS Contractor is fully responsible to ascertain all Site conditions for the purposes of determining construction means and methods and costs of performing the Services.

**21.2. Existing Utilities.** To the extent necessary, EMS Contractor shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline and service utilities. It shall be the responsibility of EMS Contractor to determine, within reason, the exact location of all utilities. EMS Contractor shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities.

**22. Materials.** EMS Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

**22.1. Anti-Trust Claim.** EMS Contractor agrees to pass-through, on a pro-rata basis, any applicable awards received pursuant to causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act

(Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions **Code**), arising from purchases of goods, services, or materials provided to the District pursuant to the Contract. EMS Contractor shall include in each of its subcontracts related specifically to the Project substantially the same terms of assignment from the subcontractor to the District.

**22.2. Substitutions.** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.

**22.3. Hazardous Materials.** EMS Contractor warrants that no hazardous materials shall be included in or comprise any materials or equipment furnished for the Work.

**23. Equipment and Labor.** EMS Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.

**24. Warranty/Quality.** Unless a longer warranty is called for elsewhere in this Agreement, the EMS Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a period of two (2) years from the Final Completion Date. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards, including but not limited to California Solar Initiative Program requirements.

**25. Correction of Errors.** EMS Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the EMS Contractor's failure to comply with the standard of care required herein.

**26. Trench Shoring.** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, EMS Contractor must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring Services standards, the plan shall be prepared by a registered civil or structural engineer.

**27. Excavations Over Four Feet.** This Article shall pertain to all Construction comprising the excavation of any trench or trenches four (4) feet or more in depth.

**27.1.** If applicable, EMS Contractor shall submit to the District for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches four (4) feet or more in depth. EMS Contractor's plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that EMS Contractor's registered civil or structural engineer certifies that the plan complies with the current and applicable CAL-OSHA Construction Safety Orders, or stating that EMS Contractor's registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other

provisions of the Safety Orders. No excavation of any such trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

All shoring submittals shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittals shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

Nothing in this Article shall relieve EMS Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions adequate for worker protection. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon District, its Board, or any of its employees.

**27.2.** In relation to digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, EMS Contractor shall comply with the following requirements and include similar provisions in any contract for the Project which involves digging trenches or other excavations:

**27.2.1.** EMS Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:

**27.2.1.1.** Material that the EMS Contractor or any Subcontractor or Consultant believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

**27.2.1.2.** Subsurface or latent physical conditions at the Site differing from those indicated;

**27.2.1.3.** Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Provisions.

**27.2.2.** District shall promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the EMS Contractor's cost of or the time required for performance of any part of the work, shall issue a change order under the procedures described in the contract.

**27.2.3.** In the event that a dispute arises between the District and the EMS Contractor, whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the EMS Contractor's cost of or time required for performance of any part of the work, the EMS Contractor shall not be excused from any scheduled completion date provided for by the Construction Provisions but shall proceed with all work to be performed under the Construction Provisions. The EMS Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.



**28. Lead-Based Paint.** No lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. EMS Contractor must execute the Lead-Based Paint Certification, if applicable.

**29. Change in Scope of Work.** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District and approved by the District Board. The foregoing notwithstanding, the EMS Contractor shall continue to perform its Work under the Agreement and shall not cause a delay of the Work by virtue of the inability of District and EMS Contractor to agree upon the extent of any adjustment to the Contract Time and/or the Total Services Price on account of such change. EMS Contractor specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Total Services Price by fair and reasonable valuations.

**29.1. Adjustment to Total Services Price.** Adjustments to the Total Services Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

**29.1.1. Change Order Mutual Agreement.** By negotiation and mutual agreement, on a lump sum basis, between District and EMS Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change.

**29.1.2. Change Directive per Determination by the District.** The District shall notify EMS Contractor in writing of its determination of the actual and necessary costs incurred by the EMS Contractor on the basis of EMS Contractor's records. EMS Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Total Services Price on account of a Change to the Work unless EMS Contractor shall notify the District, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination.

**29.1.3. Basis for Adjustment of Total Services Price.** If Changes in the Work require an adjustment of the Total Services Price, the basis for adjustment of the Total Services Price shall be as follows:

**29.1.3.1.1. Labor.** EMS Contractor shall be compensated for the actual costs, without markup, of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be

permitted. Labor costs shall exclude costs incurred by the EMS Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

**29.1.3.1.2. Materials and Equipment.** EMS Contractor shall be compensated for the actual costs, without markup, of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the EMS Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the EMS Contractor for materials and/or equipment in connection with any Change is excessive, or if the EMS Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the EMS Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

**29.1.3.1.3. Construction Equipment.** EMS Contractor shall be compensated for the actual cost, without markup, of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, EMS Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the

Work other than Changes to the Work. Unless prior approval in writing is obtained by the EMS Contractor from the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. EMS Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by the EMS Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the EMS Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the EMS Contractor incidental to the use of such Construction Equipment.

**29.1.3.1.4. Overhead.** In determining the cost to the District and the extent of increase to the Total Services Price resulting from a Change adding to the Work, the allowance for overhead (including home office and field overhead), general conditions costs and profit (hereinafter "Change Order Overhead") associated with the Change shall not exceed 15% of the direct actual costs for performance of the Change. In the event a portion of Changes to the Work is performed by a first tier subcontractor, the subcontractor Change Order Overhead shall not exceed 15% and 5% for the EMS Contractor. In the event a portion of Changes to the Work is performed by a sub-subcontractor, the sub-subcontractor Change Order Overhead shall not exceed 15%. The subcontractor markup on the total charges of a sub-subcontractor of any lower tier is limited to 5% of the costs of such change, regardless of the number of subcontractors, of any tier, performing any portion of any Change to the Work.

**29.1.3.1.5.** If a Change to the Work reduces the Total Services Price, no profit, general conditions or overhead costs shall be paid by the District to the EMS Contractor for the reduced or deleted Work.

**29.1.3.1.6.** In no event shall a Change Directive increasing the nameplate capacity of the Services, or any element thereof,

exceed the original cost per Watt installed per installation as set forth herein.

**29.1.3.1.7.** Allowances means budgets established for specific scopes of the Work which cannot be clearly defined at the time that the final contract amount is established. Expenditures for either Contingency or Allowances items shall be submitted pursuant to Article 22.1 - Adjustment to Total Services Price."

**29.1.4. Required Documentation.** EMS Contractor agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the EMS Contractor or a subcontractor. EMS Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the EMS Contractor in a calendar day, EMS Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, EMS Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by EMS Contractor's Superintendent or EMS Contractor's authorized representative; such signature shall be deemed EMS Contractor's representation and warranty that all information contained therein is true, accurate, complete, and relate only to the Change referenced therein. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative or superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District upon request. In the event that EMS Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Total Services Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Total Services Price on account of such Change shall be final, conclusive, dispositive and binding upon EMS Contractor.

**29.2. Adjustment to Contract Time.** The Contract Time shall be extended or reduced by change order for a period of time commensurate with the time reasonably necessary to perform such Change. EMS Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If EMS Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

**30. Claims.** If EMS Contractor shall claim compensation for any reason, including, without limitation, changes to the in the Work or Services, extensions of time, and/or damages sustained by EMS Contractor for which it may seek recovery from the District ("Claim"),

EMS Contractor shall, within ten (10) business days after the first occurrence giving rise to the Claim, make and deliver to the District a written statement of the amount of the Claim, the first occurrence giving rise the Claim, and description of the occurrences, events and bases for the Claim ("Notice of Claim"). EMS Contractor shall file with the District an itemized statement of all details and the amount of the Claim within fifteen (15) business days of delivery to District of the Notice of Claim.

**30.1. Bar Against Claims for Failure to Follow Contract Procedures.** Unless the Notice of Claim shall be made as required, EMS Contractor's claim for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage. EMS Contractor expressly acknowledges and agrees that this provision shall not be waived or otherwise modified by any communication not rendered to the EMS Contractor in writing by the District, and that this is a reasonable notice provision pursuant to Public Contract Code section 7102 and Government Code section 930.2.

**31.Workers.** EMS Contractor shall at all times enforce proper discipline and good order among EMS Contractor's employees, Subcontractors, Consultants, and all other invitees to the Site and shall not employ or allow the employment on the work of any unfit person or anyone not skilled in work assigned to EMS Contractor.

**31.1.** EMS Contractor shall remove from the Site any person in the employ of EMS Contractor or any Subcontractor or Consultant whom District may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of District.

**31.2.** EMS Contractor shall take all reasonable steps necessary to ensure that any employees of EMS Contractor or any of its Subcontractors or Consultants report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Site is not affected thereby). EMS Contractor shall advise its employees, Subcontractors, suppliers, and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by EMS Contractor or by the District. EMS Contractor shall impose these requirements on its Subcontractors, suppliers, and other invitees. EMS Contractor shall execute, under penalty of perjury, the certification of a drug-free workplace and certification of a tobacco-free workplace on the forms provided herewith provided herewith.

**32.Wages.** This Project is subject to the California Prevailing Wage Law. EMS Contractor shall be responsible for complying with the requirements of the California Prevailing Wage Law, including, without limitation, those requirements set forth herein.

**32.1. The California Prevailing Wage Law.**

**32.1.1.** Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the Agreement.

- 32.1.2.** Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term “per diem wages” is used herein.
- 32.1.3.** Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.
- 32.1.4.** Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.
- 32.1.5.** Each worker of EMS Contractor and any of its subcontractors engaged in work on the Services shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between EMS Contractor or any subcontractors and such workers.
- 32.1.6.** EMS Contractor shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by EMS Contractor.
- 32.1.7.** Copies of the determined prevailing wage rates are on file and available upon request at the District’s office. District shall provide EMS Contractor with current prevailing wage rates, in writing. EMS Contractor shall post, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates.
- 32.1.8.** Any worker employed to perform work on the Services which is not covered by any classification available in the District office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

**32.2. Record Of Wages Paid: Inspection.** Pursuant to Labor Code § 1776, EMS Contractor stipulates to the following:

- 32.2.1.** EMS Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The

payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776.

**32.2.2.** The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of EMS Contractor on the following basis:

**32.2.2.1.** A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.

**32.2.2.2.** A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of the District, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.

**32.2.2.3.** A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by EMS Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of EMS Contractor.

**32.2.2.4.** EMS Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.

**32.2.2.5.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the District, the Division of Apprenticeship Standards, or the 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 EMS Contractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

**32.2.2.6.** EMS Contractor shall inform the District of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

**32.2.2.7.** In the event of noncompliance with the requirements of this Section, EMS Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects EMS Contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, EMS Contractor shall pay a penalty of ONE HUNDRED (\$100.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

**32.2.2.8.** The responsibility for compliance with this Section shall rest upon EMS Contractor.

### **32.3. This Section Reserved.**

## **33. Hours Of Work.**

**33.1.** As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, EMS Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by EMS Contractor or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of EMS Contractor in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**33.2.** EMS Contractor shall pay to the District a penalty of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of these Construction Provisions by EMS Contractor or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by EMS Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**33.3.** Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District, unless otherwise agreed to by the parties.

**33.4.** Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of EMS Contractor and in compliance with applicable ordinances.



## **34.Apprentices.**

- 34.1.** All apprentices employed by EMS Contractor to perform services under these Construction Provisions shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.
- 34.2.** When EMS Contractor to whom the work under these Construction Provisions is awarded by the District or any Subcontractor under EMS Contractor, in performing any of the work under the Construction Provisions, employs workers in any apprenticeable craft or trade, EMS Contractor and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving EMS Contractor or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. EMS Contractor or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.
- 34.3.** "Apprenticeable craft or trade" as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.
- 34.4.** EMS Contractor, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other EMS Contractor in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that EMS Contractor employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. EMS Contractor or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the

payment of the contributions to the fund or funds as set forth in Labor Code § 227.

**34.5.** The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprenticeable occupations is with EMS Contractor.

**34.6.** The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**35.EMS Contractor Supervision.** EMS Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**36.Safety and Security.** EMS Contractor is responsible for maintaining safety in the performance of this Agreement. EMS Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on college grounds, particularly when children are present.

**37.Management of Site.** Throughout the Term of this Agreement, all Work and Services shall conform with the following:

**37.1.** EMS Contractor shall coordinate with District's director of maintenance to develop a mutually agreeable schedule for any activity at the Site to mitigate any inconvenience to or disruption of students, faculty, and staff in their regular activities and to otherwise eliminate any substantial interference with normal operations of the campus.

**37.2.** EMS Contractor shall not leave debris under, in, or about the Site, but shall promptly remove same from the Site and dispose of it in a lawful manner.

**37.3.** EMS Contractor shall remove rubbish and debris on a daily basis during the period of its activities at the Site.

**37.4.** Deliver personnel, tools, equipment and materials to the work area over route(s) reasonably designated by the District, provided that District ensures that EMS Contractor shall have all access rights necessary to use such designated routes.

**37.5.** Take commercially reasonable measures to mitigate objectionable dust, noise, or other disturbances. Notwithstanding the forgoing, EMS Contractor shall ensure through compliance with this subsection and subsection 30.1 above, that EMS Contractor's activities shall not result in substantial interference with or disruption of regular activities and normal operations of the campus.

**37.6.** Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or the reasonable directions of the District, not unreasonably encumber Site or overload any structure with materials, enforce all reasonable instructions of the District regarding signs, advertising, fires, and smoking and require that all workers comply with all District's regulations while on the Site.

**37.7.** Upon completion activities on the Site, EMS Contractor shall remove temporary utilities, fencing, barricades, planking, sanitary facilities and all other temporary facilities from Site.

**38. Access to Work.** District representatives shall at all times have access to the Work wherever it is in preparation or in progress. EMS Contractor shall provide safe and proper facilities for such access.

**39. Protection of Work and Property.** EMS Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, EMS Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

**40. Occupancy.** District reserves the right to occupy improvements comprising or related to the Services at any time before Final Completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.

**41. Force Majeure.** EMS Contractor shall be excused from performance hereunder during the time and to the extent that it is actually prevented, despite the EMS Contractor taking all commercially reasonable actions to mitigate such prevention of performance, by an occurrence of Force Majeure. As used herein, the term "Force Majeure" shall include, without limitation, (1) theft, vandalism, sabotage, riots or civil disturbances, (2) acts of God, (3) acts of the public enemy, (4) terrorist acts affecting the Site, (5) willful and deliberate acts, or active and primary negligence of the District, (6) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, power surge, landslide or similarly cataclysmic occurrence, (7) insect or animal damage, (8) prohibitions imposed by new law or regulation, (9) appropriation or diversion of electricity by sale or order of any governmental authority having jurisdiction thereof, or (10) any other action by any superior governmental authority (including, without limitation, an unstayed order of a court or administrative agency). Economic hardship shall not constitute an occurrence of Force Majeure under this Agreement.

## **42. Termination.**

**42.1. For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate EMS Contractor only for the Work and Services rendered to the date of termination and all reasonable costs incurred by EMS Contractor as a result of such termination (including in the termination of subcontracts, vendor agreements and in demobilization), which cannot be mitigated or eliminated through commercially reasonable efforts by EMS Contractor. Written notice by District shall be sufficient to stop further performance of services by EMS Contractor. Notice shall be deemed given when received by the EMS Contractor or no later than three (3) Business Days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate EMS Contractor for work completed to date.

**42.2. With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

**42.2.1.** material violation of this Agreement by the EMS Contractor; or

**42.2.2.** any act by EMS Contractor exposing the District to liability to others for personal injury or property damage; or

**42.2.3.** EMS Contractor is adjudged a bankrupt, EMS Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of EMS Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another provider. If the documented reasonable expenses, fees, and costs to the District to complete the Services and Work exceed the cost of providing the service pursuant to this Agreement, upon receipt of an invoice and reasonable supporting documentation from the District, EMS Contractor shall pay the excess expenses, fees, and/or costs to the District within fifteen (15) Business Days of receipt of the District's notice of these expenses, fees, and/or costs.

**42.3.** In no event shall any delay in Substantial or Final Completion arising during the period from issuance of a notice of termination for cause through the time such condition or violation shall have ceased or been cured be excused, nor shall EMS Contractor be relieved of liability for Liquidated Damages relating thereto.

**42.4.** Upon termination, EMS Contractor shall provide the District with all documents produced maintained or collected by EMS Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

### **43. Indemnification.**

**43.1.** EMS Contractor agrees to and does hereby defend, indemnify and hold harmless District, Inspector, the State of California and their officers, employees, agents and independent contractors (the "Indemnified Parties") from every claim or demand made, and every liability, loss, damage, expense or attorneys' fees of any nature whatsoever, which may be incurred by reason of:

**43.1.1.** Liability for: (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation arising from any act, omission or breach of EMS Contractor or any person, firm or corporation employed by, under contract with, or acting on behalf of EMS Contractor, arising out of or in any way connected with the Work performed by EMS Contractor, its employees, contractors and/or agents pursuant to this Agreement or the Contract Documents, whether said injury or damage occurs either on or off District Property, except for liability resulting from the sole or active negligence, or the willful misconduct of the Indemnified Parties; and

**43.1.2.** Any dispute between EMS Contractor and EMS Contractor's subcontractors, / suppliers and/or / sureties, including, but not limited to, any

failure or alleged failure of the EMS Contractor (or any person hired or employed directly or indirectly by the EMS Contractor) to pay any subcontractor or material supplier of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

**43.2.** EMS Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified in this Section and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

**43.3.** Upon termination, EMS Contractor shall provide the District with all documents produced maintained or collected by EMS Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

**43.4.** To the furthest extent permitted by California law, and up to the amount of the Total Services Price, District shall defend, indemnify, and hold harmless EMS Contractor, agents, representatives, officers, consultants and employees from any and all third party claims of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death or property damage arising out of, connected with, or resulting from the sole and active negligence, or willful misconduct of District.

**43.5.**

#### **44. Insurance.**

**44.1.** The EMS Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance:

**44.1.1. General Liability.** One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability, including Products Liability and Completed Operations coverage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

**44.1.2. Automobile Liability Insurance.** One Million Dollars (\$1,000,000) combined single limit per occurrence for any automobile that shall protect the EMS Contractor and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by EMS Contractor.

**44.1.3. Workers' Compensation and Employers' Liability Insurance.** For all of the EMS Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, EMS Contractor shall keep in full force and effect, a Workers' Compensation

policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. EMS Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

**44.1.4. Professional Liability (Errors and Omissions).** One Million Dollars (\$1,000,000) for errors and omissions as appropriate to profession of engineer, coverage to continue through completion of construction.

**44.1.5. Builder's Risk Insurance.** On a replacement cost value basis, EMS Contractor shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

**44.1.6. Umbrella or Excess Liability.** Four Million Dollars (\$4,000,000) per occurrence to meet the policy limit requirements of the required policies if EMS Contractor's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect EMS Contractor, District, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**44.1.7. Other Insurance Provisions:** The policies are to contain, or be endorsed to contain, the following provisions:

**44.1.7.1.** For the general liability and automobile liability policies:

**44.1.7.1.1.** The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of EMS Contractor; instruments of Service and completed operations of the EMS Contractor; premises owned, occupied or used by EMS Contractor; or automobiles owned, leased, hired or borrowed by EMS Contractor. The coverage shall

contain no special limitations on the scope of protection afforded to the Additional Insureds.

**44.1.7.1.2.** For any claims related to the projects, EMS Contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the EMS Contractor's insurance and shall not contribute with it.

**44.1.7.1.3.** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

**44.1.7.2.** EMS Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**44.1.7.3.** EMS Contractor shall furnish the District with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.

**44.1.8. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

**45. Payment Bond and Performance Bond.** EMS Contractor shall not commence the Work until it has provided to the District, in a form provided by the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Total Services Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

**45.1. Performance bond liability.** Any performance bond issued for a site or Services will cease one (1) year from Final Completion; however, claims against the Performance Bond may be made at any point during the relevant statutory period of limitations commencing from the date that is one (1) year from Final Completion, including any extensions thereof for any lawful reason, including, without limitation, delayed discovery of facts giving rise to such a claim. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by EMS Contractor under the terms of this Agreement or other written agreement between the District and EMS Contractor.

**45.2. Payment bond liability.** Any payment bond issued will cease at the termination of any time required by law.

**45.3. Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to the Performance Guarantee Agreement between the parties.

**46. Permits and Licenses.** EMS Contractor and all EMS Contractor's employees or agents shall secure and maintain in force, at EMS Contractor's sole cost and expense, such permits and licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement.

**47. Assignment.** The rights, burdens, duties, or obligations of EMS Contractor pursuant to this Agreement shall not be assigned by the EMS Contractor without the prior written consent of the District.

**48. Subcontractors.** If EMS Contractor shall subcontract any part of this Agreement, EMS Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.

**49. Compliance with Laws.** EMS Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. EMS Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If EMS Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, EMS Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon EMS Contractor's receipt of a written termination notice from the District. If EMS Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, EMS Contractor shall bear all costs arising therefrom.

**49.1.** EMS Contractor hereby acknowledges that the District's representative, the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the EMS Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. EMS Contractor shall be liable for any delay caused by its non-compliant Work.

**50. Audit.** EMS Contractor shall establish and maintain books, records, and Services of account, in accordance with generally accepted accounting principles, reflecting all business operations of EMS Contractor transacted under this Agreement. EMS Contractor shall retain these books, records, and Services of account during the Term of this Agreement and for three (3) years thereafter. EMS Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to EMS Contractor and shall conduct audit(s) during EMS Contractor's normal business hours, unless EMS Contractor otherwise consents.



**51. Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the EMS Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the EMS Contractor agrees to require like compliance by all its subcontractors.

**52. Environmental Attributes and Energy Credits.** District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of the Services, and to the completed Work and each of its component parts, without limitation.

**53. Limitation of Liability.** Except with respect to EMS Contractor's indemnification obligations pursuant to Section 37 or with respect to damages that arise from the gross negligence or willful misconduct of a Party, each Party's total liability under the Contract Documents shall be limited to the Total Services Price. Except with respect to EMS Contractor's indemnification obligations pursuant to Section 37 or with respect to damages that arise from the gross negligence or willful misconduct of a Party, in no event, shall either Party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for performance under this Agreement.

**54. Confidentiality.** EMS Contractor and all EMS Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services to the extent allowed by law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**55. Disputes.** In the event of a dispute between the parties as to performance of the Work, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, EMS Contractor agrees it will neither rescind the Agreement nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. The demand for mediation of any claim over \$375,000 shall be made within the required Notice of Claim submitted by the EMS Contractor as set forth herein, or within a reasonable time after written notice of the dispute has been provided by the District to the EMS Contractor.

**55.1.** In the event of a dispute between the parties described in this Article, pending resolution of the dispute(s), EMS Contractor agrees to and shall continue the Work diligently to completion conditioned only on District's payment of undisputed amounts. If the dispute is not resolved, EMS Contractor agrees it will not stop, delay, or hinder progress of the Work, but shall continue the Work diligently to completion conditioned only on District's payment of undisputed amounts.

**56. Attorney 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.

**57. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been 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 required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**District**

Rancho Santiago Community College District

**EMS Contractor**

[CONTRACTOR]

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**58. Governing Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

**59. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**60. Waiver.** Any delay or forbearance in enforcing, or failure to enforce any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**61. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party of its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

**62. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**63. Cooperation.** The Parties hereto hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.

**64. Binding Contract.** This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

- 65. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 66. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 67. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
- 68. Counterparts.** This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.
- 69. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 70. Entire Contract.** This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**Rancho Santiago Community College**

**[CONTRACTOR]**

**District**

|                    |                    |
|--------------------|--------------------|
| Date: _____, 20__  | Date: _____, 20__  |
| By: _____          | By: _____          |
| Print Name: _____  | Print Name: _____  |
| Print Title: _____ | Print Title: _____ |
| Address: _____     | Address: _____     |
| Telephone: _____   | Telephone: _____   |
| Facsimile: _____   | Facsimile: _____   |
| E-Mail: _____      | E-Mail: _____      |

**Information regarding EMS Contractor:**

Proper Name: \_\_\_\_\_: \_\_\_\_\_  
License No.: \_\_\_\_\_ Employer Identification and/or Social Security Number  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the EMS Contractor to furnish the information requested in this section.**

Type of Business Entity:  
\_\_\_\_ Individual  
\_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership  
\_\_\_\_ Limited Partnership  
\_\_\_\_ Corporation, State: \_\_\_\_\_  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other: \_\_\_\_\_

**Exhibit A-1**  
**1.1.1 Services**

**Energy Management System**

The Contractor shall survey the existing building and provide a report identifying mechanical deficiencies for district evaluation. The report shall be used to identify problems prior to start of system implementation. Depending on the budget the District may choose to repair said deficiencies under this contract through an allocated allowance budget.

The District is interested in implementing an automatic demand (ADR) response feature integral to the EMS coordinated with Southern California Edison (SCE). The contractor shall review the feature with the District and the ability to implement ADR in designated buildings. When a demand response event occurs, a central system shall send an event or price signal through the internet, directly to the automated control system (energy management system). The District preset load reduction strategy shall then be applied throughout designated buildings. The District shall have the option to override Auto-DR signals as needed or revise the program strategy. Through SCE's Auto-DR Express or Customized Technology Incentive programs, the District may qualify for incentives.

The energy management control system shall consist of a high-speed, peer-to-peer network of DDC controllers and a web-based operator interface. The mechanical system and building floor plan shall be controlled by a point-and-click graphic. A web server with a network interface card shall gather data from this system and generate web pages accessible through a conventional web browser on each PC connected to the network. Operators shall be able to perform all normal operator functions through the web browser interface. The systems shall fully integrate into all our mechanical system and shall contain powerful reporting, trending and scheduling capabilities with tools that enable the District to manage the relationship between energy consumption and comfort both easily and effectively.

The control systems shall have dynamic thermographic color floor plans that provide an immediate understanding of conditions in the building. Graphics shall be customized for the Districts specific information needs. The system shall have hierarchical and group scheduling that supports customized, graphically displayed schedules for building, floors, zones or equipment groups to flexibly manage energy use. The system shall have logical alarming where alarm conditions are graphically represented and sorted by source, type and criticality. The system shall provide logging/reporting. The system shall provide for monitoring and storing your energy usage data to manage the District utility consumption. The system shall have graphical control to define appropriate zone control setpoints with a simple graphical adjustment.

The EMS system shall have an open architecture and support for industry standards with ability for integration with third party mechanical and electrical building subsystems. The system shall be capable of supporting multiple protocols over a TCP/IP network allowing many equipment items to be connected directly to the main EMS backbone. Equipment using BACnet can be

connected to an IP, ARCNET, MS/TP, or Point to Point (PTP) network segment. The system shall have an open protocol architectural for seamless interconnection to equipment using BACnet, Modbus, N2, JBUS, or LonWorks, as well as other proprietary protocols.

The system shall directly control HVAC equipment as per a Sequence of Operations designed per the Contractor for HVAC Controls. Each zone and equipment controller shall provide occupied and unoccupied modes of operation by individual zone. The systems shall have energy conservation features such as optimal start and stop, night setback, request-based logic, and demand level adjustment of setpoints as specified in the sequence, trim and respond, VFD monitoring and control, Cooling and heating coil water supply temperatures reset, Enthalpy economizer controls, Carbon dioxide sensors calibration, Chilled and circulating hot water pump speed control, and lighting control integration as per the existing configuration, and automatic demand response and load shedding programming.

The Contractor shall use trending and energy consumption data to verify, document, and improve a building's operation and identifying broken components, recalibrating sensors, and correcting control functions that have been disabled by building operator in error.

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## **Exhibit A-2 Systems**

The District's Energy Management System configuration for each building is listed below. The final design may change depending on the components and capability of the existing equipment to provide the level of control indicated herein. This is a general guideline:

Bldg A Existing Configuration: (23) VAVs with HHW reheat, (1) AHU SF and (1) RF (with SF and RF VFD Control). (1) Boiler and (1) Chiller with Pumps and multiple EFs.

*Note: The chiller and boiler were replaced with new high efficiency units in summer 2009.*

- AHU DDC controller Optimum Start w/SA Temperature control of CHW Supply Temperature
- Chiller Power Demand Limiting and Cooling Control Valve
- Cooling lockout based on OSA Temperature
- SF VFD control based on duct static pressure
- RF VFD control based on building static pressure
- 100% economizer damper control, minimum OSA Flow control with demand ventilation override based on Zone CO<sub>2</sub> (or other DVC device).
- Heating System DDC Controller Optimum Start
- HWS Temperature control reset by OSA
- Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level
- DDC Zone control with dual max Heating/Cooling CFM control reduced
- Zone CFM checked by CO<sub>2</sub> Demand Ventilation (or other DVC device)
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting Control based on operating schedule and astroclock algorithm. Pick up existing interior and exterior lighting control points from American Automatrix AutoPilot System and integrate into new system.

Bldg B Existing Configuration: (23) VAVs with HHW reheat, (1) AHU SF and (1) RF (with VFD Control). (1) Boiler and (1) Air Cooled Chiller with Pumps and multiple EF units.

*Note: The chiller and boiler were replaced with new high efficiency units in summer 2009.*

- AHU DDC controller Optimum Start w/SA Temperature control of CHW Supply Temperature

- Chiller Power Demand Limiting and Cooling Control Valve
- Cooling lockout based on OSA Temperature
- SF VFD control based on duct static pressure
- RF VFD control based on building static pressure
- 100% economizer damper control, minimum OSA Flow control with demand ventilation override based on Zone CO2 (or other DVC device).
- Heating System DDC Controller Optimum Start
- HWS Temperature control reset by OSA
- Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level
- DDC Zone control with dual max Heating/Cooling CFM control reduced
- Zone CFM checked by CO2 Demand Ventilation (or other DVC device)
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting Control based on operating schedule and astroclock algorithm. Pick up existing interior and exterior lighting control points from American Automatrix AutoPilot System and integrate into new system.

Bldg C Existing Configuration: (6) split system units DX Condensers and gas heat units and fans (No VFD). Multiple EF units.

*Note: Existing split units to be upgraded to premium efficiency summer 2015 under a separate contract.*

- DDC controller Optimum
- Start w/Zone Temperature control of Cooling and Heating Stages
- Cooling lockout based on OSA Temperature
- Reduction of operating hours with ability to override zone to occupied after or before hours.
- Building internal and external Night Lighting Control of (5) circuits - with spare for (8), based on operating schedule and astroclock algorithm.

Bldg D Existing Configuration: (44) Fan Coils with 4 pipe system -HHW and CHW, (1) Chiller and (1) Boiler with pumps (no existing VFD), 2 heat pumps, and multiple EF.

*Note: Existing air cooled chiller to be replaced with premium efficiency chiller (same size) with new pumps and VFD control as part of a Year 3 Prop. 39 project to take place Winter 2015. All VAV units have new Belimo HHW and CHW 3-way valves replaced Fall 2014. Boiler and pumps replaced with premium efficiency equipment in Winter 2014.*



- Air-Cooled Chiller/Pumps DDC controller w/Optimum Start
- CHW Supply Temperature reset based on Zone Demand
- Chiller Power Demand Limiting Cooling lockout based on OSA Temperature
- Heating System/Pumps DDC Controller w/Optimum Start
- HWS Temperature control reset by OSA Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level
- Control of Ventilation and Exhaust Fans per Occupancy Schedule or After-Before Hours Override
- DDC Fan Coil Unit Zone control w/Optimum Start. Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting and SF/EF Ventilation Control based on operating schedule and astroclock algorithm. Pick up existing interior and exterior lighting control points from American Automatrix AutoPilot System and integrate into new system.

Bldg E Existing Configuration: (17) VAV with Reheat Coils, (1) Boiler and Pump, (1) DX AHU Unit with SF and RF (VFD Controlled), (1) Split System Unit (serving MDF).

- Air-Cooled DX AHU DDC controller w/Optimum Start
- Supply Air Temperature reset based on Zone Demand
- DX Staged Cooling w/lockout based on OSA Temperature
- Dual Boiler Heating System/ Dual HW Pumps DDC Controller w/Optimum Start
- HWS Temperature control reset by OSA Temperature and zone Heating demand  
Minimize simultaneous heating and cooling at the zone level
- Control of Exhaust Fans per Occupancy Schedule or After-Before Hours Override
- DDC Zone control with dual max Heating/Cooling CFM control, reduced Zone CFM checked by CO2 Demand Ventilation
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Building internal and external Night Lighting Control based on operating schedule and astroclock algorithm
- EMS to pick up interior and exterior lighting control points from existing American Automatrix AutoPilot System and integrate into new system

Bldg L Existing Configuration: 41 VAV ( with reheat), (1) DX AHU with SF and RF (with VFD) , (1) Boiler with pump and 3-way valve, (1) split system CRAC unit (Server Room), multiple EF units.

- Air-Cooled DX AHU DDC controller w/Optimum Start
- Supply Air Temperature reset based on Zone Demand
- DX Staged Cooling w/lockout based on OSA Temperature
- Single Boiler Heating System/ HW Pump DDC Controller w/Optimum Start
- HWS Temperature control reset by OSA Temperature and zone Heating demand
- Minimize simultaneous heating and cooling at the zone level. Control of Exhaust Fans per Occupancy Schedule or After-Before Hours Override
- DDC Zone control with dual max Heating/Cooling CFM control
- Reduced Zone CFM checked by CO2 Demand Ventilation
- Reduction of operating hours with ability to override zone to occupied after or before hours.

Bldg M Existing Configuration: (3) split system HP and FC units, (1) split system AC (Server Room), multiple EF units

- M&O Bldg - (3) small Split System Heat Pump Units serving Individual Zones
- DDC controller Optimum Start w/Zone Temperature control of Cooling and Heating Stages
- Cooling lockout based on OSA Temperature
- Reduction of operating hours with ability to override zone to occupied after or before hours
- Monitor Space Temperature in Server Room and alarm if High Temperature
- Building internal and external Night Lighting Control of (5) circuits - with spare for (8), based on operating schedule and astroclock algorithm

**PREVAILING WAGE CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

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

Name of EMS Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

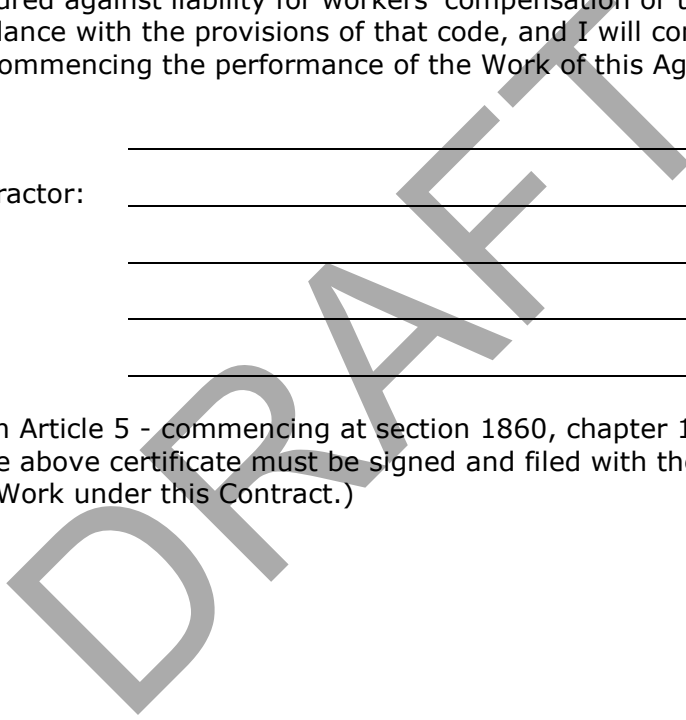
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Date: \_\_\_\_\_  
Name of EMS Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)



## **DRUG-FREE WORKPLACE CERTIFICATION**

The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local educational agency and public community college district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

EMS Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace.
  - (2) The person's or organization's policy of maintaining a drug-free workplace.
  - (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.
  - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

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

Name of EMS Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**TOBACCO-FREE ENVIRONMENT CERTIFICATION**

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes college buildings, college grounds, District owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District’s policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm’s employees, agents, subcontractors, or my firm’s subcontractors’ employees or agents to use tobacco and/or smoke on the Project site.

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

Name of EMS Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

**ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION**

EMS Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of EMS Contractor's work on the Project for District.

EMS Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by EMS Contractor if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at EMS Contractor's expense at no additional cost to the District.

EMS Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

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

Name of EMS Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



## **LEAD-PRODUCT(S) CERTIFICATION**

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

Because the EMS Contractor and its employees will be providing services for the District, and because the EMS Contractor's work may disturb lead-containing building materials, **EMS CONTRACTOR IS HEREBY NOTIFIED** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All college buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

The District shall utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. Furthermore, since it is assumed by the district that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the EMS Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (**Including Title 8, California Code of Regulations, Section 1532.1**). Any and all Work which may result in the disturbance of lead-containing building materials must be coordinated through the District.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new college facility or in the modernization or renovation of any existing college facility. EMS Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the EMS Contractor.

All contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors shall comply with the Renovation, Repair and Painting Rule, shall receive training from a U.S. EPA-accredited training provider, and shall be certified by the U.S. EPA. EMS Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

If failure to comply with these laws, rules, and regulations results in a site or worker contamination, EMS Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work.

It shall be the responsibility of the EMS Contractor to properly dispose of any and all waste products, including but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of EMS Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any campus within the District.

The undersigned hereby acknowledges, under penalty of perjury, that he or she has received notification of potential lead-based materials on the owner's property, as well as the existence of applicable laws, rules and regulations governing work with, and disposal of, such materials with which it must comply. The undersigned also warrants that he or she has the authority to sign on behalf of and bind the EMS Contractor.

Date: \_\_\_\_\_  
Name of EMS Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**PERFORMANCE BOND**  
**(100% of Total Services Price)**

**(Note: Respondents must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the Rancho Santiago Community College District, ("District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

\_\_\_\_\_ (Project Name)

("Project" or "Contract") which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

And WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if EMS Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of EMS Contractor remains. Nothing herein shall limit the District's rights or the EMS Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Affix Corporate Seal)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**EMS Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

**PAYMENT BOND**  
**EMS Contractor's Labor & Material Bond**  
**(100% of Total Services Price)**

**(Note: Respondents must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

That WHEREAS, the governing board ("Board") of the Rancho Santiago Community College District, (or "District") and \_\_\_\_\_, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

\_\_\_\_\_ (Project Name)

("Project" or "Contract") which Contract dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the Labor Code of California.

NOW, THEREFORE, the Principal and \_\_\_\_\_, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons described in Civil Code Section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind; or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind; then, said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 9554 and 9564.

This bond shall inure to the benefit of any person named in Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for

performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Affix Corporate Seal)

Principal \_\_\_\_\_

By \_\_\_\_\_

Surety \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Name of California Agent of Surety

\_\_\_\_\_  
Address of California Agent of Surety

\_\_\_\_\_  
Telephone Number of California Agent of Surety

**EMS Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

**EXHIBIT E – SOUTHERN CALIFORNIA ENERGY STUDY**

Exhibit E - Southern California Energy Study will be sent under separate cover.