

**Public Works, Repairs and Maintenance
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This Agreement between Owner and Contractor (“Agreement”) is entered into effective as of this ____ day of _____, 20____, between the Foothill-De Anza Community College District, Santa Clara County, California (“Owner”) and _____ (“Contractor”), with Owner and Contractor each a “Party” and together the “Parties” to this Agreement.

Contractor and Owner agree as follows:

1. SCOPE OF WORK

1.1. Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances and to perform all the work in a good and skillful manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, all in strict compliance with the Agreement Documents, required for construction of the Project (the “Project”) located on the _____ campus(es), described as:

1.2. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, transportation, freight, licenses, fees, permits, and other facilities and services necessary for the proper execution and completion of the Project. The Contractor shall at all times enforce strict discipline and good order among Contractor’s employees and subcontractors and shall not employ on the Project anyone not skilled in the task assigned. Any employee of Contractor, or employee of Contractor’s subcontractors or suppliers, that Owner deems not skilled for the task assigned shall, upon Owner’s request, be dismissed from the site.

2. EXAMINATION OF SITE

Contractor is familiar with the scope of work or has visited the site and investigated the conditions on, in, out and about the site, including any buildings, which might affect the progress of the Project and is satisfied as to those conditions. No claim for money or time will be allowed as to such matters.

3. AGREEMENT DOCUMENTS

The Contractor and Owner agree that the Agreement Documents are composed of this Agreement, required insurance certificates, additional insured endorsement and declarations page, any required bonds, any Invitation to Bid or Request for Quotation (including all Exhibits), Purchase Order, and any specifications and plans. If there are specifications and plans, the specifications and plans are intended to cooperate, so that any work exhibited in the plans and not mentioned in the specifications, or vice versa, is to be executed the same as if both mentioned in the specifications and set forth in the plans to the true intent and meaning of the said plans and specifications, when taken together. The Agreement Documents are complementary, and each obligation of the Contractor, subcontractors, and material or equipment suppliers in any one shall be binding as if specified in all. Where requirements of the Agreement Documents exceed those of the applicable building codes and ordinances, the Agreement Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws. When applicable, the work shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

4. COMPLETION DEADLINE

4.1. The Contractor shall commence performance of the work in accordance with the schedule as stated below.

Schedule Option A - DEFINED PROJECT:

Approximate Start: _____
Approximate End: _____ or within _____ calendar days.

Schedule Option B – ON-GOING/ANNUAL AGREEMENTS:

Start: _____
End: _____

4.2. The actual dates of work will be mutually agreed upon between the Owner and the Contractor after receipt of an authorized Purchase Order issued by the Owner. All work shall be coordinated with:

District Representative: _____ E-Mail: _____
Telephone Number: _____

5. AGREEMENT SUM

The Total Agreement Sum below is a not to exceed total amount payable by Owner to Contractor for the performance of work under the Agreement Documents unless modified in writing through a properly executed change order:

Project Cost	\$	_____
Cost for Bonds per Section 19 <i>(Required. if project cost is \$22,500-\$60,000)</i>	\$	_____
Total Agreement Sum	\$	_____

Payments will only be made for actual goods or services ordered and received, and approved by the Owner.

6. CONTRACTOR’S LICENSE, REGISTRATION AND COMPLIANCE MONITORING

In accordance with section 3300 of the Public Contract Code, Contractor has a Class “_____” license which shall be maintained in good standing for the duration of Contractor’s work on the Project. Public works projects, as defined by Labor Code, shall be subject to compliance monitoring, reporting, and enforcement by the Department of Industrial Relations. The Owner shall not enter into any contract without proof of the Contractor’s current registration to perform public work under Labor Code section 1725.5.

6.1. DIR registration provides for an exemption for Small Projects as defined below.

6.1.1. Contractors who work exclusively on small projects are not required to register as public works contractors, or file electronic certified payroll reports for those projects. The small project exemption is applied based on the amount of the entire project, not a contractor’s subcontracted amount of the project. Small project exemptions apply for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

6.1.2. On projects that qualify for the small project exemption, contractors are still required to pay prevailing wages, maintain certified payroll records on a continuous basis, and provide those records to the Labor Commissioner’s Office upon request.

6.2. The Contractor shall not enter into any subcontract without proof of the subcontractor’s current registration to perform public work under Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7,

Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work unless the Small Project Exemption is applicable.

7. PAYMENT

Option A (single payment upon completion):

If work is completed within 30 days a lump sum payment will be made following final completion by the Contractor and acceptance of the project by the Owner.

Option B (monthly progress payments and retention):

In accordance with Public Contract Code §9203 and §20104.50 where a Public Project or Repair is \$5,000 or more, Progress Payments less 5% retention will be paid within thirty (30) days after the Owner's receipt of a proper Application for Progress Payment.

- 7.1. Owner will pay Contractor on a monthly basis for services satisfactorily performed after receipt of properly documented and submitted applications for payment. Contractor shall submit to Owner an itemized application for payment on a monthly basis indicating the amount of work completed since commencement of the work or since the last progress payment, as applicable. These applications shall be supported by evidence which is required by this Agreement and such other documentation as the Owner may require. If required, the Contractor shall certify that the work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to submit a detailed schedule of values upon request of the Owner and in such detail and form as the Owner shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments. For each accepted payment, five percent (5%) shall be withheld and retained by the Owner, and the remainder shall be paid to the Contractor.
- 7.2. If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Contractor incurred under this section, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.
- 7.3. Owner may withhold payment and/or retention, in whole or in part, to such extent as may be necessary to protect the Owner from loss because of any of the following: (a) Defective work not remedied; (b) Stop Payment Notices filed, unless the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim and which Owner chooses to accept; (c) Liquidated damages assessed against the Contractor; (d) Reasonable doubt that the work can be completed for the unpaid balance of any Agreement Sum or by the Completion Deadline; (e) Damage to the Owner, another contractor, or subcontractor; (f) Unsatisfactory prosecution of the work by the Contractor; (g) Failure to store and properly secure materials; (h) Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Agreement Documents; (i) Failure of the Contractor to maintain record drawings; (j) Erroneous estimates by the Contractor of the value of the work performed, or other false statements in an Application for Payment; (k) Unauthorized deviations from the Agreement Documents; (l) Failure of the Contractor to prosecute the work in a timely manner in compliance with established progress schedules and Completion Deadline; (m) Subsequently discovered evidence or observations nullifying the whole or part of a previously issued payment; (n) Failure to pay subcontractors or suppliers; or (o) Breach of any provision of the Agreement Documents.
 - 7.3.1. Owner's failure to withhold any of these sums from a progress payment and/or retention shall not constitute a waiver of Owner's right to such sums.
 - 7.3.2. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties. Owner reserves the right to approve or reject the surety insurer selected by Contractor and to require Contractor to obtain a bond from a surety insurer satisfactory to the Owner.

- 7.4. If the Owner accepts any work or makes any release of progress payments or retention under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.
- 7.5. In accordance with Public Contract Code section 22300, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Agreement.
 - 7.5.1. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon completion of the work, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Agreement Documents. Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this section shall be substantially similar to the form set forth in Public Contract Code section 22300.

8. CHANGE ORDERS

- 8.1. The Contractor and the Owner agree that changes in the Project to be done under this Agreement and any plans and specifications shall become effective only when written in the form of a change order approved and signed by the Owner and the Contractor. It is specifically agreed that the Owner shall have the right to request any alterations, deviations, reductions, or additions to the Project and the amount of the cost thereof shall be added to or deducted from the amount of the Agreement Sum by fair and reasonable valuations. Contractor also agrees to provide the Owner with all information requested to substantiate the cost of the change order and to inform the Owner whether the work will be done by the Contractor or by a subcontractor.
- 8.2. This Agreement shall be deemed to be completed when the Project is finished in accordance with this Agreement, and any original plans and specifications as amended by such changes.
- 8.3. The Contractor shall submit with the proposed change order its request for time extension (if any), and include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Project. The time extension shall be agreed to by the Parties and memorialized by a written change order prior to initiation of the work contemplated by the change order.

9. DISPUTES

If a dispute arises between the Owner and the Contractor as to an interpretation of any of the specifications or Agreement Documents or as to the quality or sufficiency of materials or workmanship, the decision of the Owner shall for the time being prevail, and the Contractor, without delaying the job, shall proceed as directed by the Owner without prejudice to a final determination of the dispute.

10. CLAIMS LESS THAN \$375,000

- 10.1. Notwithstanding any other provision herein, claims of \$375,000 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code sections 20104, et seq., including claim, response, informal meet and confer conference, non-binding mediation if a claim of over \$100,000 remains in dispute after the meet and confer conference, and Government Code claim. "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to this Agreement, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner.
- 10.2. The Contractor shall submit its claim of \$375,000 or less to the Owner in writing before payment is made. The Owner shall respond within the time provided by statute. If the Contractor disagrees with the response or the Owner fails to respond within the time permitted, the Contractor shall notify the Owner of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference. The Owner shall schedule a meet-and-confer conference within thirty (30) days of the demand. If not resolved at the meet-and-confer conference,

then the claim shall be submitted to mediation. If the dispute is not resolved at mediation, the Contractor may initiate a civil action as set forth in Public Contract Code section 20104 et seq.

11. TERMINATION

- 11.1. If the Contractor should be adjudged bankrupt, or if the Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed on account of Contractor's insolvency, or if Contractor or any of Contractor's subcontractors should violate any of the provisions of the Agreement, or if Contractor should refuse or fail to supply enough properly skilled workmen or proper materials, or if Contractor violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f), or should fail to make prompt payment to subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, then the Owner may serve written notice upon the Contractor and its surety of its intention to terminate the Agreement. Unless, within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for corrections thereof be made, the Agreement shall, upon the expiration of said five (5) days, at the Owner's option, terminate.
- 11.2. In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the contractor, and the surety shall have the right to take over and perform the Agreement; provided, however, that if the surety, within ten (10) days after the serving upon it of Notice of Termination, does not give the Owner written notice of its intention to take over and perform the Agreement or does not commence performance within ten (10) days from the date of the serving of such notice; the Owner may then take over the Project and prosecute the same to completion by any method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any excess cost occasioned the Owner thereby. In such event, the Owner may without liability for so doing, take possession of and utilize in completing the Project, such materials, appliances and other property belonging to the Contractor as may be on the site of the Project and necessary therefore. In such case the Contractor shall not be entitled to receive payment until the Project is finished. If the Agreement Sum exceeds the expense of finishing the Project, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed the Agreement Sum, the Contractor shall pay the difference to the Owner.
- 11.3. The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and (3) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination.

12. SUBCONTRACTORS

If Contractor shall subcontract any part of the work, Contractor shall be fully responsible to Owner for acts or omissions of Contractor's subcontractors. Pursuant to Public Contract Code section 6109, no contractor may perform work on a public works project with a subcontractor who is ineligible to perform work on the project pursuant to California Labor Code sections 1777.1 or 1777.7.

13. PREVAILING WAGES

- 13.1. The Project is a public work, the Work shall be performed as a public work and under California Labor Section Code 1770 et seq., the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Agreement. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are available or on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until

the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement. Contractor shall post on site all required job site notices as prescribed by regulation.

- 13.2. The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- 13.3. Pursuant to Labor Code section 1776, the Contractor and each subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State Department of Industrial Relations. Contractor and subcontractors shall comply with Labor Code section 1776.

14. WORKING HOURS

- 14.1. In accordance with the provisions of California Labor Code sections 1810 to 1815, inclusive, the time of service of any worker employed by the Contractor or a subcontractor doing or contracting to do any part of the work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay.
- 14.2. The Contractor and every subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement.
- 14.3. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

15. APPRENTICES

- 15.1. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journey person (unless an exemption is granted in accordance with section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, sexual orientation, national origin, ancestry or color.
- 15.2. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

16. FORCE MAJEURE

The Parties shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities,

lockout, or commandeering of materials, products, plants, or facilities by the Government when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the nonperformance is not due to the fault or neglect of the Party not performing. A Contractor seeking an extension of time as a result of the above enumerated acts, must present the request for an extension of time to the Owner within fifteen (15) calendar days of the commencement of the act causing the delay. A Contractor's failure to provide notice of a request for an extension of time may result in denial of the request.

17. INDEMNIFICATION

- 17.1. To the fullest extent permitted by law, the Contractor and its Subcontractors shall defend and indemnify the Owner, any construction manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Governing Boards, members of the Governing Boards, and directors ("Indemnitees"), from and against claims, actions, liability, damages, losses, and expenses (including, but not limited to, attorneys' fees and costs including fees of consultants) alleged by third parties arising out of or resulting from performance of the work by Contractor or its subcontractors; or any act, omission, negligence, or willful misconduct of the Contractor or its subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a Party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Party, person, or entity described in this paragraph. This obligation to defend and indemnify includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor and its subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor and its subcontractors.
- 17.2. In the event Contractor brings hazardous materials on the Project site, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project site. In addition, the Contractor shall defend and indemnify the Indemnitees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Indemnitees' active negligence, sole negligence or willful misconduct.

18. INSURANCE

- 18.1. **Comprehensive General Liability and Automobile Insurance.** Without limiting Contractor's indemnification, it is agreed that Contractor shall maintain in force at all time during the performance of this Agreement the policies of insurance hereinafter described. Contractor shall secure and maintain in force during the term of this Agreement a comprehensive general liability and automobile policy utilizing an occurrence policy form, with combined single limits of One Million dollars (\$1,000,000) per occurrence with a Two Million dollars (\$2,000,000) annual aggregate limit. Property damage limits shall be One Million dollars (\$1,000,000) per loss. The Owner shall be named as an additional insured on the policies by endorsements that shall be attached to the Agreement as proof of insurance.
- 18.1.1. Written notification by the carrier to the Owner at least thirty (30) days prior to cancellation, failure to renew, or other termination, is required.
- 18.1.2. Certificates of insurance shall clearly state that the Owner is named as an additional insured under the General Liability and Automobile Liability policies described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy be excess and non-contributing.

- 18.1.3. Contractor will, at its own expense, maintain coverage in conformance with above requirements. As required, certificates of insurance evidencing the existence of coverage shall be filed with the Owner prior to commencement of work.
- 18.2. **Workers' Compensation.** Contractor shall maintain a policy of workers' compensation insurance as required by Labor Code section 3200 et seq. during the duration of this Agreement. A certificate evidencing this coverage shall be filed with the Owner prior to the commencement of work under this Agreement. Notification by the carrier to the Owner at least thirty (30) days prior to cancellation, failure to renew, or other termination, is required.

19. PERFORMANCE AND PAYMENT BONDS

19.1. Check below:

- Bonds are not applicable (Not required for Projects \$22,500 or less, inclusive of all changes)**
If change orders increase the value of the Agreement over \$25,000 then Owner reserves the right to request bonds for Change Order(s) that materially changes the size and/or scope of work. The Contractor shall be required to provide payment bonds pursuant to California Civil Code sections 9550-9566.
- Bonds are applicable (Required for Projects or regular and routine maintenance service greater than \$22,500)***
Prior to commencing any portion of the work, the Contractor shall apply for and furnish Owner separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance (during construction and one year after completion, and during any warranty or guarantee period) of and payment of all obligations arising under this Agreement and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California and shall be executed on Owner issued forms. Samples of the bonds are included as:
- EXHIBIT A (Payment Bond), and
 - EXHIBIT B (Performance Bond).

*EXCEPTION: If the Agreement is established as a blanket in excess of \$22,500 for the provision of as-needed maintenance/repair services (not a defined and specific project), bonds are not required. During the term of the Agreement, in the event, a specific project is required that exceeds the \$22,500 threshold, then Contractor will notify Owner and submit the required bonds.

- 19.2. To the extent, if any, that the Agreement Sum is increased in accordance with this Agreement, the Contractor shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of this Agreement (including, without limitation, an increase in the Agreement Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bond, the Owner may terminate this Agreement for cause.
- 19.3. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

20. WARRANTY PERIOD

The Contractor shall promptly correct any work found not to be in conformance with the Agreement Documents for one year after Owner's written acceptance of the work. Contractor shall correct the work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this section shall survive acceptance of the work under the Agreement and termination of the Agreement.

21. ASSIGNMENT OF ANTI-TRUST CLAIM

Pursuant to Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the owner 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 (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with section 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

22. SUBSTITUTIONS

No substitutions of materials from those specified in this Agreement or the specifications shall be made without prior written approval of the Owner.

23. SUPERVISION AND OWNER ACCESS

Contractor shall provide competent supervision of all persons on the job site. Contractor shall allow Owner access to the site at all times.

24. DRUG FREE WORKPLACE

Contractor certifies that Contractor will comply with the requirements of California's Drug-Free Workplace Act of 1990, California Government Code Section 8350 et seq., and will provide a drug-free workplace by taking the following actions: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that 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) Contractor's policy of maintaining a drug-free workplace; (3) any available 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 Agreement be given a copy of Contractor's drug-free policy statement and agree to abide by the terms of Contractor's statement as a condition of employment on the Agreement.

25. CLEAN UP, PROTECTION OF WORK AND PROPERTY

Contractor shall maintain site in a clean and safe condition, including the daily removal of flammable material. The Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchpersons for protection of workers and the public, and shall post danger signs warnings against hazards created by such features in the course of construction. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Owner, is permitted to act at its discretion to prevent such threatened loss or injury. If at Project completion, the site is not clean, Owner may clean the site and deduct the cost from the Agreement Sum.

26. OCCUPANCY

Owner reserves the right to occupy buildings at any time before formal acceptance of Agreement completion and such occupancy shall not constitute final acceptance or approval of any part of the work covered by this Agreement, nor shall such occupancy extend the date specified for substantial completion of work.

27. ANTI-DISCRIMINATION

It is the policy of the Owner that there shall be no discrimination against any of Contractor's prospective or active employees engaged in the Project because of race, color, ancestry, national origin, sexual orientation, sex or

religious creed. Therefore, the Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the Project by Contractor.

28. INDEPENDENT CONTRACTOR

While engaged in carrying out the terms and conditions of the Agreement Documents, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the Owner.

29. TESTING AND INSPECTIONS REQUIREMENTS (Apply only when checked)

If checked, see EXHIBIT C for detailed requirements.

30. OTHER SPECIAL CONSTRUCTION REQUIREMENTS (Apply only when checked)

If checked, see EXHIBIT D for detailed requirements.

31. MISCELLANEOUS PROVISIONS

- 31.1. **DISCOVERY OF HAZARDOUS MATERIALS.** In the event the Contractor encounters or suspects the presence on the site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), Lead (Pb), or any other material defined as being hazardous by California Health and Safety Code section 25249.5, which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner. The work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), Lead (Pb) or other hazardous material, and has not been rendered harmless. The work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), Lead (Pb) or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Contractor.
- 31.2. **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.
- 31.3. **Assignment.** The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on any payment bond, the surety on any performance bond and the Owner.
- 31.4. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Contractor and Owner and their respective successors and assigns.
- 31.5. **Severability; Governing Law; Choice of Forum.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Agreement shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.
- 31.6. **Amendments.** The terms of the Agreement Documents shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Parties.
- 31.7. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice. Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third-party claims relating to this Agreement pursuant to Public Contract Code section 9201.
- 31.8. **Entire Agreement.** The Agreement Documents constitute the entire agreement between the Parties relating to the Project, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated

herein. The Owner makes no representations or warranties, express or implied, not specified in the Agreement. The Agreement is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856. Contractor, by the execution of this Agreement, acknowledges that Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

31.9. Execution of Other Documents. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

31.10. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

31.11. Exhibits. The following Exhibits are included and hereby incorporated into this agreement:

- EXHIBIT A – Payment Bond
- EXHIBIT B – Performance Bond
- EXHIBIT C – Testing and Inspections
- EXHIBIT D – Special Construction Provisions

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The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective Parties, and by their signatures to bind the respective Parties to this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Owner and the Contractor as of the date set forth above.

Foothill-De Anza Community College District
“Owner”

By: _____
Authorized Signature – Purchasing Services
 Print Name: _____
 Date: _____

“Contractor”

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____
 Email: _____
 California Contractor’s License# _____
 • Expiration Date: _____
 • DIR Registration #: _____

This Agreement is not valid until signed by both Parties above.

FOR CAMPUS USE ONLY:		
Originator: _____	Date: _____	Extension: _____
FOAP: I _____ F _____ O _____ A _____ P _____		
Campus Finance/Fiscal Services Authorization:		
Name: _____	Signature: _____	
Title: _____	Date: _____	