



Addendum 2

ISSUED: Friday, March 20, 2026

Project Name: DESIGN-BUILD CONTRACTOR, INSTRUCTIONAL BUILDING CONFERENCE CENTER (IBCC)
Bid No: GCC-003

Item No.	Item Description
1	Pre-Submittal Conference Presentation (PDF)
2	Revised Design-Build Contract
3	General Conditions



GCC-003
Request For Qualifications (RFQ)
Design-Build (DB) Contractor
Instructional Building Conference Center (IBCC)

Pre-Submittal Conference

Friday, March 20, 2026

2:00 PM

AGENDA

- **Welcome & sign in using the TEAMS Chat**
- **Introductions**
- **Project Overview**
- **RFQ/P Approach and Schedule Requirements**
- **Questions & Open Discussion**





Project Team

Glendale Community College District

- Dr. Ryan Cornner, President / Superintendent
- Sharlene Coleal, Vice President of Administrative Services

Gafcon Program Management Office (PMO)

- Heather Skaife, Principal in Charge
- Joe Jackson, Program Manager
- Silva Sorkazian, Contracts and Risk Manager



Project Overview

- **Design Build Project Delivery**
- **72,500 GSF**
- **Programmed to Accommodate the following departments:**
 - Dance, Film & Television,**
 - Music, Electronic Media,**
 - Performance Space and Media Arts**

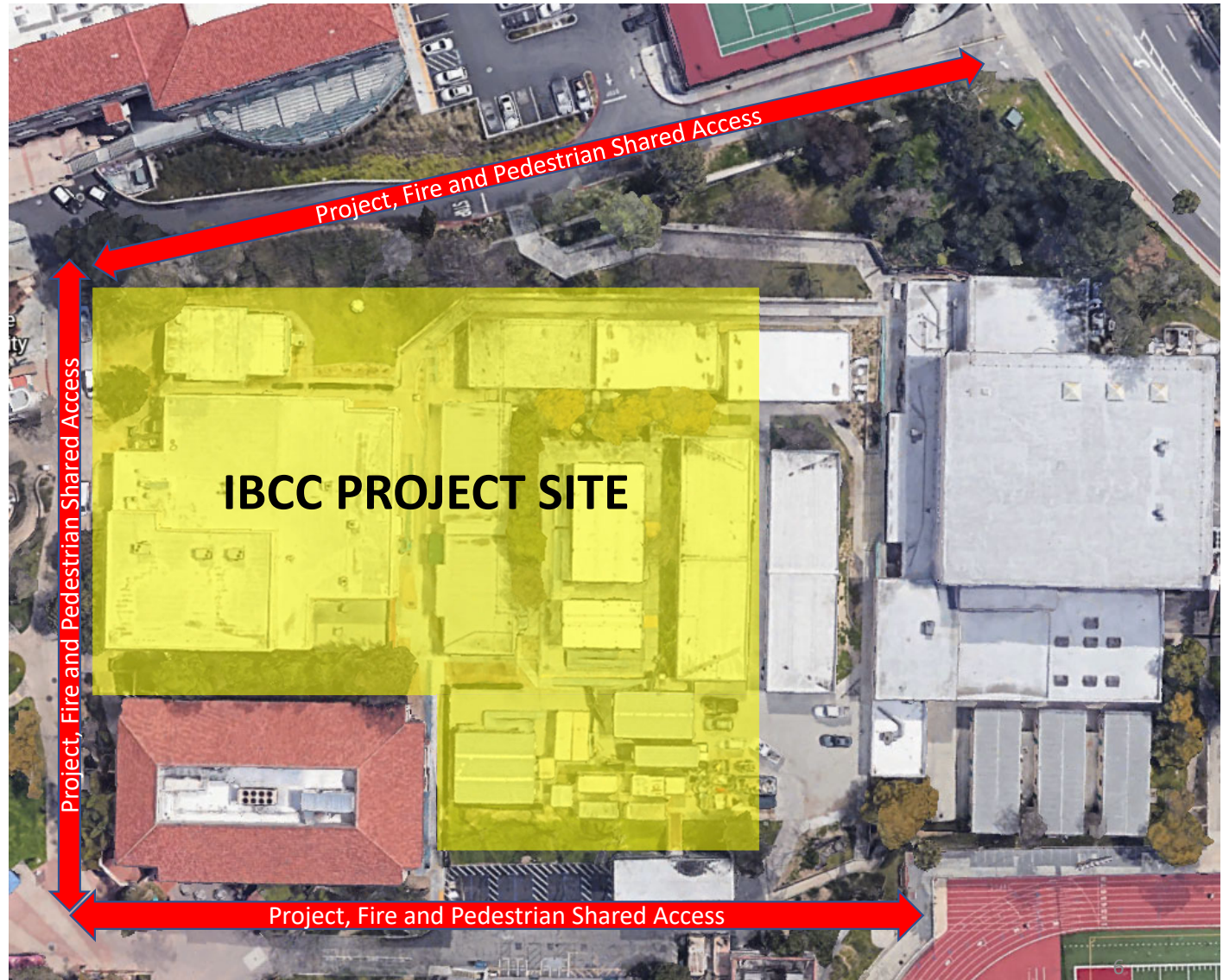




IBCC Campus Location



IBCC Site, Demo and Shared Access





RFQ/P Approach

Architect of Record is Steinberg Hart

Part 1: Prequalification

Part 2: Request for Proposal

- ***Competing Points:***

- ***Approach***
- ***Constructability review fee and approach***
- ***Construction Schedule***
- ***GCs / Fee / Insurance***
- ***Design Construction Administration***
- ***Risk Identification / Mitigation Strategies***
- ***Pricing NTP 1 Items***



Contract Approach

NTP 1:

- ***Constructability Review***
- ***GMP Development***
- ***Staging / Laydown***
- ***Demolition***

NTP 2:

- ***Construction***



RFQ / RFP Schedule

.1 Issuance of Request for Qualifications:	Friday, March 13, 2026
.2 Pre-Submittal Conference:	Friday, March 20, 2026 at 2:00PM
.3 Requests for Clarification Deadline:	Tuesday, March 31, 2026 at 4:00PM
.4 District Response to Request for Clarifications	Friday, April 3, 2026
.5 Design-Build Qualification Due:	Friday, April 10, 2026 at 2:00PM
.6 Evaluation of Design-Build Qualifications:	4/13-4/16/2026
.7 Issuance of RFP documents to (3-5) shortlisted firms	Friday, April 17, 2026
RFP Schedule. The following is the anticipated schedule of events relative to the Request for Proposal process and Award of the Design-Build Contractor:	
.1 Issuance of RFP documents to shortlisted firms	Friday, April 17, 2026
.2 Mandatory Pre-submittal Conference & Job Walk	April 30, 2026, at 10:00 AM
.3 RFP Requests for clarification deadline	May 5, 2026 by 4:00 PM
.4 District Response to Request for Clarifications	Friday, May 8, 2026
.5 RFP Proposals due	May 15, 2026 by 2:00 PM
.6 Evaluation of RFP Proposals (approximate)	May 18-22, 2026
.7 Notify firms of interviews, if held (approximate)	Wednesday, May 20, 2026
.8 Interviews, if held (approximate)	May 26-28, 2026
.9 Notice of Intent to Award (approximate)	Friday, May 29, 2026
.10 Board of Trustees Approval (approximate)	Tuesday, June 9, 2026
.11 Notice to Proceed (approximate)	Monday, June 15, 2026
.12 Debriefings:	By Appointment after award of contract

RFQ Attachments and Reference Documents

Exhibits to the RFQ

Path: Exhibits

Sheet No.
DSA SPECS
DIV 01 DSA SPECS
DSA 103-19 DOC
DSA PLANS
DSA APPROVAL OF PLANS 04-25-23
SITE-L1-2-3
DESIGN BUILD CONTRACT-DRAFT

Drawing Count: 1 to 7 of 7

Reference Documents

Path: Reference Documents

Sheet No.
1. DD BOARD MEETING FLYTHROUGH
2. PROGRAM SUMMARY
3. FACILITIES STRATEGIC PLAN
4. SITE DEMOLITION SKETCH
6. BUILDING MATERIALS SURVEY REPORT
7. BLDG ABATEMENT SPECIFICATIONS
8. LIMITED ASBESTOS SURVEY
9. MODULARS HAZMAT SURVEY REPORT
10. TOPOGRAPHICAL SURVEY
11. UG UTILITY SURVEY
12. UG UTILITY SURVEY (DWG)
14. FIIRE HYDRANT LOCATIONS

Drawing Count: 1 to 12 of 12

Questions

Questions and responses provided during this Presubmittal Conference cannot be relied upon as part of this procurement competition unless they are formally submitted prior to the RFI deadline, in accordance with the RFI requirements outlined in the Request for Qualification.

GLENDALE COMMUNITY COLLEGE

DESIGN-BUILD CONTRACT

1.1 Contract for Design and Construction.

This Design-Build Contract is effective as of the [REDACTED] day of [REDACTED], 2026, by and between Glendale Community College, a College organized and existing under the laws of the State of California ("College"), and **TBD** ("Design-Build Entity").

The parties agree as follows:

- A. Design-Build Entity, for and in consideration of the payment to be made to Design-Build Entity as hereinafter provided, shall furnish all plant, labor, technical and professional design services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by College, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the public work of improvement titled:

Instructional Building and Conference Center Project

Design-Build Entity is an independent contractor and not an agent of College. The Design-Build Entity and its surety shall be liable to College for any damages arising as a result of the Design-Build Entity's failure to comply with this obligation.

- B. The Design-Build Entity is made up of Steinberg Hart (License No. *****INSERT LICENSE NUMBER*****), which shall function as the designer and Architect/Engineer of Record for the Project and provide all architectural/engineering design services, and **TBD** (License No. *****INSERT LICENSE NUMBER*****), which shall function as the general contractor for the Project and provide all construction services for the Project together with its chosen subcontractors. For purposes of this Contract, **TBD** shall execute the Contract on behalf of the Design-Build Entity and shall have the authority to make all decisions necessary on behalf of the Design-Build Entity. Notwithstanding the foregoing, College may accept bonds naming the Design-Build Entity as principal and professional liability insurance naming the member of the Design-Build Entity designated for design/architectural services as named insured.

Design-Build Entity shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California.

- C. Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in College's Notice to Proceed. The Design-Build Entity shall complete all Work required by the Contract Documents within *****INSERT CALENDAR DAYS**** from the commencement date stated in the Notice to Proceed, which equates to a Project Completion Date of *****INSERT DATE*****.

By its signature hereunder, Design-Build Entity agrees the Project Completion Date is adequate and reasonable to complete the Work.

- D. College shall pay to the Design-Build Entity as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract

Documents, and including all applicable taxes and costs, no more than the Guaranteed Maximum Price (“GMP”) of _____ Dollars (\$ _____). The detailed line-item breakdown of the GMP is attached hereto as Attachment 7 – GMP Breakdown. Payment shall be made as set forth in the General Conditions. Unless otherwise stated in the Contract Documents, the GMP shall pay for all costs and expenses required to design and construct the Project. As described further in Attachment 7, the GMP also specifically includes the line-item costs for the Additional Scope items consisting of the (i) Pre-Construction Value-Engineering and Constructability Review, and the (ii) “Open Book” Subcontractor Solicitation Process, which are further defined in Attachment 5 hereto.

Specifically, also included within the GMP shall be one contingency (i) construction contingency (named the “Contingency”) in the line-item amounts indicated in Attachment 7. If Design Build Entity desires to utilize the Contingency, it may only propose to utilize the Contingency for the following (i) Scope gaps; (ii) Costs to address unforeseen conditions not contemplated by the parties at the time of the execution of the Contract Documents; (iii) Design Errors & Omissions (iv) Other items for the benefit of the Project requested by the Design-Build Entity if approved by the College in writing, in the College’s sole discretion. Prior to performing any Work that Design Build Entity intends to be paid for out of any portion of a Contingency, Design Build Entity must submit to the College a written request for the use of a Contingency that shall include sufficient substantiation enabling the College to determine that the proposed use of the Contingency is allowable and adequate cost documentation consistent with the change provisions of Article 10 of the General Conditions. If the Design Build Entity depletes the Contingency, any additional costs for items referenced by the Contingency shall be at the Design Build Entity’s sole expense. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of Contingency. Any Contingency remaining at Project completion shall remain the sole property of College. Any remaining value in the aggregate GMP at project completion shall also be returned to the College.

- E. Design-Build Entity shall provide indemnification and defense as set forth in the General Conditions.
- F. No oral agreement or conversation with any representative or employee of College, either before or after the execution of the Contract shall affect or modify any of the terms or obligations herein contained. This Contract constitutes the entire agreement between the parties hereto and no changes, alterations or modifications hereof shall be effective unless in writing and signed by College.
- G. The “Contract Documents” include only the following documents, each of which is incorporated into this Contract by reference:

Request for Qualifications (“RFQ”) and all addenda, attachments and appendices

Design-Build Entity Statement of Qualifications in response to RFQ

Request for Proposal (“RFP”) and all addenda, attachments and appendices

Design-Build Entity Proposal submitted in response to RFP

Design-Build Contract and all addenda

General Conditions

Special Conditions

College approved Change Orders

Attachment 1 to this Contract - Design Professional Rate Schedule for Extra Work

Attachment 2 to this Contract - Performance Bond

Attachment 3 to this Contract - Payment Bond

Attachment 4 to this Contract - Escrow Agreement for Security (optional)

Attachment 5 to this Contract - Enhancements/Additional Scope of Work Terms And Conditions

Attachment 6 to this Contract - Exclusions/Clarifications of Scope by the Design-Build Entity

Attachment 7 – Guaranteed Maximum Price Breakdown dated _____, 2026

Completed and approved Construction Documents in accordance with the General Conditions

The Design-Build Entity shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions.

- H. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Design-Build Entity shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.
- I. By my signature hereunder, as Design-Build Entity, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's 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.
- J. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of College.



K. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

College:
Glendale Community College
1500 North Verdugo Road
Glendale, CA 91208

DESIGN-BUILD ENTITY:
TBD

Attn: ****INSERT NAME AND TITLE****

Attn: ****INSERT NAME AND TITLE****

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

L. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

GLENDALE COMMUNITY COLLEGE

DESIGN-BUILD ENTITY:

TBD

By: _____

By: _____
(Authorized Representative of Design-Build Entity)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____
(Attach Acknowledgment for Authorized Representative of Design-Build Entity)

Dated: _____

License No. _____

Dated: _____

ATTEST:

College Clerk

END OF CONTRACT

ATTACHMENT 1

DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

[TO BE NEGOTIATED WITH THE DESIGN-BUILD ENTITY]

Design-Build entity shall only apply mark-ups as allowed in the General Conditions for Overhead and Profit on design change directives.

END OF DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

DRAFT

ATTACHMENT 2

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Glendale Community College (hereinafter referred to as "College") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design-Build Entity is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Design-Build Entity and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto College in the sum of _____ DOLLARS, (\$_____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well 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 the Design-Build Entity, 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 Documents and any alteration thereof made as therein provided, on its 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 all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless College, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of two (2) years after the acceptance of the work by College, during which time if Design-Build Entity shall fail to make full, complete, and satisfactory repair and replacements and totally protect College from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit College's rights or the Design-Build Entity or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by College in enforcing such obligation.

Whenever Design-Build Entity shall be, and is declared by College to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at College's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and College, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by College under the Contract and any modification thereto, less any amount previously paid by College to the Design-Build Entity and any other set offs pursuant to the Contract Documents.
3. Permit College to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by College under the Contract and any modification thereto, less any amount previously paid by College to the Design-Build Entity and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that College may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Build Entity.

Surety shall not utilize Design-Build Entity in completing the Project nor shall Surety accept a bid from Design-Build Entity for completion of the Project if College, when declaring the Design-Build Entity in default, notifies Surety of College's objection to Design-Build Entity's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

[Remainder of Page Left Intentionally Blank.]

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

DESIGN-BUILD ENTITY/PRINCIPAL

Name

By _____

SURETY:

By: _____

Attorney-In-Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

END OF PERFORMANCE BOND

ATTACHMENT 2

**ATTACHMENT 3
PAYMENT (MATERIAL & LABOR) BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Glendale Community College (hereinafter referred to as "College ") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, Design-Build Entity is required to furnish a bond in connection with the contract described above; providing that if Design-Build Entity or any of its subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Design-Build Entity and its subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Design-Build Entity and _____ as Surety, are held and firmly bound unto College in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, 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.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Design-Build Entity, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, 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 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by College in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall insure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

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

addition, alteration or modification in, to, or of any contract, plans, 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 therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted 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 Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between College and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

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 Design-Build Entity and Surety above named, on the _____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Design-Build Entity,
if corporation)

Design-Build Entity/Principal

By _____
(Signature of Design-Build Entity)

(Seal of Surety)

Surety

By _____
Attorney in Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

END OF PAYMENT (LABOR AND MATERIALS) BOND

ATTACHMENT 3

ATTACHMENT 4

ESCROW AGREEMENT FOR SECURITY

This Escrow Contract is made and entered into by and between the **GLENDAL COMMUNITY COLLEGE**, whose address is 1500 North Verdugo Road, Glendale, CA 91208 (hereinafter called the "College") and **TBD** whose address is **TBD, CA** (hereinafter called "the Design-Build Entity") and _____ whose address is **[INSERT ADDRESS]** (hereinafter called "Escrow Agent").

For the consideration hereinafter set forth, College, the Design-Build Entity, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, the Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by College pursuant to the Construction Contract entered into between College and the Design-Build Entity for the **[INSERT PROJECT NAME]** Project in the amount of **[\$[INSERT AMOUNT]]** dated **[INSERT DATE]** (hereinafter referred to as the "Contract"). Alternatively, on written request of the Design-Build Entity, College shall make payments of the retention earnings directly to the Escrow Agent. When the Design-Build Entity deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify College within 10 days of the 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 College and the Design-Build Entity. Securities shall be held in the name of College, and shall designate the Design-Build Entity as the beneficial owner.

(2) College shall make progress payments to the Design-Build Entity for those 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 College makes payment of retention earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Design-Build Entity until the time that the escrow created under this Escrow Contract is terminated. The Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Contract and the rights and responsibilities of the parties shall be equally applicable and binding when College pays the Escrow Agent directly.

(4) The Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of College. These expenses and payment terms shall be determined by College, the Design-Build Entity 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 the Design-Build Entity and shall be subject to withdrawal by the Design-Build Entity at any time and from time to time without notice to College.

(6) The Design-Build Entity shall have the right to withdraw all or any part of

ATTACHMENT 4

the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from College to the Escrow Agent that College consents to the withdrawal of the amount sought to be withdrawn by the Design-Build Entity.

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

(8) Upon receipt of written notification from College certifying that the Contract is final and complete, and that the Design-Build Entity has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to the Design-Build Entity 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 payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from College and the Design-Build Entity pursuant to Sections (5) to (8), inclusive, of this Escrow Contract and College and the Design-Build Entity 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 College and on behalf of the Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF THE DESIGN-BUILD ENTITY:

By: _____

Name: _____

Its: _____

ON BEHALF OF COLLEGE:

By: _____

Name: _____

Its: _____

ON BEHALF OF ESCROW AGENT:

By: _____

Name: _____

Its: _____

Address: _____

At the time the Escrow Account is opened, College and the Design-Build Entity shall deliver to the Escrow Agent a fully executed counterpart of this Escrow Contract.

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

ON BEHALF OF THE DESIGN-BUILD ENTITY:

ON BEHALF OF COLLEGE:

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

END OF ESCROW AGREEMENT FOR SECURITY

DRAFT

ATTACHMENT 5

ENHANCEMENTS/ADDITIONAL SCOPE OF WORK TERMS AND CONDITIONS

1. Pre-Construction Value Engineering and Constructability Review.

Immediately upon execution of the Contract, the Design Build Entity (“DBE”) shall conduct a Pre-Construction Value Engineering and Constructability Review of the existing DSA Approved Plans and Specifications dated _____, DSA A#_____. (collectively, the “Plans”) DBE’s review of plans shall include value engineering and constructability comments to identify any potential issues with the Plans in their current form and shall be completed within _____ days of the date of execution of the Contract. If, upon completing its review of the Plans, the DBE believes that the work of the Project depicted in the Plans, construction processes/procedures, specified materials/equipment or other aspects of the Plans can be modified for the benefit of the College and the Project to reduce the GMP, construction costs and/or the time for achieving Final Completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project, the DBE shall identify the same in writing (“the Value Engineering Recommendations”) for review and potential acceptance by the College. The College shall have the sole and exclusive discretion to accept some, all, or none of the DBE’s Value-Engineering Recommendations. If the College accepts any of the DBE’s Value Engineering Recommendations, the DBE shall ensure that the College accepted Value Engineering Recommendations are incorporated into the Plans and ultimately the construction of the Project.

2. “Open Book” Subcontractor Solicitation Process

Notwithstanding and in addition to the requirements of Article 9 of the General Conditions, the DBE agrees to conduct the following “Open Book” Subcontractor Solicitation Process to verify the line item amounts set forth in the approved GMP:

1. Subcontractor Bid Packages. Design Build Entity shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.
2. Public Notice. DBE shall provide notice of bidding for Subcontractors “in accordance with the publication requirements applicable to the College’s competitive selection process” to solicit Subcontractors in compliance with statutory requirements and the College’s process.
3. College Review of Bid Packages and Notice. At least fourteen (14) Days prior to the bidding of Subcontractor bid packages, DBE shall provide the College with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. The College reserves the right to request that DBE reasonably revise its published notice.
4. Three Bona Fide Bids. DBE is required to receive at least three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the DBE seeking bids, the College may, in its

ATTACHMENT 5

sole discretion, and upon DBE's written request, authorize DBE to utilize a different minimum number of bona fide bids from Subcontractors.

5. Alternative Procedures. The DBE may request, at least fourteen (14) days prior to the bidding of subcontractor bid packages, that the College approve other selection process(es) or criteria that the contractor desires to implement on this project. DBE can only implement those if the College pre-approves them.

6. Open-Book / Bid Opening. DBE shall invite the College to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.

7. Missing Scopes of Work in Subcontractor Bids ("Bid Levelling"). When DBE has received all Subcontractor bids, DBE shall identify all scope(s) of construction Work for which DBE did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a Subcontractor bid or was not bid on ("Unbid Work"). The College expects very little if any Unbid Work, far less than 1% of the GMP. After the College reviews the DBE's justification, the Parties shall meet and confer and the College shall reasonably determine, in its sole discretion, whether to:

- a. Direct the DBE to rebid the Unbid Work; or
- b. If DBE requests, allow the DBE to self-perform the Unbid Work. If DBE self-performs the Unbid Work, DBE shall provide substantiation for the pricing for the Unbid Work that DBE intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that DBE intends to self-perform. The College reserves the right to seek its own pricing of that Work to verify the value of DBE's proposed pricing.

8. Low Bid. Because the "best value" process was implemented as part of the Subcontractor procurement process, once the DBE receives Subcontractor bids, the DBE shall award subcontracts to subcontractors with the lowest responsive, responsible bid that have satisfied the above prequalification and/or qualification steps, as applicable.

9. Self-Performing Construction Work. If DBE intends to propose to self-perform portion(s) of the construction Work, it must

- a. Receive the College's prior written approval.
- b. Provide its pricing (its bid) to the College 48 hours prior to DBE's receipt of Subcontractor bids for those portion(s) of the Work.
- c. Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the DBE is bidding to self-perform, not including the DBE's pricing/bid.

10. Reconciling to GMP/Savings Deemed Contingency. After DBE completes this Subcontractor Procurement Process and the College approves the Subcontractor bids and self-performed construction Work, if any, DBE shall prepare an updated final GMP Breakdown for

the College's review and approval. Any savings and/or reduction in cost of any line item of the GMP after the Subcontractor Selection Process shall be added to the Construction Contingency in accordance with Section 1.1 (D) of the Contract.

[ADDITIONAL TERMS/CONDITIONS TO BE NEGOTIATED WITH THE DESIGN-BUILD ENTITY]

**END OF ENHANCEMENTS/ADDITIONAL SCOPE OF WORK
TERMS AND CONDITIONS**

DRAFT

ATTACHMENT 6

EXCLUSIONS/CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

[TO BE NEGOTIATED WITH THE DESIGN-BUILD ENTITY]

END OF EXCLUSIONS/CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

DRAFT

ATTACHMENT 7
GMP BREAKDOWN

DRAFT

00 72 53 -- GENERAL CONDITIONS

ARTICLE 1 -DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms.

- A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave or other identified circumstance.
 2. Additional Work -- New or unforeseen work will be classified as "Additional Work" when College's Representative determines that it is not covered by the Contract.
 3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 4. Application for Payment -- The form acceptable to College's Representative which is to be used by the Design-Build Entity during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. Architect of Record or Engineer of Record ("A/E") -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Section 00 73 13, Article 1.1 or any succeeding entity designated by College.
 6. Bridging Documents -- Includes, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Work, Project Program, Performance Specifications and schematic drawings.
 7. Certificate for Payment -- The form signed by College's Representative attesting to the Design-Build Entity's right to receive payment for certain completed portions of the Work on the Project in accordance with Article 12.
 8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
 9. Change Order Request ("COR") -- A request made by the Design-Build Entity for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a Design-Build Entity-claimed change to the Work. This term may also be referred to as a Change Order Proposal ("COP"), or Request for Change ("RFC").

10. College's Representative -- The individual or entity as identified in the Special Conditions to act as College's Representative.
11. Claim -- A demand or assertion by College or Design-Build Entity seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
12. Construction Documents -- The plans and technical specifications prepared by the Design-Build Entity for the Project and approved by College. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by College. All amendments and modifications to the Construction Documents must be approved by College in writing.
13. Construction Documents Phase -- The second of three phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.
14. Construction Phase -- The third phase of the Work and will commence upon final approval of the Construction Documents by College and DSA.
15. Construction Work -- That portion of the Work on the Project consists of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.
16. Contract -- The entire integrated written agreement between College and Design-Build Entity concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
17. Contract Documents -- The documents listed in Section 00 42 53, Article 1.1.G. Some documents provided by College, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
18. Contract Times -- The number of days or the dates stated in the Contract Documents and Master Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.
19. Cost Breakdown -- A Cost Breakdown/Schedule of Values for each phase of Work shall be submitted by the Design-Build Entity as required pursuant to Article 12 herein and are incorporated into the Contract Documents by reference.
20. Daily Rate -- The Daily Rate stipulated in the Contract Documents as full compensation to the Design-Build Entity due to College's unreasonable delay to the Project that was not contemplated by the parties.
21. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

22. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
23. Demobilization -- The complete dismantling and removal by the Design-Build Entity of all of the Design-Build Entity's temporary facilities, equipment, and personnel at the Site.
24. Design-Build Entity -- The individual or entity with which College has contracted for performance of the Work.
25. Design-Build Entity Representative -- The person or firm identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract and who shall not be changed without prior written consent of College.
26. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to College under the Contract Documents or; (2) developed or prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.
27. Design Professional -- The individuals or entities who will provide the Design-Build Entity with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
28. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.
29. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.
30. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
31. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of College's provided equipment which is installed in the Project by the Design-Build Entity.
32. Governmental Approvals -- Those governmental actions required to be obtained by College and necessary for the completion of the Project.
33. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price College will pay for the completion of all Work described in the Contract Documents. The

GMP is set forth in Section 00 42 53, Article 1.1 and further described in the cost proposal submitted by the Design-Build Entity.

34. Hazardous Environmental Condition – The presence at the Site of Hazardous Waste.
35. Hazardous Waste – Has the same meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, 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, whichever is more restrictive.
36. Holidays -- View Glendale Community College Holidays schedule: <https://www.glendale.edu/students/admissions-records/a-r-important-dates>

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.
37. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
38. Master Project Schedule -- The overall schedule for completion of the Project as prepared by College and included in the RFP.
39. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.
40. Notice of Award – The written notice by College to the Design-Build Entity stating that upon timely compliance by the Design-Build Entity with the conditions precedent listed therein, College will sign and deliver the Contract.
41. Notice of Completion – The form which may be executed by College and recorded by the county where the Project is located constituting final acceptance of the Project.
42. Notice to Proceed -- A written notice given by College to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the Work and when Contract Times will commence to run.
43. Partial Utilization – Use by College of a substantially completed part of the Work prior to Completion of all the Work.
44. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto included within the Bridging Documents.
45. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include

separate design or construction work performed by College or by Separate Contractors for the Project.

46. Project Completion Date -- The date by which the Design-Build Entity agrees that all Work described in the Contract Documents shall be completed. The Project Completion Date is set forth in Section 00 42 53, Article 1.1.
47. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times as a part of the Master Project Schedule. The detailed requirements for the Project Schedule are stated in Article 6.
48. Proposal -- The proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.
49. Request for Proposal ("RFP") -- The request for proposal issued by College for the Project and includes all documents, exhibits, attachments, and addenda thereto.
50. Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
51. Schematic Design Phase -- The first of three phases of the Work. The scope of the Schematic Design Phase is further defined in the RFP.
52. Separate Contractor -- A person, or firm, under separate contract with College performing other work at the Project site which may affect the Work.
53. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Build Entity and submitted by Design-Build Entity to illustrate some portion of the Work.
54. Site -- Lands or areas indicated in the Contract Documents as being furnished by College upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by College which are designated for the use of Design-Build Entity.

55. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
56. Subcontractor – An individual or entity that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.
57. Submittal - Written or graphic information and physical samples prepared and supplied by the Design-Build Entity demonstrating various portions of the Work.
58. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Build Entity or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
59. Technical Specifications – All documents developed by the Design-Build Entity during the Schematic Design Phase and which are ready for final construction.
60. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the Design-Build Entity. For example, a first tier Subcontractor is under subcontract with the Design-Build Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
61. Unexcusable Delay - Any delay other than an Excusable Delay, as described in Articles 9 and 10 of these General Conditions, that does not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and does not entitle the Design-Build Entity to an adjustment of the Project Completion Date.
62. Warranty - A written guarantee provided to College by the Design-Build Entity that the Work remains free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
63. Work -- The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

B. Furnish, Install, Perform, Provide.

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. Regardless of whether "furnish," "install," "perform," or "provide" is used in connection with services, materials, or equipment, an obligation of Design-Build Entity is implied.

C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

A. Within fifteen (15) Days after receipt of the Notice of Award and before College will execute the Contract, the Design-Build Entity shall furnish and file with College a signed Contract in duplicate and the necessary Performance Bond, Payment Bond, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

A. Design-Build Entity shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to College conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

2.3 Evidence of Insurance.

- A. Design-Build Entity shall obtain, at its sole cost and expense, all insurance required by Article 5. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to College within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by College.

2.4 Execution of Contract.

- A. Upon receipt of the required Contract Documents, College will execute the Contract, establishing the Effective Date of the Contract.

2.5 Commencement of Contract Times; Notice to Proceed.

- A. College will not issue a Notice to Proceed until after the Effective Date of the Contract.
- B. Work shall commence within fifteen (15) Days of the date stated in College's Notice to Proceed.
- C. The Contract Times begin to run on the Day the Design-Build Entity commences Work. If the Design-Build Entity fails to commence Work as required herein, the Contract Times commence on the fifteenth (15th) Day after the date stated in the Notice to Proceed.
- D. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.
- E. Nothing herein shall affect the Project Completion Date.

2.6 Copies of Documents.

- A. College will furnish to Design-Build Entity one (1) copy of the Bridging Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.7 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by College, Design-Build Entity, College's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference College and Design-Build Entity each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.8 Initial Acceptance of Schedules.

- A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by Design-Build Entity, College's Representative, and others as appropriate will be held to review for acceptability to College's Representative the schedules submitted, as required by the Contract Documents. Design-Build Entity shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design-Build Entity until acceptable schedules are submitted to College's Representative.
- B. Acceptance of the schedules by College's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility thereof.

2.9 Subcontractor Mobilization Meeting.

Prior to the start of each major Subcontractor's Site Work, the Design-Build Entity, the involved Subcontractor, and College's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.10 Project Signage.

College will permit a single project sign, which shall be subject to College's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 3 -CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent.

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to College.
- C. Clarifications and interpretations of the Contract Documents shall be issued by College's Representative as provided in these General Conditions.
- D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.
- E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Design-Build Entity in dividing Work

among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of College, Design-Build Entity, or College's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to College or College's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 Order of Precedence.

The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- A. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:
1. Permits from other agencies as may be required by law;

2. Change Orders or Pending Change Orders, most recent first;
 3. Attachment # to the Contract: Enhancements/Additional Scope of Work Terms and Conditions and Attachment 6 to the Contract: Exclusions/Clarifications of Scope by the Design-Build Entity;
 4. Design-Build Contract;
 5. Special Conditions;
 6. General Conditions;
 7. RFP and all addenda, attachments and appendices;
 8. Design-Build Entity Proposal in response to RFP;
 9. Technical Specifications prepared by Design-Build Entity;
 10. Drawings prepared by Design-Build Entity;
 11. Request for Qualifications and all addenda, attachments and appendices; and
 12. Design-Build Entity Statement of Qualifications in response to Request for Qualifications.
- B. With reference to the Drawings the order of precedence shall be as follows:
1. Figures govern over scaled dimensions;
 2. Detail drawings govern over general drawings;
 3. Change Order drawings govern over Drawings;
 4. Drawings govern over standard drawings.
- C. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.4 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a Change Order.

3.5 Interpretation and Use of Contract Documents.

- A. College and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which the Design-Build Entity based its Proposal. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by College, the Construction Documents become a part of the Contract Documents and define the entire scope of work, so long as such documents incorporate all minimum requirements of the design criteria and performance specifications set forth in the RFP

as may be amended by the Contract Documents. The Design-Build Entity shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.

- B. As described in the RFP, the construction materials, items, supplies, etc., including the quality and/or quantity of such items, specified in the Design-Build Entity's proposal for the design and construction of the Project represent a substantive basis which College factored into its determination of the "best value" for award of the Contract. Any change in such materials, items, supplies, etc. from those specified in the Design-Build Entity's proposal (and subsequently incorporated into the Contract Documents) during the design and construction of the Project requires the express written authorization of College pursuant to Article 9.
- C. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.
- D. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.
- E. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- F. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- G. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

- H. Before commencing any Work on the Project, the Design-Build Entity shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify College's Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to College.
- I. Before commencing any Work on the Project, the Design-Build Entity shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify College's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Design-Build Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to Design-Build Entity. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any Subcontractor proceed with Work if uncertain without the Design-Build Entity's written direction and/or approval.

3.6 Reuse of Documents.

- A. Design-Build Entity and any Subcontractor shall not:
 - 1. have or acquire any title to or Ownership rights in any of the Drawings, Technical Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or
 - 2. reuse of any such Drawings, Technical Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of College and A/E and specific written verification or adaptation by the A/E.
- B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude Design-Build Entity from retaining copies of the Contract Documents for record purposes.

3.7 Electronic Data.

- A. Unless otherwise stated in the Special Conditions, the data furnished by College or College's Representative to Design-Build Entity, or by Design-Build Entity to College or College's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.8 Ownership and Use of Construction Documents.

- A. The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of College. College and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of College pursuant to the requirements of College. College shall have unlimited rights, for the benefit of College, in all drawings, designs, technical specifications, notes and any other documentation and other Work developed in the performance of this Contract for the Project, including the right to re-use details of the Design on any other College Work at no additional cost to College. The Design-Build Entity agrees to, and hereby does, grant to College a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of College. Any use or reuse by College of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at College's own risk with respect to third parties. If College uses or re-uses the Construction Documents on any project other than this Project, it shall remove the A/E's seal from the Construction Documents and hold harmless Design-Build Entity, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

3.9 Administration of the Contract by College's Representative.

- A. During the term of this Design-Build Contract, College's Representative shall have the right to review the Design-Build Entity's Work at such intervals as deemed appropriate by College's Representative. However, no actions taken during such review or site visit by College's Representative shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.
- B. College's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the Design-Build Entity's responsibility.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, College and the Design-Build Entity shall communicate through College's Representative. Communications by the Design-Build Entity with College's consultants and College's Representative's consultants shall be through College's Representative. Communications by College and College's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through College's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.
- D. Based on College's Representative's Project site visits, review of the Work, and evaluations of the Design-Build Entity's Applications for Payment, College's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates for Payment in such amounts.
- E. College's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. College's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever College's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, College's Representative will have the authority to require additional inspection or testing of the Work on the Project in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of College's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of College or College's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.
- F. College's Representative will have the authority to conduct inspections in connection with Beneficial Occupancy and to determine the dates of Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate for Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.

- G. College's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the Design-Build Entity shall notify College's Representative in writing and request interpretation, or clarification. College's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the Work affected before receipt of a response from College's Representative, any portion of the Work on the Project which is not done in accordance with College's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.
- H. College may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace College's Representative with a new College Representative. Upon receipt of notice from College informing the Design-Build Entity of such replacement and identifying the new College's Representative, the Design-Build Entity shall recognize such person or firm as College's Representative for all purposes under the Contract Documents.

ARTICLE 4 -AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands.

- A. College shall furnish the Project site. College shall notify Design-Build Entity of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which Design-Build Entity must comply in performing the Work. College will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.
- B. Design-Build Entity shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to College.

4.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Design-Build Entity or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by College. Neither Design-Build Entity nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Design-Build Entity will, as determined by College's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided College shall have the right to use or consume these materials without payment to a third party.

4.3 Hazardous Environmental Conditions at Site.

- A. Reports and Drawings. The Special Conditions identify those reports and drawings known to College relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. Limited Reliance by Design-Build Entity on Technical Data Authorized. Design-Build Entity may rely upon the accuracy of the “technical data” contained in such reports and drawings but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Special Conditions. Design-Build Entity shall make its own interpretation of the “technical data” and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Design-Build Entity may not rely upon or make any claim against College or College’s Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Design-Build Entity’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of design or construction to be employed by Design-Build Entity and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Design-Build Entity interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Design-Build Entity shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Construction Documents or identified in the Contract Documents to be within the scope of the Work. Design-Build Entity shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Design-Build Entity, Subcontractors, Suppliers, or anyone else for whom Design-Build Entity is responsible.
- D. If Design-Build Entity encounters a Hazardous Environmental Condition or if Design-Build Entity or anyone for whom Design-Build Entity is responsible creates a Hazardous Environmental Condition, Design-Build Entity shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an Emergency); and (iii) notify College and College’s Representative (and promptly thereafter confirm such notice in writing). College shall promptly consult with College’s Representative concerning the necessity for College to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Design-Build Entity shall not be required to resume Work in connection with such condition or in any affected area until after College has obtained any required permits related thereto and delivered written notice to Design-Build Entity: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely.

- F. If after receipt of such written notice Design-Build Entity does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then College may order the portion of the Project that is in the area affected by such condition to be deleted from the Work in accordance with the Contract Documents. College may have such deleted portion of the Project performed by College's own forces or others.
- G. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless College and College's Representative, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created, in whole or in part, by Design-Build Entity or by anyone for whom Design-Build Entity is responsible. Nothing in this Section shall obligate Design-Build Entity to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. Design-Build Entity shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. Design-Build Entity shall be solely responsible for ensuring that the design provides for the protection of existing improvements.
- B. Design-Build Entity shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of College. Design-Build Entity shall report to College's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 5 - BONDS AND INSURANCE

- 5.1 Time for Compliance. Design-Build Entity shall not commence Work under this Contract until it has provided evidence to College that it has secured all insurance required under this Section. Design-Build Entity shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. Design-Build Entity shall not allow any subconsultant or subcontractor to commence work on any subcontract until it has provided evidence to College that the subconsultant or subcontractor has secured all insurance required under this Article.
- 5.2 Minimum Requirements. Design-Build Entity shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise out of or result from the performance of the Work and Design-Build Entity's other obligations under the Contract Documents whether by Design-Build Entity, its agents, representatives, employees or subcontractors. Design-Build Entity shall

also require all of its subconsultants and subcontractors to procure and maintain the same insurance for the duration of the Contract and verify the subconsultants' and subcontractors' compliance. Design-Build Entity's and subconsultants' and subcontractors' insurance shall meet at least the minimum levels of coverage set forth in this Article:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Design-Build Entity has no owned autos, non-owned, leased or hired autos Code 8 (hired) and Code 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; (4) Installation Floater/Builder's Risk: "All Risk All Perils" form; and (5) Professional Liability/Errors and Omissions. The policies shall not contain any exclusion contrary to the Contract, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability or (2) cross liability for claims or suits by one insured against another.
- B. Minimum Limits of Insurance. The Design-Build Entity shall maintain limits no less than:
1. For Commercial General Liability, Design-Build Entity shall have limits of at least the amount that corresponds to the Guaranteed Maximum Price in the following table:

<u>Guaranteed Maximum Price</u>	<u>Amount of Liability Insurance</u> (per occurrence)
\$ 0 - \$ 2 million	\$ 2 million
\$ 2 million - \$ 5 million	\$ 3 million
\$ 5 million - \$ 10 million	\$ 5 million
\$10 million - \$ 20 million	\$10 million

- If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 25 03, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required occurrence limit. Should any of the Work involve aircraft (fixed wing or helicopter) owned or operated by Design-Build Entity, liability insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage is required. Should any of the Work involve watercraft owned or operated by Design-Build Entity, liability insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage is required.
2. Automobile Liability: \$1 million per accident for bodily injury and property damage.
 3. Workers' Compensation and Employer's Liability:
 - a. Workers' Compensation: statutory limits.
 - b. Employer's Liability limits of \$1 million per accident for bodily injury or disease.

- c. Should any of the Work be upon or contiguous to navigable bodies of water, Design-Build Entity shall carry insurance covering its employees for benefits available under the Federal Longshoremen's and Harbor Worker's Act to the extent required by law;
- 4. Excess/Umbrella Liability Policy may be provided to insure the total limits required for Commercial General Liability and Automobile Liability and must apply to all primary coverage afforded, including but not limited to general liability, owned and non-owned automobiles, leased and hired cars.
- 5. Professional Liability/Errors and Omissions: \$5,000,000 per claim.
- C. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) Days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with College. If such coverage is cancelled or materially reduced, Design-Build Entity shall, within ten (10) Days after receipt of written notice of such cancellation or reduction of coverage, file with College evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, College has the right but not the duty to obtain the insurance it deems necessary and any premium paid by College will be promptly reimbursed by Design-Build Entity or College may withhold amounts sufficient to pay premium from Design-Build Entity payments. In the alternative, College may suspend or terminate this Contract.

5.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Design-Build Entity shall provide endorsements on forms approved by College to add the following provisions to the insurance policies:

- A. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37 (including completed operations), or endorsements providing the exact same coverage, College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the Work or ongoing and completed operations performed by or on behalf of the Design-Build Entity, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of College, before College's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.

- B. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Design-Build Entity or for which the Design-Build Entity is responsible; and (2) the insurance coverage shall be primary insurance as respects College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any insurance or self-insurance maintained by College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.
- C. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree, using WC 00 03 13 or the exact equivalent, to waive all rights of subrogation against College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.
- D. Professional Liability/Errors and Omissions. Professional Liability Insurance insuring the A/E, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the A/E may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect and shall be so certified to College by the insurer, for a period of five (5) years after the completion of all of the Design-Build Entity's services hereunder and College's acceptance of the Project. All subconsultants shall have professional liability insurance with the same limits (additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis are set forth below).
- E. All Coverages. Each insurance policy required by this Agreement shall be endorsed to include the following provisions:
1. coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to College and all additional insureds.
 2. any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to College and any other additional insureds.
 3. standard separation of insureds provisions.
 4. no special limitations on the scope of protection afforded to College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions.
 5. waiver of any right of subrogation of the insurer against College, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or

shall specifically allow the Design-Build Entity or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, the Design-Build Entity hereby waives its own right of recovery against College or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants and subcontractors.

5.4 Installation Floater Insurance Shall Be for the Total Value of Project. The policy shall be written on an “All Risk, All Perils” form, to include coverage for earthquake, flood, and Acts of God (as defined in Public Contract Code Section 7105), insuring for physical loss or damage to the Work, false work, completed work, work in progress, material, supplies, and equipment of the Project site, but also to property at off-site storage locations and in transit, without regard to the location of the covered property. The premium for the Acts of God insurance shall be included as a separate item number in the Cost Proposal and shall be provided to College prior to commencement of the Construction phase of the Project. The policy shall be issued on a replacement cost basis, and shall insure against at least the following perils or causes of loss: fire, lightning, weather damage, explosion, extended replacement cost coverage, theft, vandalism, malicious mischief, collapse, debris removal, aircraft, demolition occasioned by enforcement of Applicable Laws, water damage from any source, snow, sleet, hail, wind, acts of terrorism, and such other perils not specifically listed. The policy shall include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects), allow for Partial Utilization of the Work by College, and include testing and startup.

If the replacement cost increases during the course of construction, additional insurance limits must be purchased by the Design-Build Entity.

Should any of the Work involve construction or remodeling of, or addition to, a building or buildings, then Builder’s Risk/Course of Construction Coverage shall be added to the Installation Floater Insurance. The Builder’s Risk/Course of Construction coverage shall also include the perils of Acts of God, flood and earthquake.

Installation Floater Insurance deductible amounts may be selected by the Design-Build Entity but shall not exceed the maximum allowable deductible for the Guaranteed Maximum Price of the Project in the table set forth below. The maximum allowable deductibles for the perils of earthquake and flood shall not be greater than five percent of the value at risk at the time of loss.

<u>Guaranteed Maximum Price</u>		<u>All Risk Perils Maximum Deductible</u>
\$ 0	\$ 2,000,000	\$ 10,000
\$ 2,000,001	\$ 5,000,000	\$ 20,000
\$ 5,000,001	\$ 10,000,000	\$ 50,000
\$ 10,000,001	-- \$ 50,000,000	\$ 100,000

Installation Floater Insurance policy shall name College, Design-Build Entity, Subconsultants, and Subcontractors as insureds, with deductible amounts, if any, for the sole account of and payable by Design-Build Entity. Loss under Installation Floater Insurance shall be adjusted with and payable to College for the interest of all parties.

The amount of Installation Floater Insurance shall be sufficient to protect against such loss or damage in full until all Work is accepted by College. The premium for Installation Floater Insurance will be paid by Design-Build Entity.

- 5.5 Pollution Liability insurance is required should any of the Project involve pollutants. Liability coverage shall include coverage for the environmental risk associated with the project and expenses related to such, including bodily injury, property damage, on and off site clean-up, transporting, carrying, or storing pollutants, coverage for non-owned disposal site in an amount not less than that set forth in the Special Conditions.

Pollutants include, but are not limited to, asbestos, mold, microbial matter, solid, liquid, gaseous or thermal irritants or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

- 5.6 Receipt and Application of Insurance Proceeds.

Any insured loss under the policies of insurance required herein will be adjusted with College and made payable to College as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of the provisions herein. College shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Project and the cost thereof covered by an appropriate Change Order.

College as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing to College's exercise of this power within fifteen (15) Days after the occurrence of loss. If such objection be made, College as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, College as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, College as fiduciary shall give bond for the proper performance of such duties.

- 5.7 Partial Utilization, Acknowledgement of Property Insurer.

If College finds it necessary to occupy or use a portion or portions of the Project prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

- 5.8 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by College. Design-Build Entity shall guarantee that, at the option of College, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects College, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions; or (2)

the Design-Build Entity shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

- 5.9 Claims Made Policies. Claims made policies are not acceptable other than for Professional Liability. In addition to the requirements above, for any claims made policy:
- A. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work.
 - B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after College's acceptance of the Work.
 - C. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Design-Build Entity must purchase "extended reporting" coverage for a minimum of five (5) years after College's acceptance of the Work.
- 5.10 Subcontractor Insurance Requirements. Design-Build Entity shall not allow any subcontractors to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subcontractors maintain insurance meeting all requirements under this Section and has provided evidence to College of such insurance. For Commercial General Liability coverage subcontractors shall provide coverage naming College, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, College may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that College and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.
- 5.11 Subconsultant Insurance Requirements. Design-Build Entity shall not allow any subconsultants to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subconsultants maintain insurance meeting all requirements under this Section and has provided evidence to College of such insurance. Additionally, all subconsultants must maintain professional liability/ errors and omissions coverage with limits of at least \$5,000,000 per claim. For Commercial General Liability coverage subcontractors shall provide coverage naming College, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, College may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that College and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.
- 5.12 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to College.
- 5.13 Verification of Coverage. Design-Build Entity shall furnish College with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to College. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by College before work

commences. College reserves the right to require complete, certified copies of all required insurance policies, at any time.

5.14 Reservation of Rights. College reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5.15 Performance Bond and Payment Bond.

- A. The Design-Build Entity shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to College conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The Design-Build Entity shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract.
- B. The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by College.
- C. The Design-Build Entity shall promptly furnish such additional security as may be required by College to protect its interests and those interests of persons or firms supplying labor or materials to the Project.
- D. The premiums for the Payment Bond and Performance Bond shall be paid by the Design-Build Entity.
- E. The Design-Build Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Contract Documents.
- F. No payment will be made to the Design-Build Entity until the Design-Build Entity's Payment Bond and Performance Bond have been approved by College.
- G. Should, in College's sole opinion, any bond become insufficient or surety found to be unsatisfactory, the Design-Build Entity shall renew or replace the effected bond within 10 Days of receiving notice from College.
- H. In the event the surety or the Design-Build Entity intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to College, and the Design-Build Entity shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article 5.15 are accepted by College.
- I. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of College, cause the

amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to College.

- J. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Build Entity will release the surety. If the Design-Build Entity fails to furnish any required bond, College may terminate the Contract for cause.

ARTICLE 6 -DESIGN-BUILD ENTITY'S RESPONSIBILITIES

6.1 Design-Build Entity Responsibility; Independent Contractor.

The Design-Build Entity shall be responsible to College for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. College retains the Design-Build Entity on an independent contractor basis. The Design-Build Entity is not an employee, agent or representative of College. The Design-Build Entity represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. The Design-Build Entity shall maintain complete control over its employees and its Subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

6.2 Review of Contract Documents and Field Conditions by The Design-Build Entity; Single Point Responsibility of The Design-Build Entity.

- A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Section 00 42 53, Article 1.1, the Design-Build Entity shall carefully study and compare each of the Contract Documents provided by College with the others and with information furnished by College, and shall promptly report in writing to College's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by College or inconsistencies with Applicable Law observed by the Design-Build Entity. The Design-Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to College in writing.
- B. The Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the

Design-Build Entity before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to College's Representative.

- C. If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of College's Representative, the Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.
- D. College does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future programs that may result from Work performed under this Contract.
- E. The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.
- F. The Design-Build Entity agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design-Build Entity has the duty to act in College's best interests at all times throughout the course and performance of this Contract.

6.3 Design, Supervision and Construction Procedures.

- A. The Design-Build Entity shall supervise, coordinate, and direct all Work on the Project using the Design-Build Entity's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.
- B. The Design-Build Entity shall be responsible to College for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.
- C. The Design-Build Entity shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of College or College's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.
- D. The Design-Build Entity shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- E. To facilitate communications and the management of the design process, the Design-Build Entity shall maintain an office in San Diego County for the duration of the design process.
- F. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The Design-Build Entity shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the College-approved Construction Documents, which are developed from the College-accepted Proposal, the Design-Build Entity shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.
- G. The Design-Build Entity is required to deliver to College, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

- H. The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project.
- I. The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.
- J. The Design-Build Entity shall at all times maintain good discipline and order among its employees and Subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all Work on the Project.

6.4 Labor; Working Hours.

- A. The Design-Build Entity shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Design-Build Entity shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 7:00 a.m. and 7:00 p.m. any day Monday through Friday of any week and/or during Schedule Constraints defined in the Contract Documents. The Design-Build Entity will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without College's written consent given after prior written notice to College's Representative. The Design-Build Entity shall be responsible for, and shall reimburse College for, all inspection costs outside regular working hours, including overtime.
- C. The Design-Build Entity will provide all labor needed to complete the Work within the Contract Times.

6.5 Progress Meetings.

- A. The Design-Build Entity shall schedule and hold regular on-Site progress meetings at least weekly and at other times as requested by the College or as required by progress of the Work. The Design-Build Entity, College's Representative, and all Subcontractors active on the Site shall attend each meeting. The Design-Build Entity may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.
- B. College's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Design-Build Entity shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

6.6 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

- A. Design-Build Entity shall adhere to the Master Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:

1. Design-Build Entity shall submit to College's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Change Order.
3. Should any of the following conditions exist, College may require Design-Build Entity to prepare, at no extra cost to College, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:
 - a. The Design-Build Entity's monthly progress report indicates delays that are, in the opinion of College, of sufficient magnitude that College questions the Design-Build Entity's ability to complete the Work;
 - b. The Project Schedule shows the Design-Build Entity to be thirty (30) or more Days behind the critical path at any time during construction;
 - c. The Design-Build Entity desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of College, are major in nature.
 - d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how Design-Build Entity intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the Design-Build Entity to recover the schedule.
 - e. Design-Build Entity shall submit the recovery schedule within seven (7) Days of College's request:
 - (i) If Design-Build Entity asserts that College is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of College's request will be considered a concurrent delay event attributable to Design-Build Entity, and Design-Build Entity shall only be entitled to non-compensable adjustments to the Project Completion Date.
 - (ii) If Design-Build Entity is responsible for the delay, this provision will not limit or affect Design-Build Entity's liability and failure to submit the recovery schedule with seven (7) Days of College's request may result in College withholding progress payments or other amounts due under the Contract Documents.
 - f. Design-Build Entity is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or

deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

g. Regardless of whether College directs Design-Build Entity to prepare a recovery schedule pursuant to this Article 6.6, Design-Build Entity shall promptly undertake appropriate action at no additional cost to College to recover the schedule whenever the current Project Schedule shows that the Design-Build Entity will not achieve a milestone and/or complete the Work within the Project Completion Date.

h. Failure by the Design-Build entity to provide the College with a time impact analysis schedule and its associated cost within ten (10) business days from Notice of delay will result in forfeiture of the entity's right to request a compensable time extension.

B. Unless otherwise specified in the Contract Documents, Design-Build Entity shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.

C. Failure of College's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.

D. The Design-Build Entity shall perform all Work on the Project in accordance with the current accepted Project Schedule.

6.7 Materials.

A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the Design-Build Entity shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.

B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of College. If required by College's Representative, Design-Build Entity shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.
- D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Design-Build Entity shall be entirely responsible for damage or loss by weather or other causes to materials or Work until College has accepted the Work.
- E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to College free from any claims, liens, or encumbrances.
- F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of College or any independent contractor.

6.8 Submittals.

A. Industry Standard Submittals.

Design-Build Entity will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

B. Schedule of Submittals.

Design-Build Entity will prepare and deliver a Schedule of Submittals to College's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which Design-Build Entity will deliver each Submittal to College's Representative. Each Submittal must be delivered to College's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Design-Build Entity is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The Design-Build Entity will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
 - a. Transmit three (3) copies of each with a Submittal Transmittal.
 - b. Transmittals will be sequentially numbered. The Design-Build Entity to mark revised Submittals with original number and sequential alphabetic suffix.
 - c. Each Submittal will identify the Project, the Design-Build Entity, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.

- d. The Design-Build Entity must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When a Submittal is revised for resubmission, the Design-Build Entity shall promptly address College comments and resubmit. The Design-Build Entity shall identify changes made since previous submission.
 - g. College's review of Submittals shall not relieve the Design-Build Entity from responsibility for deviations from the Contract Documents unless the Design-Build Entity has, in writing, called College's attention to such deviations at time of submission and College's has taken no exception to the deviation. College's review of Submittals shall not relieve the Design-Build Entity from responsibility for errors in the Submittals.
 - h. Submittals not required by the Construction Documents or requested by College's Representative will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by College's Representative. Delays resulting from incomplete submittals are not the responsibility of College's Representative.
 - j. The Design-Build Entity shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process.
2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to College's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Design-Build Entity.
 3. Schedule Milestones for Submittals. Design-Build Entity must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If Design-Build Entity fails to submit the submittals in accordance with the Schedule of Submittals, Design-Build Entity will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. Design-Build Entity will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

6.9 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Design-Build Entity shall have:

1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
4. determined and verified all information relative to the Design-Build Entity's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, the Design-Build Entity shall give College's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to College's Representative for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show College's Representative the services, materials, and equipment Design-Build Entity proposes to provide and to enable College's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.
2. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.
3. Design-Build Entity shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable College's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.
2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. College's Representative's Review.

1. College's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals. College's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. College's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 3. College's Representative's review and acceptance shall not relieve the Design-Build Entity from responsibility for any variation from the requirements of the Contract Documents unless College's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
- F. The Design-Build Entity shall make corrections required by College's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The Design-Build Entity shall direct specific attention in writing to revisions other than the corrections called for by College's Representative on previous Submittals.
- G. College will review the first resubmittal of Shop Drawings at its cost. College reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

6.10 Construction Documents.

A. Construction Documents.

1. Upon receipt of the Notice to Proceed, the Design-Build Entity shall instruct the A/E to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. College's review of the Construction Documents shall be conducted in accordance with the approved Master Project Schedule with procedures set forth in this Article 6.10. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by College of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design-Build Entity and approved by College.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will submit the Construction Document packages to College for review and approval in accordance with the agreed upon schedule, unless otherwise approved in writing by College. The Master Project Schedule shall indicate the times for College to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
3. The Design-Build Entity shall submit completed packages of the Construction Documents for review by College at the times indicated on the Master Project Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and College to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The Design-Build Entity will conduct these design meetings with College in accordance with the schedule approved by College. The Design-Build Entity will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.
4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to College for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the Design-Build Entity by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

2. The Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.
3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
4. The Design-Build Entity shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.
5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by College.

C. Field Engineering.

1. The Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.
2. The Design-Build Entity shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. Design-Build Entity shall be responsible for obtaining a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the Design-Build Entity's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by Design-Build Entity at its sole cost and expense.
2. The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

6.11 Dust Control.

- A. Design-Build Entity, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

6.12 Air Pollution.

- A. Design-Build Entity shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

6.13 Patent Fees and Royalties.

- A. Design-Build Entity shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of College or College's Representative, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by College in the Contract Documents.
- B. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless College and College's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.14 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Build Entity, unless otherwise specified in the Contract Documents.

- A. Design-Build Entity shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than College.
- B. The Design-Build Entity shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance

Specifications, drawings, or by governing authorities, except for such off-site inspections identified as College's responsibility in the Contract Documents.

- C. Before acceptance of the Work, the Design-Build Entity shall submit all licenses, permits, certificates of inspection and required approvals to College.

6.15 Design-Build Entity Standard of Care.

- A. The Design-Build Entity warrants to College that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The Design-Build Entity warrants to College that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by College's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this Article 6.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of College's Representative.
- B. The Design-Build Entity shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

6.16 Applicable Laws.

- A. Design-Build Entity shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither College nor College's Representative shall be responsible for monitoring Design-Build Entity's compliance with any Applicable Laws.
- B. If Design-Build Entity performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Build Entity shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

6.17 Labor Laws and Design-Build Entity's Obligations.

A. Hours of Work.

1. The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.
2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to College. Permissible working hours shall be between 7:00 a.m. to 7:00 p.m. and shall not be changed except with consent of College.
3. Eight (8) hours of work shall constitute a legal day's work. The Design-Build Entity and each Subcontractor shall forfeit, as penalty to College, twenty-five dollars (\$25) for each worker employed in the execution of Work on the Project by the Design-Build Entity or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
4. If the work done after hours is required by the Contract to be done outside the Design-Build Entity's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by College. If College allows the Design-Build Entity to do Work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by College and deducted from the next progress payment. If the Design-Build Entity elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by College and deducted from the next progress payment.
5. No Work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to College staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to College staff shall be made by and pursuant to the sole discretion of a representative of College. All Work on the Project or other activities which could present a hazard or unreasonable disruption to College staff shall be performed before or after normal working hours, on weekends, or on a College recognized holiday. Neither the Design-Build Entity nor its Subcontractors or anyone working on behalf of the Design-Build Entity or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The Design-Build Entity, Subcontractors and persons working on behalf of the Design-

Build Entity shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The Design-Build Entity is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. College has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at College's office and shall be made available to any interested party on request. the Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Project available to interested parties upon request, and shall post copies at the Design-Build Entity's principal place of business and at the Project site. The Design-Build Entity shall defend, indemnify and hold College, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.
2. Pursuant to Labor Code Section 1775, the Design-Build Entity is hereby advised that in the event that the Design-Build Entity fails to pay prevailing wages, the Design-Build Entity will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the Design-Build Entity and each Subcontractor shall forfeit as a penalty to College not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each 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 Design-Build Entity.
3. The Design-Build Entity shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the Design-Build Entity and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The Design-Build Entity shall certify under penalty of perjury that records maintained and submitted by the Design-Build Entity are true and

accurate. The Design-Build Entity shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Design-Build Entity and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Design-Build Entity shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.
3. If not subject to paragraph (2), above, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR.
4. In the event of noncompliance with the requirements of this Article 6.17C, the Design-Build Entity shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the Design-Build Entity shall, as a penalty to the College, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.
5. In submitting the Proposal on this Project, it shall be the Design-Build Entity's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.
6. The Design-Build Entity shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to College.

D. Apprentices.

1. The Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Design-Build Entity or any Subcontractor. The Design-Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

E. Labor Compliance; Stop Orders.

1. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Design-Build Entity's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor that affect Design-Build Entity's performance of Work, including any delay, shall be Design-Build Entity's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Design-Build Entity caused delay subject to any applicable liquidated damages and shall not be compensable

by the College. Design-Build Entity shall defend, indemnify and hold the College, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Design-Build Entity or any subcontractor.

F. Nondiscrimination.

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Design-Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. The Design-Build Entity will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

- G. Workers' Compensation. Pursuant to Labor Code section 1860, Design-Build Entity shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, Design-Build Entity shall sign and file with College the following certification:

"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 contract."

6.18 Skilled and Trained Workforce.

- A. Education Code section 17250.25(c) requires the Design-Build Entity to ensure that it and its Subcontractors at every tier use a skilled and trained workforce to perform all Work on the Project that falls within an apprenticeship occupation in the building and construction trades. As part of the Design-Build Entity's Statement of Qualifications submitted in response to the RFQ, the Design-Build Entity submitted a Skilled and Trained Workforce Certification certifying its compliance with all skilled and trained workforce requirements in place for this Project.
- B. A "skilled and trained workforce" means a workforce that meets all of the following conditions:
1. All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.
 2. As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

3. As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
 4. As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
 5. As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the Design-Build Entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
 6. For an apprenticeable occupation in which no apprenticeship program has been approved by the chief prior to January 1, 1995, up to one-half of the graduation percentage requirements under Public Contract Code section 22164(c)(1)(B)(ii) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.
- C. The Design-Build Entity shall comply with the foregoing skilled and trained workforce requirements in accordance with Education Code section 17250.25(c)(2) and will establish its compliance in one of the following methods:
1. The Design-Build Entity shall provide monthly reports to the College demonstrating that it and its Subcontractors performing work on the Project are complying with the requirements of Public Contract Code section 2602; or
 2. The Design-Build Entity shall provide evidence that it has become party to a project labor agreement entered into by the College that binds all contractors and subcontractors performing Work on the Project and that includes the requirements of Public Contract Code section 2500.

6.19 Taxes.

- A. The Design-Build Entity shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project.

- B. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the Design-Build Entity will be responsible.
- C. The Design-Build Entity shall include in its Proposal the patent fees or royalties on any patented article or process furnished or used in the Project. The Design-Build Entity shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with the Project, and shall defend, indemnify and hold harmless College, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

6.20 Use of Site and Other Areas.

A. Limitation on Use of Site and Other Areas.

1. The Design-Build Entity shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, or to the College or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 2. Should any claim be made by any such College or occupant because of the performance of the Work, Design-Build Entity shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- B. Removal of Debris. During the progress of the Work Design-Build Entity shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.
 - C. Cleaning. Prior to Completion of the Work, Design-Build Entity shall clean the Site and the Work and make it ready for utilization by College. At the completion of the Work Design-Build Entity shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
 - D. Loading Structures. Design-Build Entity shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Entity subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.21 Utility Usage.

- A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Build Entity. Design-Build Entity shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed.

Upon completion of the Work, Design-Build Entity shall remove all temporary distribution systems.

- B. Design-Build Entity shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents.
- C. All permanent meters installed shall be listed in the Design-Build Entity's name until the Work is accepted.
- D. If Work is to be performed in existing College's facilities, Design-Build Entity may, to the extent authorized by College in writing, use College's existing utilities. If Design-Build Entity uses College utilities, it shall compensate College for utilities used.

6.22 Record Documents.

- A. Design-Build Entity shall maintain in a safe place at the Site one record copy of all Drawings, Performance Specifications, Technical Specifications, Addenda, Change Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to College's Representative for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to College. See 01 00 00 for additional Record Drawing requirements.

6.23 Safety and Protection.

- A. Design-Build Entity shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Design-Build Entity shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Design-Build Entity shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Design-Build Entity shall comply with the applicable requirements of College's safety programs, if any. The Special Conditions identify any College's safety programs that are applicable to the Work.
- D. Design-Build Entity shall inform College and College's Representative of the specific requirements of Design-Build Entity's safety program with which College's and College's Representative's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Build Entity.
- F. Design-Build Entity's duties and responsibilities for safety and for protection of the Work shall continue until College files the Notice of Completion in accordance with Contract Documents.

6.24 Safety Representative.

- A. Design-Build Entity shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Design-Build Entity shall provide College's Representative the name and contract information of the safety representative in writing. Design-Build Entity shall provide College's Representative the name and contact information of the safety representative in writing.

6.25 Hazard Communication Programs.

- A. Design-Build Entity shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

6.26 Emergencies.

- A. In an emergency affecting safety of life or of Work or of adjoining property, Design-Build Entity, without special instruction or authorization from College, shall act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if directed or instructed by College. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined in accordance with the Contract Documents.

6.27 Continuing The Work.

- A. Design-Build Entity shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with College. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless College and Design-Build Entity otherwise agree in writing.

6.28 Guarantee.

- A. The Design-Build Entity unconditionally guarantees all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Project Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, etc. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material shall be guaranteed for six (6) months. The Design-Build Entity shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to College; ordinary wear and tear and abuse excepted.
- B. The Design-Build Entity further agrees, within fourteen (14) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by College, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If College finds that the Design-Build Entity fails to perform any of the Work under the guarantee, College may elect to have the Work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the Work upon demand. College will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.
- C. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of College employees, property, or licensees, College may undertake, at the Design-Build Entity's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents.

6.29 Warranty.

- A. The Design-Build Entity warrants to College that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of College. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of College to maintain an action for breach of contract against the Design-Build Entity. Nothing contained in these Contract Documents pertaining to warranty or guarantee shall be construed as limiting any other rights College may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

6.30 Indemnification.

- B. To the fullest extent allowed by law (including without limitation Civil Code Sections 2782 and 2782.8), the Design-Build Entity shall defend (with counsel of College's choosing), indemnify and hold College, its officials, officers, agents, employees, and representatives free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, Losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with any acts, omissions or willful misconduct of Design-Build Entity, its officials, officers, employees, agents, consultants, contractors, and Subcontractors arising out of or in connection with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of College's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against College, its officials, officers, agents, employees and representatives. the Design-Build Entity shall pay and satisfy any judgment, award or decree that may be rendered against College, its officials, officers, agents, employees and representatives, in any such suit, action or other legal proceeding. The Design-Build Entity shall reimburse College, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Design-Build Entity agrees to pay, or reimburse College and College's Representative, for regulatory agency or court imposed fees, fines, or penalties imposed on College and College's Representative arising from the Design-Build Entity's failure to complete the Project in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. The Design-Build Entity's responsibility and obligation to pay, or reimburse College and College's Representative, for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Project.
- A. In claims against any person or entity indemnified under this Article 6.30 that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this Article 6.30 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations.
- B. The indemnification obligations under this Article 6.30 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- C. Joint and Several Liability. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.30.

6.31 Superintendent.

- A. The Design-Build Entity shall employ a competent Superintendent satisfactory to College who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling College to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the Design-Build Entity fails to complete the Contract by the Project Completion Date, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.
- B. Any changes to the assignment of the Superintendent shall receive prior written approval from College. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

6.32 Project Staffing.

- A. The Design-Build Entity and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.

College shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by College, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to College, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

6.33 Compliance With State Storm Water Permit for Construction.

Refer to Section 01 00 00 for information regarding compliance with State Storm Water Permit for Construction.

6.34 Monthly Report.

The Design-Build Entity shall prepare and submit to College, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by College. Reports shall be furnished at the time of submission

of each monthly application for payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

6.35 Other Reports.

The Design-Build Entity will cooperate with College in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

6.36 Notice of Labor Dispute.

- A. If the Design-Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the Design-Build Entity shall immediately give written notice including all relevant information to College.
- B. The Design-Build Entity agrees to insert the substance of this Article 6.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Design-Build Entity, as the case may be, of all relevant information concerning the dispute.

6.37 Documents and Samples At Project Site.

- A. The Design-Build Entity shall maintain the following at the Project site:
 - 1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
 - 2. One copy of the prevailing wage rates applicable to the Project.
 - 3. The current accepted Master Project Schedule.
 - 4. Shop Drawings, Product Data, and Samples.
 - 5. One current copy of all documents required by Article 6.21.
 - 6. All other required submittals.

These shall be available to College's Representative and shall be delivered to College's Representative for submittal to College upon the earlier of Final Completion or termination of the Contract.

6.38 Cutting, Fitting, and Patching.

- A. The Design-Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

- B. The Design-Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design-Build Entity shall not cut or alter the work of any Separate Contractor without the prior written consent of College's Representative.

6.39 Access to Work.

- A. College, College's Representative, their consultants, and other persons authorized by College will at all times have access to the Work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

6.40 Concealed Or Unknown Conditions.

- A. Except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:
 - 1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in the Contract Documents, and/or can reasonably be inferred by the Design-Build Entity based on its experience and expertise; and
 - 2. That the Design-Build Entity's Guaranteed Maximum Price for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed or unknown conditions, The Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, concealed and/or unknown conditions shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

- B. If concealed or unknown conditions are encountered which require, in the opinion of College's Representative, design details which differ from those details shown in the Bridging Documents and College's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if College agrees with College's Representative's determinations, College will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 9 and 10 following receipt of a Change Order Request.
- C. If the Design-Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design-Build Entity shall notify College's Representative within three (3) Days in writing of such conditions so that College's Representative can determine if such conditions require design details which differ from those design details shown in the Bridging Documents. Design-Build Entity shall be liable to College for any extra costs incurred as a result of the Design-Build Entity's failure to give such notice. Design-Build Entity's failure to give such notice shall constitute a waiver by Design-Build Entity of any additional compensation.

6.41 Liability for and Repair of Damaged Work.

- A. Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to College's acceptance of the Project as fully completed.

6.42 Permits, Fees, and Notices.

- A. Except for the permits and approvals which are to be obtained on behalf of College or the requirements with respect to which College is not subject, the Design-Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The Design-Build Entity shall deliver to College all original licenses, permits, and approvals obtained by the Design-Build Entity in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

ARTICLE 7 -OTHER WORK AT THE PROJECT SITE

7.1 Related Work At Project Site.

- A. Nothing contained in the Contract Documents shall be interpreted as granting to Design-Build Entity exclusive occupancy at the Project site. College reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with College's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the Design-Build Entity prior to starting any such other work. The Design-Build Entity shall participate with College and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Master Project Schedule after such joint review.
- B. Design-Build Entity shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. Design-Build Entity shall not be entitled to additional compensation from College for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, Design-Build Entity shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by College or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The Design-Build Entity shall promptly report to College's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by College's Representative, the Design-Build Entity shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such

discrepancies or defects shall constitute an acknowledgment that the other construction or operations by College or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.

- C. Design-Build Entity's Responsibility. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work.
- D. Design-Build Entity Shall Not Endanger Existing Work. Design-Build Entity shall not endanger any work of Separate Contractor by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of College's Representative and the Separate Contractor whose work will be affected.
- E. Design-Build Entity shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Build Entity shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Build Entity may cut or alter others' work with the written consent of College's Representative and the others whose work will be affected.
- F. If the proper execution or results of any part of Design-Build Entity's Work depends upon work performed by Separate Contractors, Design-Build Entity shall inspect such other work and promptly report to College's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Design-Build Entity's Work. Design-Build Entity's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Design-Build Entity's Work except for latent defects and deficiencies in such other work.
- G. If any claims are made by Separate Contractors arising out of Design-Build Entity's performance of the Work, Design-Build Entity shall be responsible to immediately resolve the dispute and indemnify College pursuant to the Contract Documents.

7.2 Coordination.

- A. If College intends to have work performed by Separate Contractors at the Project site, the following will be set forth in the Special Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Special Conditions, College shall have sole authority and responsibility for such coordination.

- C. Coordination Delays. College's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between Design-Build Entity and any Separate Contractor shall be submitted to College's Representative for a decision in the matter. Design-Build Entity shall comply with direction from College's Representative whose decision on coordination matters will be final.

7.3 For Delays by Others.

- A. By entering into this Contract, Design-Build Entity acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of Design-Build Entity. Design-Build Entity expressly warrants and agrees that Design-Build Entity will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, College, or College's Representative. Design-Build Entity also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. Design-Build Entity will have no remedy, and hereby expressly waives any remedy, against College or College's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

7.4 Design-Build Entity's Delay Or Damage.

- A. Design-Build Entity shall be liable to College and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of Design-Build Entity's wrongful action or inactions.

ARTICLE 8 -FINGERPRINTING REQUIREMENTS

College shall determine the Fingerprinting requirements for the Project as set forth in the Special Conditions. The Project shall be governed by paragraph (a) or (b) below, depending on the Work involved in the Project.

8.1 Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More Than Limited Contact with Students.

If the College determines, based on the totality of the circumstances concerning the Project, that the Design-Build Entity and Design-Build Entity's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Contract, the Design-Build Entity acknowledges that Design-Build Entity is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Design-Build Entity and/or its employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Design-Build Entity shall, at Contractor's own expense:

- A. install a physical barrier to limit contact with students by Design-Build Entity and/or Design-Build Entity's employees;

- B. provide for the continuous supervision and monitoring of the Design-Build Entity and/or Design-Build Entity's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice;
- C. provide for the surveillance of the Design-Build Entity and Design-Build Entity's employees by a College employee;
- D. require any employee of the Design-Build Entity potentially having contact with students to obtain fingerprint clearance as described in Education Code section 45125.1.

8.2 Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving Only Limited Contact with Students.

If the College determines based on the totality of the circumstances concerning the Project that the Design-Build Entity and Design-Build Entity's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Contract, the Design-Build Entity acknowledges that Design-Build Entity is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Design-Build Entity and/or Design-Build Entity's employees on a school site: (1) Design-Build Entity and/or Design-Build Entity's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Design-Build Entity and/or Design-Build Entity's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Design-Build Entity and/or Design-Build Entity's employees shall not change locations without contacting the school office; (4) Design-Build Entity and Design-Build Entity's employees shall not use student restroom facilities; and (5) If Design-Build Entity and/or Design-Build Entity's employees find themselves alone with a student, Design-Build Entity and Design-Build Entity's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

ARTICLE 9 -SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. All portions of the Work on the Project for which Subcontractors were not listed by the Design-Build Entity in its Proposal, shall be awarded by the Design-Build Entity pursuant to the requirements described in this Article.
- B. The Design-Build Entity shall submit to College's Representative after selecting Subcontractors pursuant to an open and competitive process, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the Design-Build Entity awards a contract for any portion of the Work to a Subcontractor not originally listed in the Design-Build Entity's Proposal.
- C. College has the right to request all documentation that supports the Design-Build Entity's selection of a Subcontractor. College shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of Work. Within

College's discretion, any Subcontractor may be deemed not qualified to perform Work on the Project if College or College's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

- D. The Subcontractors listed by the Design-Build Entity shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of College. Only upon compliance with the "Subletting and Subcontracting Fair Practices Act" and with the written consent of College shall a substitution be made.
- E. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article or as required by College or College's Representative pursuant to this Article, shall be borne solely by the Design-Build Entity. The Design-Build Entity shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution.
- F. The Design-Build Entity shall require, in each subcontract for any portion of Work on the Project, the Subcontractor to indemnify College, College's Representative and its consultants, representatives, directors, officers, agents and employees, pursuant to the provisions set forth in Article 6.
- G. Each subcontract shall preserve and protect the rights of College under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The Design-Build Entity shall cause each such subcontract to expressly include the following requirements:
 - 1. Subcontractor waives all rights that Subcontractor may have against College for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Build Entity or College, except for such rights Subcontractor may have to the proceeds of such insurance held by College under Article 5.1.
 - 2. College and entities and agencies designated by College will have access to and the right to audit and the right to copy at College's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to Work on the Project. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.
 - 3. Subcontractor recognizes the rights of College under Article 8.3, Contingent Assignment of Subcontracts, and agrees, upon notice from College that College has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by College, to execute a written Contract confirming that Subcontractor is bound to College under the terms of the subcontract.
 - 4. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

9.2 Contingent Assignment of Subcontracts.

- A. The Design-Build Entity hereby assigns to College all its interest in first tier subcontracts now or hereafter entered into by the Design-Build Entity for performance of any part of the Work on the Project. The assignment will be effective upon acceptance by College in writing and only as to those subcontracts which College designates in writing. College may accept said assignment at any time during the course of the Work on the Project and prior to Final Completion in the event of a suspension or termination of the Design-Build Entity's rights under the Contract Documents. Such assignment is part of the consideration to College for entering into the Contract with the Design-Build Entity and may not be withdrawn prior to Final Completion.

9.3 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. All Subcontractors shall be retained in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 *et seq.*) The Design-Build Entity shall not, without the consent of College: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal; sublet or subcontract any portion of the Work on the Project in excess of one-half of one percent (.5%) of the Guaranteed Maximum Price as to which its Proposal did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design-Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design-Build Entity for substitution will be handled through College's Representative.
- B. All Subcontractor and Sub-Subcontractor substitutions shall be made pursuant only to the Subletting and Subcontracting Fair Practices Act found at Public Contract Code Section 4100 *et seq.*
- C. Any substitutions of Subcontractors shall not result in any increase in the Guaranteed Maximum Price or result in the granting of any extension of Project Completion Date for the completion of the Project.
- D. Substitutions due to a claim of inadvertent clerical error shall be made pursuant to Public Contract Code Section 4107.5.
- E. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.
- F. Upon the request of College, the Design-Build Entity shall promptly furnish to College a true, complete, and executed copy of any subcontract.

9.4 Subcontractor's Responsibilities.

Every Subcontractor is bound to the following provisions, subject to the limitations of Article 8.3 above:

- A. Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Performance Specifications, and other instructions, shall at once report to the Design-Build Entity any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Design-Build Entity concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.
- B. Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Project site. The Subcontractor shall not employ on the Project any unfit person or anyone not skilled in the task assigned. The Design-Build Entity shall have the right to remove from the Project any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.
- C. Should the proper and accurate performance of the Work on the Project depend upon the proper and accurate performance of other Work not included in its agreement, each Subcontractor shall use all necessary means to discover any defect in such other Work and shall allow the Design-Build Entity or other Subcontractors as the Design-Build Entity elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Design-Build Entity over its written objection.
- D. Each Subcontractor shall submit to the Design-Build Entity, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Design-Build Entity in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Design-Build Entity with respect thereto.
- E. Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Design-Build Entity in the subcontract. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Design-Build Entity. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Design-Build Entity or College. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

- F. Each Subcontractor may be subject to the Design-Build Entity's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.
- G. Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.
- H. Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement.
- I. Without limitation of any other right or remedy available to the Design-Build Entity under the Contract or at law, should the Subcontractor: (1) fail to perform its portion of the Work on the Project in a skilled and expeditious manner in accordance with the terms of the subcontract with sufficient labor, materials, equipment, and facilities; (2) delay the progress of the job; (3) otherwise fail in any of its obligations; (4) have a receiver appointed for the Subcontractor; or (5) be declared bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceeding or declaration is not set aside within thirty (30) Days, then the Design-Build Entity, upon three (3) Days' notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Design-Build Entity may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work on the Project and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Design-Build Entity's own forces.
- J. In the event of any dispute as to whether or not any portion of the Work on the Project is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a change order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Design-Build Entity. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of Work on the Project during the existence of the dispute. The Design-Build Entity shall continue to pay the undisputed amounts called for under the subcontract during the existence of the dispute. Any party stopping or delaying the progress of the Work on the Project because of a dispute shall be responsible in damages to College, and the Design-Build Entity for any losses suffered as a result of the delay.
- K. The Design-Build Entity agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.
- L. The Design-Build Entity shall require each Subcontractor to comply with all procedures established by the Design-Build Entity for coordination among College, College's consultants, the Design-Build Entity, and the various Subcontractors for coordination of the Work on the Project with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the

Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

- M. The Design-Build Entity shall require each Subcontractor to comply with all on-site record keeping systems established by the Design-Build Entity and shall, upon the request of the Design-Build Entity, provide the Design-Build Entity with such information and reports as the Design-Build Entity may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Project site.
- N. The specific requirements of this Article are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the Contract Documents which are relevant to the proper performance of its portion of the Work on the Project.
- O. The Design-Build Entity shall require all Subcontractors to commence their Work within two (2) Days after the Design-Build Entity provides them with a notice to begin, and shall require all Subcontractors to diligently prosecute their Work in accordance with the Master Project Schedule, so as to allow the Project to be totally and adequately completed within the Project Completion Date.

ARTICLE 10 -CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

- A. College, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Build Entity indicates the Design-Build Entity's agreement therewith, including any adjustment in the Guaranteed Maximum Price or the Contract Times, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
- B. Design-Build Entity shall promptly execute changes in the Work as directed in writing by College even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the Design-Build Entity shall be presented in writing. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Design-Build Entity. Design-Build Entity shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.
- C. The Design-Build Entity may request a Change Order under the procedures specified herein.

- D. No changes in the work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract.
- E. A Field Order, as defined below, may be issued by College; such Field Order does not require the agreement of the Design-Build Entity, and shall be valid with or without the signature of the Design-Build Entity.
- F. The Design-Build Entity shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order, College Directed Change Order or Field Order.
- G. A Change Order becomes a Contract Document when: (i) it is a College Directed Change Order as described in Article 9.3; or (ii) after it has been signed by both College and the Design-Build Entity, and states their agreement upon all of the following:
 1. A change in the Work, if any.
 2. The amount of an adjustment of the Guaranteed Maximum Price, if any.
 3. The amount of an adjustment of the Project Completion Date, if any.
 4. The terms and conditions of the Change Order are accepted as full and final settlement of any and all claims arising out of or related to the subject of the Change Order and the compensation set forth therein comprises the total compensation due for the work or change defined in the Change Order, including all impacts on any unchanged work.

10.2 Design-Build Entity Change Order Requests.

- A. The Design-Build Entity may only request changes to the Guaranteed Maximum Price and/or Project Completion Date for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of College, College's Representative, their agents or employees, or caused by unforeseen conditions or Acts of God if, and only if, the Design-Build Entity follows the procedures specified in this Article.
- B. If the Design-Build Entity asserts that the Design-Build Entity is entitled to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of College, or as the result of unforeseen conditions that could not have been foreseen by the Design-Build Entity, then the Design-Build Entity may submit a Change Order Request in a form acceptable to College, to College's Representative.
- C. A Change Order Request must state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Project Completion Date. Upon request of College's Representative, the Design-Build Entity shall submit such additional information as may be requested by College's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a cost proposal meeting the requirements of this Article and written documentation demonstrating the Design-Build Entity's entitlement to a time extension under Article 10. If the Change Order Request seeks an

adjustment of the Guaranteed Maximum Price for a Compensable Delay, upon request of College's Representative, the Design-Build Entity shall submit written documentation demonstrating the Design-Build Entity's entitlement to such an adjustment under Article 9.

- D. A condition precedent to obtaining an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of College, College's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in this Article. A Change Order Request based upon such acts, errors or omissions of the College will be deemed timely submitted if, and only if, it is submitted within ten (10) Days of the date the Design-Build Entity discovers, or reasonably should discover, that an act, error, or omission of College has occurred that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within ten (10) Days of the date the Design-Build Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request). Although the Design-Build Entity shall have ten (10) Days to submit such Change Order Requests, the Design-Build Entity shall provide College written or oral notice of the issue being the basis for such Change Order within five (5) business days of discovery.
- E. If College's Representative issues a final decision on all or part of a Change Order Request, the Design-Build Entity may contest the decision by filing a timely Claim under the procedures specified in Article 14. A final decision is any decision on a Change Order Request by College's Representative which states that it is final.

10.3 Unilateral Change Order; Field Order.

- A. An College Directed Change Order is a type of Change Order which may be issued by College and incorporated into the Contract Documents without the Design-Build Entity's signature, where College determine that it is in College's best interest to adjust the Guaranteed Maximum Price and/or Project Completion Date as College believes necessary, even though no agreement has been reached between College and the Design-Build Entity.
- B. A Field Order is a preliminary to a Change Order that describes a change in the Work, the estimated adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, and orders a change in the Work before all of the terms of the change are fully agreed upon by College and the Design-Build Entity. A Field Order must eventually be memorialized as a Change Order or an College Directed Change Order and incorporated into the Contract Documents.

1. A Field Order may be issued by College. If requested in writing, the Design-Build Entity shall promptly provide College's Representative with a cost proposal, setting forth the proposed adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, for performing the change in the Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Guaranteed Maximum Price and the Project Completion Date, as well as the change in the Work.
2. A Field Order signed by the Design-Build Entity indicates the agreement of the Design-Build Entity therewith, including the Design-Build Entity's agreement to the proposed adjustments to the Guaranteed Maximum Price and/or the Project Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.
3. Upon receipt of a Field Order, the Design-Build Entity shall promptly proceed with the change in the Work.
4. If the Design-Build Entity does not agree to the adjustment of the Guaranteed Maximum Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Article 9.4; and the Design-Build Entity shall comply with the provisions of Article 9.4 regarding records and documentation of actual costs.

10.4 Changes to The Guaranteed Maximum Price.

A. Process for Determining Adjustments in the Guaranteed Maximum Price.

1. Change Order Request Detail. Design-Build Entity's Change Order Request shall include all professional services, material, labor, and equipment separately priced for each element of Work. Allowable Overhead and Profit may be added to the total of these costs if allowed by the Contract Documents. As general guidance, all cost documentation shall be tabulated from detailed computerized spreadsheets in a "workbook" which will be compiled into useful summary spreadsheets as directed by College's Representative.
 - a. Lump Sum Change Orders. By mutual acceptance of a lump sum price negotiated on the basis of the Design-Build Entity's itemized estimate of the anticipated costs of the Additional Work.
 - b. Time and Materials Change Orders. College may direct Design-Build Entity to proceed with the Additional Work with payments to be made on the basis of the actual cost of the labor and materials required to complete the Additional Work.
2. Change Order Request Form. Design-Build Entity's Change Order Request shall be on forms acceptable to College's Representative. Design-Build Entity's Change Order Request shall certify in writing that the amounts included cover all direct, supplemental, indirect, consequential, and cumulative costs and delays, as applicable, and that those costs and delays would be or were necessarily incurred, despite Design-Build Entity's reasonable and diligent efforts to mitigate them. Mitigation efforts undertaken by Design-Build Entity must be described.

B. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:

1. Labor. The costs of labor will be the actual cost for prevailing wages locally for each craft or type of worker at the time the additional work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost of the Additional Work will not be permitted unless the Design-Build Entity establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Section 00 42 53, Attachment 1.
2. Materials. The cost of materials shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then College shall determine the materials cost, at its sole discretion.
3. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit markups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

C. Time and Materials Change Orders.

1. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Design-Build Entity for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by College, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items.
2. Timely and Final Documentation.
 - a. Design-Build Entity must submit timesheets, materials invoices, records of equipment hours and records of rental equipment hours to College's Representative for an approval signature each day Additional Work is performed. Failure to get College's Representative's approval signature each Day may result in a waiver of Design-Build Entity's right to claim these costs.
 - b. All documentation of incurred costs shall be submitted by Design-Build Entity and approved by College's Representative within three (3) Days of incurring the cost for labor, material, equipment, and special services. Design-Build Entity's total actual cost shall be presented in a summary table in an electronic

spreadsheet file by labor, material, equipment, and special services (T&M Summary Sheets). Design-Build Entity's failure to provide the T&M Summary Sheets within three (3) Days of performance of the work will result in the Design-Build Entity's otherwise allowable profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Design-Build Entity's failure to submit the T&M Summary Sheets within three (3) Days of completion of the work will result in Design-Build Entity's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.

3. Labor. The costs of labor will be the actual cost substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Section 00 42 53, Attachment 1.
 - a. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
 - b. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including without limitation the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.
4. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
 - a. Trade discounts available to the purchaser shall be credited to College notwithstanding the fact that such discounts may not have been taken by Design-Build Entity.
 - b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by College's Representative.
 - c. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower.
 - d. If in the opinion of College's Representative the cost of materials is excessive, or Design-Build Entity does not furnish satisfactory evidence of the cost of such

materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Site less trade discounts.

- e. College reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Design-Build Entity for costs of such materials or Indirect Costs or profit on College furnished materials.
5. Equipment. Design-Build Entity will be paid for the use of equipment at the rental rates listed for that equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Contract was executed. Such rental rate will be used to compute payments for equipment whether the equipment is under Design-Build Entity's control through direct Ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to College for the total period of use. If it is deemed necessary by Design-Build Entity to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by College's Representative. Design-Build Entity may furnish cost data which might assist College's Representative in the establishment of the rental rate.
- a. All equipment shall, in the opinion of College's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
 - b. Before construction equipment is used on the Additional Work, Design-Build Entity shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to College's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.
 - c. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
6. Rental Equipment.
- a. Rental Time. The rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.
 - b. Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
 - c. Computation Method. The following shall be used in computing the rental time of equipment on the Site:

- (i) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
 - (ii) When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be ½-day of operation.
- 7. Design-Build Entity-Owned Equipment. For Design-Build Entity-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month which is found in the rental rate source identified in the Special Conditions for rental equipment.
- 8. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
 - a. Invoices for Special Services. When College's Representative and Design-Build Entity determine that a special service is required which cannot be performed by the forces of Design-Build Entity or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by College's Representative.
 - b. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. Overhead and Profit specified herein shall be commensurate by the DBE fee defined in the GMP.
- 9. Excluded Costs. The term Time and Materials shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Design-Build Entity's allowance for Overhead and Profit:
 - a. Overhead Cost. Payroll costs and other compensation of Design-Build Entity's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks and other personnel employed by Design-Build Entity whether at the Site or in Design-Build Entity's principal office or any branch office, material yard, or shop for general administration of the Additional Work;
 - b. Office Expenses. Expenses of Design-Build Entity's principal and branch offices;
 - c. Capital Expenses. Any part of Design-Build Entity's capital expenses, including interest on Design-Build Entity's capital employed for the Additional Work and charges against Design-Build Entity for delinquent payments;

- d. Negligence. Costs due to the negligence of Design-Build Entity or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - e. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included by the Contract Documents;
 - f. Small Tools. Cost of small tools valued at less than \$1000 and that remain the property of Design-Build Entity;
 - g. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
 - h. Anticipated Lost Profits. Expenses of Design-Build Entity associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retention;
 - i. Home Office Overhead. Costs derived from the computation of a “home office overhead” rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
 - j. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Design-Build Entity, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work; or
 - k. Design Costs. Design costs in excess of the hourly rates included in Section 00 42 53, Attachment 1.
10. Overhead and Profit for Lump Sum and Time and Materials Change Orders.
- a. The mark-up to be added to Lump Sum and Time and Materials Change Orders for Overhead (including supervision) and Profit on Additional Work shall be determined in accordance with the following provisions:
 - (i) “Net Cost” is defined as the actual costs of labor, materials and tools and equipment as defined herein only, excluding Overhead and Profit. The costs of applicable insurance and bond premium will be reimbursed to the Design-Build Entity and Subcontractors at cost only, without mark-up and in no case shall the total costs exceed one and one-half percent (1.5%) of Net Cost. Design-Build Entity shall provide College with documentation of the costs, including not limited to payroll records, invoices, and such other information as College may reasonably request.
 - (ii) For Work performed by the Design-Build Entity’s forces the added cost for overhead and profit shall be commensurate by the DBE fee defined in the GMP.

- (iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed ten (10%) percent of the Subcontractor's Net Cost of the Work, to which the Design-Build Entity shall be commensurate with the DBE fee defined in the GMP.
- (iv) For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed ten (10 %) percent of the Net Cost for Work, to which the subcontractor and Design-Build Entity may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.
- (v) No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by College exceed fifteen (15%) percent of the Net Cost, as defined herein, of the party that performs the Work.
- (vi) No additional markup will be allowed for design costs computed as specified in Section 00 42 53, Attachment 1.

- b. All of the following costs are included in the markups for overhead and profit described above, and Design-Build Entity shall not receive any additional compensation for: Submittals, drawings: field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on Site facilities (Offices, Telephones, Internet access, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

D. Change for Compensable Delay.

- 1. The Guaranteed Maximum Price will be adjusted for Compensable Delay, which for the purposes of this Article exists if, and only if, the Design-Build Entity demonstrates that all of the following four conditions are met:
 - a. Condition Number One: The delay results in an extension of the Project Completion Date pursuant to Article 10.
 - b. Condition Number Two: The delay is caused solely by one, or more of the following:
 - (i) An error or omission in the Contract Documents caused by College and not as a result of the Design-Build Entity's failure to conform to bridging documents, performance standards, Construction Documents, or Contract Documents; or
 - (ii) College's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or

- (iii) College's decision to suspend Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - (iv) The failure of College, College's Representative or Separate Contractors to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Build Entity.
- c. Condition Number Three: The delay is not concurrent with a delay that is:
 - (i) Critical under Article 10; and
 - (ii) Caused by an event not listed in this Article 9.4D(1)(b).
 - d. Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Article 9.4D(1)(b).
- 2. For each day of delay that meets all four conditions prescribed in Article 9.4(D)(1), the Guaranteed Maximum Price will be adjusted in accordance with the Reverse Liquidated Damages specified in Section 00 73 13.
 - 3. Except as provided in Articles 9 and 10, the Design-Build Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. The Reverse Liquidated Damages specified in Section 00 73 13 will be full and final compensation for any compensable delay.
 - 4. If for any reason one or more of the conditions prescribed in Article 9.4(D)(1) is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Guaranteed Maximum Price.

10.5 College Reservation of Rights.

- A. By signing the Contract, the parties agree that College has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
 - 1. To order changes in the Work, including without limitation:
 - a. Changes to correct errors or omissions caused by College, if any, in the Contract Documents.
 - b. Changes resulting from College's decision to change the Work subsequent to execution of the Contract.
 - c. Changes due to unforeseen conditions.
 - 2. To suspend Work on the Project or any part thereof.
 - 3. To delay Work on the Project, including without limitation, delays resulting from the failure of College or College's Representative to timely perform any Contract obligation and delays for College's convenience.

ARTICLE 11 - PROJECT COMPLETION DATE

11.1 Commencement of Work On The Project.

- A. The date of commencement of the Work shall be set forth in the Notice to Proceed. The date of commencement for the Work shall not be postponed by the failure of the Design-Build Entity, Subcontractors, or of persons or firms for whom the Design-Build Entity is responsible, to act.

11.2 Progress and Completion.

- A. By signing the Contract:
 - 1. The Design-Build Entity represents to College that the Project Completion Date is reasonable for performing the Work and that the Design-Build Entity is able to perform and complete the Work within the Project Completion Date.
 - 2. The Design-Build Entity agrees that College is purchasing the right to have the Design-Build Entity present on the Project for the full duration of the time period necessary to complete the Work described in the RFP.
- B. The Design-Build Entity shall not, except by agreement or instruction of College in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 5.1 to be furnished by the Design-Build Entity. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.
- C. The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If College's Representative determines and notifies the Design-Build Entity that the Design-Build Entity's progress is such that the Design-Build Entity will not achieve full completion of the Work by the Project Completion Date, the Design-Build Entity shall immediately and at no additional cost to College, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from College's representative, the Design-Build Entity shall immediately notify College's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date. The Design-Build Entity shall reimburse College for any extra costs or expenses (including the reasonable value of any services provided by College's employees) incurred by College as the result of such measures.

11.3 Delay.

- A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price and may be compensated as Additional Work as described below. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project; and
 2. that the Proposal was made with full knowledge of this risk.
- B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

11.4 Adjustment of The Project Completion Date for Excusable Delay.

- A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the Design-Build Entity demonstrates that all of the following six conditions are met:
1. Condition Number One: When the event causing the delay commences, the Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.
 2. Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:
 - a. If the Master Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.
 - b. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
 3. Condition Number Three: The delay is supported by the Master Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Master Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 10.4A(2).
 4. Condition Number Four: Within ten (10) Days of the date the Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design-Build Entity has not been delayed when the Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design-Build

Entity submits a timely Change Order Request that meets the requirements of Article 9.

5. Condition Number Five: The delay is not caused by:
 - a. A naturally occurring unforeseen site condition not anticipated in the Contract Documents (e.g., unanticipated naturally occurring rock or sand); or
 - b. The financial inability, misconduct or default of the Design-Build Entity, a Subcontractor or supplier; or
 - c. The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design-Build Entity within thirty (30) Days of the issuance of the Notice to Proceed; or
 - d. An error or omission in the Contract Documents caused by the Design-Build Entity or the Design-Build Entity's design consultants.
 - e. Requirements by Authority Having Jurisdiction, including but not limited the Division of State Architect (DSA)
 - f. Inspection Request delay caused by incomplete work not ready for inspection.
 6. Condition Number Six: The delay is caused by:
 - a. Fire; or
 - b. Strikes, boycotts, or like obstructive actions by employees or labor organizations; or
 - c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or
 - d. A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or
 - e. An error or omission in the Contract Documents caused by College; or
 - f. College's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - g. College's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - h. The failure of College, College's representative or a Separate Contractor to timely perform any Contract obligation unless such failure is due to the Design-Build Entity's default or misconduct.
- B. If and only if a delay meets all six conditions prescribed in Article 10.4A, then the Project Completion Date will be extended by the number of days completion of the

entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.

- C. If for any reason one or more of the six conditions prescribed in Article 10.4A is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date under Article 10.4B.

11.5 Non-Compensable Delay

- A. For Excusable, non-compensable delay, the extension of the Project Completion Date pursuant to Article 10.4 above, shall constitute full and final consideration to the Design-Build Entity for the delay.

11.6 Compensable Delay.

- A. Subject to the limitations set forth in Article 10.7, below, any adjustment of the Guaranteed Maximum Price as the result of Compensable Delay shall be limited to the amounts specified in Article 9.

11.7 No Damages for Reasonable Delay.

- A. College's liability to the Design-Build Entity for delays for which College is responsible shall be limited to only an extension of the Project Completion Date unless such delays were unreasonable under the circumstances. In no case shall College be liable for any costs which are borne by the Design-Build Entity in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
- B. Damages caused by unreasonable College delay that impact the critical path, including delays caused by items that are the responsibility of College pursuant to Government Code section 4215, shall be compensated at the Reverse Liquidated Damages rate established in Section 00 73 13, no other calculations, proportions or formulas shall be used to calculate any delay damages.
- C. College and College's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Design-Build Entity for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Build Entity on or in connection with any other project or anticipated project.

ARTICLE 12 -TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

- A. Prompt notice of all Defective Work of which College or College's Representative has actual knowledge will be given to Design-Build Entity. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

- A. College, College's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's safety procedures and programs.

12.3 Tests and Inspections.

- A. Design-Build Entity shall give College's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Except as provided by the Contract Documents, College shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish College's Representative the required certificates of inspection or approval.
- D. Design-Build Entity shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for College and College's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to College.
- E. College will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to College ordinance.

12.4 Uncovering Work.

- A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Design-Build Entity without written concurrence of College's Representative, Design-Build Entity shall, if requested by College's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given College's Representative timely notice of Design-Build Entity's intention to cover the same and College's Representative has not acted with reasonable promptness in response to such notice.

- C. If Design-Build Entity has given College's Representative timely notice of Design-Build Entity's intention to cover the work and College's Representative has not acted with reasonable promptness in response to such notice, and College's Representative later considers it necessary or advisable that covered Work be observed by College's Representative or inspected or tested by others, Design-Build Entity, at College's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as College's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
1. If it is found that the uncovered Work is defective, Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and College shall be entitled to an appropriate decrease in the GMP.
 2. If the uncovered Work is not found to be defective, Design-Build Entity shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 College May Stop The Work.

- A. If the Work is defective, College may in its sole discretion order Design-Build Entity to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the Design-Build Entity.

12.6 Correction of Defective Work and Guarantee to Repair Period.

- A. Promptly after receipt of written notice, Design-Build Entity shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by College or College's Representative, remove it from the Project and replace it with Work that is not defective. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. The term "Guarantee to Repair Period" means a period of two (2) years, unless a longer period of time is specified, commencing as follows:
1. For any Construction Work not described as incomplete on the date of Project Completion.
 2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 12.6, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

3. For all Construction Work other than 1. or 2. above, from the date of Final Completion.
- C. When correcting Defective, Design-Build Entity shall take no action that would void or otherwise impair College's special warranty and guarantee, if any, on said Work.
 - D. The Design-Build Entity shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Guarantee to Repair Period and (2) replace, repair, or restore to College's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The Design-Build Entity shall promptly commence such correction, replacement, repair, or restoration upon notice from College's Representative or College, but in no case later than fourteen (14) Days after receipt of such notice; and the Design-Build Entity shall diligently and continuously prosecute such correction to completion. The Design-Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for College's Representative's services and expenses. The Design-Build Entity shall perform corrective Work on the Project at such times that are acceptable to College and in such a manner as to avoid, to the extent practicable, disruption to College's activities.
 - E. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by College or Separate Contractors, the Design-Build Entity shall pay to College all reasonable costs of correcting such Defective Work. The Design-Build Entity shall replace, repair, or restore to College's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.
 - F. The Design-Build Entity shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Design-Build Entity nor accepted by College.
 - G. The Design-Build Entity's obligations under this Article are in addition to and not in limitation of its standard of care owed on the Project to College under Article 6 or any other obligation of the Design-Build Entity under the Contract Documents. Enforcement of the Design-Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies College may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of the Design-Build Entity under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of the Design-Build Entity to correct the Work on the Project and in no way limits either the Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design-Build Entity's obligations under the Contract Documents.
 - H. If the Design-Build Entity fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the

Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) Days after receipt of notice from College to promptly commence and thereafter diligently continue to completion the correction of such failure, College may, without prejudice to other remedies College may have, correct such failure at the Design-Build Entity's sole expense. In such case, College will be entitled to deduct from payments then or thereafter due the Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of College's Representative and College's consultants made necessary thereby. If payments then or thereafter due the Design-Build Entity are not sufficient to cover such amounts, the Design-Build Entity shall pay the additional amount to College.

12.7 Acceptance of Defective Work.

- A. If, instead of requiring correction or removal and replacement of Defective Work, College prefers to accept it, College may do so. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to College's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
- B. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and College shall be entitled to an appropriate decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work and all costs incurred by College.
- C. If the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of retention to be paid to College.
- D. If the acceptance of defective Work occurs after release of the Project retention, an appropriate amount will be paid by Design-Build Entity to College.

12.8 College May Correct Defective Work.

- A. If Design-Build Entity fails within a reasonable time after written notice from College's Representative to correct Defective Work, or to remove and replace rejected Work as required by College, or if Design-Build Entity fails to perform the Work in accordance with the Contract Documents, or if Design-Build Entity fails to comply with any other provision of the Contract Documents, College may, after seven (7) Days written notice to Design-Build Entity, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, College may exclude Design-Build Entity from all or part of the Site, take possession of all or part of the Work and suspend Design-Build Entity's services related thereto, take possession of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which College has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow College and College's Representative, and the agents, employees,

other contractors, and consultants of each of them, access to the Site to enable College to exercise the rights and remedies to correct the defective work.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by College correcting the defective work will be charged against Design-Build Entity, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and College shall be entitled to an appropriate decrease in the GMP.
- D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
- E. If the Change Order is executed after all payments under the Contract have been paid by College and the Project Retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to College.
- F. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Design-Build Entity to College.
- G. Design-Build Entity shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to College correcting defective work.

12.9 Warranty Period.

- A. There shall be a Warranty Walk scheduled on or about 10 months after completion. If within two (2) years after commencement of the Warranty, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective or not performing suitably for its intended use, or if the repair of any damages to the Site or areas made available for Design-Build Entity's use during the performance of the Work is found to be defective, Design-Build Entity shall promptly, without cost to College and in accordance with College's written instructions:
 - 1. repair such defective land or areas;
 - 2. correct such defective or non-performing work;
 - 3. if the Defective Work has been rejected by College pursuant to the Contract Documents, remove it from the Project and replace it with Work that is not defective; and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Design-Build Entity does not promptly comply with the terms of College's written instructions, or in an emergency where delay would cause serious risk of loss or

damage, College may have the Defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Design-Build Entity in accordance with Section 00 72 13, Article 11.1.E.

- C. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- D. Design-Build Entity's obligations under this Article are in addition to any other obligation or warranty and do not limit College's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.

ARTICLE 13 -PAYMENTS TO DESIGN-BUILD ENTITY AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to College's Representative. Progress payments on account of Unit Price Work will be based on the number of units completed.

A. Applications for Payments.

1. By the twenty-fifth (25th) day of each month Design-Build Entity shall submit to College's Representative for review an Application for Payment filled out and signed by Design-Build Entity covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that College has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect College's interest therein, all of which must be satisfactory to College.
2. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the Design-Build Entity stating that it has paid all amounts due on account of the Work paid by College in the prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as set forth in the Special Conditions.

B. Review of Applications.

1. College's Representative will either indicate in writing a recommendation of payment to College or return the Application for Payment to Design-Build Entity indicating in writing College's Representative's reasons for refusing to recommend payment. In the latter case, Design-Build Entity may make the necessary corrections and resubmit the Application for Payment.
2. By recommending any such payment College's Representative will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to College's Representative in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Design-Build Entity to be paid additionally by College or entitle College to withhold payment to Design-Build Entity.
3. Neither College's Representative's review of Design-Build Entity's Work for the purposes of recommending payments nor College's Representative's recommendation of any payment, including final payment, will impose responsibility on College's Representative:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Design-Build Entity's failure to comply with Applicable Laws applicable to Design-Build Entity's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Design-Build Entity has used the moneys paid on account of the GMP; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to College free and clear of any Liens.
4. College's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. College retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in College's opinion to protect College from loss.

C. Payment Becomes Due.

1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to College's Representative, and subject to College's Representative's recommendation, subject to the modifications above, the amount

recommended will become due, and when due will be paid by College to Design-Build Entity.

D. Retention and Securities in Lieu of Retention.

1. Unless Project has been deemed substantially complex as noted in the Special Conditions, College will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws.
2. Pursuant to Public Contract Code section 22300, Design-Build Entity may substitute securities for any moneys withheld as a retention by College to ensure performance under the Contract. At the request and expense of Design-Build Entity, securities equivalent to the amount withheld shall be deposited with College, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Design-Build Entity. Upon satisfactory completion of the Contract, the securities shall be returned to Design-Build Entity.
 - a. Alternatively, Design-Build Entity may request, and College shall make payment of retentions earned directly to the escrow agent selected by the Design-Build Entity. At the expense of Design-Build Entity, Design-Build Entity may direct the investment of the payments into securities and Design-Build Entity shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by Design-Build Entity. Upon satisfactory completion of the Contract, Design-Build Entity shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when College authorizes the escrow agent to release these funds to the Design-Build Entity, pursuant to the terms of Public Contract Code section 22300.
3. Securities eligible for investment 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 Design-Build Entity and College.
4. Design-Build Entity shall be the beneficial College of any securities substituted for moneys withheld and shall receive any interest thereon.
5. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. College's Reduction in Recommended Payment.

1. In addition to reductions recommended by College's Representative, College may refuse to make payment of the full amount recommended by College's Representative because:
 - a. Claims have been made against College on account of Design-Build Entity's performance or furnishing of the Work.
 - b. Stop Payment Notices or Liens have been filed in connection with the Work.
 - c. Defective Work not remedied.

- d. Failure of Design-Build Entity to make proper payments to its subcontractors or suppliers.
- e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
- f. Damage to another contractor or third party.
- g. Amounts which may be due the College for claims against Design-Build Entity.
- h. Failure of Design-Build Entity to keep the record ('as-built") drawings up to date.
- i. Failure to provide updates on the construction schedule.
- j. Site cleanup.
- k. Failure of the Design-Build Entity to comply with requirements of the Contract Documents.
- l. Liquidated Damages.

Upon completion of the Contract, College will reduce the final Contract Price to reflect costs charged to the Design-Build Entity, back charges or payments withheld pursuant to the Contract Documents.

13.2 Design-Build Entity's Warranty of Title.

- A. Design-Build Entity warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to College no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

- A. College reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Design-Build Entity of its responsibilities under the Contract.

13.4 Final Inspection.

- A. Upon written notice from Design-Build Entity that the entire Work is complete, College's Representative will promptly make a final inspection with College and Design-Build Entity and will notify Design-Build Entity in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Build Entity shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

- A. After Design-Build Entity has, in the opinion of College's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract Documents, College shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

A. Application for Payment.

- 1. Upon execution of the Notice of Completion, Design-Build Entity may make application for final payment following the procedure for progress payments.
- 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;
 - b. consent of the surety to final payment;
 - c. a fully completed Conditional Waiver and Release on Final Payment.

B. College's Representative's Review of Application and Acceptance.

- 1. If, on the basis of College's Representative's observation of the Work during construction and final inspection, and College's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, College's Representative is satisfied that the Work has been completed and Design-Build Entity has satisfied all other requirements for final payment, College's Representative will indicate in writing College's Representative's recommendation of payment and present the Application for Payment to College for payment. Otherwise, College's Representative will return the Application for Payment to Design-Build Entity, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Build Entity shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

- 1. Within sixty (60) Days after the presentation to College's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by College's Representative, less any sum College is entitled to set off pursuant to the Contract Documents, will become due and will be paid by College to Design-Build Entity.

13.7 Waiver of Claims.

- A. The making and acceptance of final payment will constitute a waiver of all Claims by Design-Build Entity against College other than those previously made in accordance

with the requirements herein and expressly acknowledged by College in writing as still unsettled.

ARTICLE 14 -SUSPENSION OF WORK AND COMPLETION

14.1 College May Suspend Work.

- A. College may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Design-Build Entity. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Design-Build Entity shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
- B. Upon receipt of any such notice, Design-Build Entity shall, unless the notice requires otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
 - 3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to College's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
 - 4. Continue to protect and maintain the Work including those portions on which Work has been suspended.
- C. Except as provided by this article, as full and complete compensation for such suspension, Design-Build Entity shall be granted an adjustment in the GMP based on a negotiated daily rate that reflects the Design-Build Entity's actual costs associated with the demobilized condition of the Site (and as a result will be less than the Daily Rate contained in the Special Conditions) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from Design-Build Entity's non-compliance with the requirements of the Contract.

14.2 College May Terminate for Cause.

- A. College may, without prejudice to any other right or remedy, serve written notice upon Design-Build Entity of its intention to terminate this Contract in whole or in part if the Design-Build Entity: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of College; or (ix) violates any of the provisions of the Contract Documents.

- B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Design-Build Entity resolves the circumstances giving rise to the Notice of Default to College's satisfaction, or makes arrangements acceptable to College for the required corrective action, College may terminate this Contract. In such case, Design-Build Entity shall not be entitled to receive any further payment until the Work has been finished. College may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Design-Build Entity and its surety shall be liable to College for any excess costs or other damages incurred by College to complete the Work. If College takes over the Work, College may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Design-Build Entity as may be on the Site.

14.3 College May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, College may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Design-Build Entity. The Notice of Termination shall specify that the termination is for the convenience of College, the extent of termination, and the effective date of such termination ("Effective Date of Termination").
- B. After receipt of Notice of Termination, and except as directed by College, the Design-Build Entity shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 1. Stop Work as specified in the Notice.
 2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 3. Leave the Site and any other property upon which the Design-Build Entity was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
 5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.
 6. Submit to College, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Design-Build Entity for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the Design-Build Entity solely as a result of College's exercise of its right to terminate this Contract pursuant to this clause, which costs the Design-Build Entity is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by College no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be

conspicuously identified as "Termination Costs Occasioned by College's Termination for Convenience."

7. College's total liability to Design-Build Entity by reason of the termination shall be limited to the total (without duplication of any items) of:
 - a. The reasonable cost to the Design-Build Entity for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Cost Breakdown. Deductions shall be made for cost of materials to be retained by the Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
 - b. When, in College's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
 - c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
 - d. Reasonable costs to the Design-Build Entity of handling material returned to vendors, delivered to College or otherwise disposed of as directed by College.
 - e. A reasonable allowance for the Design-Build Entity's internal administrative costs in preparing termination claim.
 - f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
8. In no event shall College be liable for unreasonable costs incurred by the Design-Build Entity or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Design-Build Entity's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.
9. College shall have no obligation to pay the Design-Build Entity under this Article unless and until the Design-Build Entity provides College with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.
10. In arriving at the amount due the Design-Build Entity under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

- a. All unliquidated advances or other payments on account previously made to the Design-Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
 - b. Any claim College may have against the Design-Build Entity in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
 - c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design-Build Entity and not otherwise recovered by or credited to College.
 - d. Design-Build Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.
11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, College may immediately order Design-Build Entity to cease Work until such safety or liability issues are addressed to the satisfaction of College or the Contract is terminated.
12. If College terminates Design-Build Entity for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Build Entity shall be entitled to receive only the amounts payable under this section, and Design-Build Entity specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15 -CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

- 15.1 Design-Build Entity shall timely comply with all notices and requests for changes to the Contract Time or Contract Price as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.
- 15.2 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- 15.3 Claims. For purposes of this Article, "Claim" means a separate demand by the Design-Build Entity, after a change order duly requested in accordance with Article 44 "Changes and Extra Work" has been denied by the College, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Design-Build Entity

pursuant to the Contract, or (C) an amount the payment of which is disputed by the College. Claims governed by this Article may not be filed unless and until the Design-Build Entity completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 44, Changes and Extra Work, and Design-Build Entity's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the College and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

15.4 Supporting Documentation. The Design-Build Entity will submit all claims in the following format:

- A. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made.
- B. List of documents relating to claim:
 - 1. Specifications
 - 2. Drawings
 - 3. Clarifications (Requests for Information)
 - 4. Schedules
 - 5. Other
- C. Chronology of events and correspondence
- D. Analysis of claim merit
- E. Analysis of claim cost
- F. Time impact analysis in CPM format containing a fragnet and narrative explanation.
- G. If Design-Build Entity's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Design-Build Entity shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

15.5 College Response to Claim. Upon receipt of a claim pursuant to this Article, College shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Design-Build Entity a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of

the claim will be processed and made within 60 Days after the College issues its written statement.

If the College needs approval from the Board of Directors to provide Design-Build Entity a written statement as set forth above, and Board of Directors does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim, the College shall have up to three (3) days following the next publicly noticed meeting of Board of Directors after the 45-day period, or extension, expires to provide Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim.

Within thirty Days of receipt of a claim, the College may request in writing additional documentation supporting the claim or relating to defenses or claims the College may have against the Design-Build Entity. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of College and the Design-Build Entity. The College's written response to the claim, as further documented, shall be submitted to the Design-Build Entity within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Design-Build Entity in producing the additional information or requested documentation, whichever is greater.

- 15.6 Meet and Confer Conference. If the Design-Build Entity disputes the College's written response, or the College fails to respond within the time prescribed, the Design-Build Entity may so notify the College, in writing, either within 15 Days of receipt of the College's response or within 15 Days of the College's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the College shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- 15.7 Mediation. Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the College shall provide the Design-Build Entity a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the College issues its written statement. Any disputed portion of the claim, as identified by the Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the College and the Design-Build Entity sharing the associated costs equally. The College and Design-Build Entity shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.
- A. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- B. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through

negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

- C. Unless otherwise agreed to by the College and the Design-Build Entity in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
- D. The mediation shall be held no earlier than the date the Design-Build Entity completes the Work or the date that the Design-Build Entity last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

15.8 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Design-Build Entity must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Design-Build Entity submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

15.9 Civil Actions. The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

- A. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
- B. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

15.10 Condition Precedent. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by College, is a

condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Design-Build Entity.

- 15.11 Government Code Claim. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the College. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Design-Build Entity shall be barred from bringing and maintaining a valid lawsuit against the College. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Design-Build Entity last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted**

15.12 Non-Waiver.

The College's failure to respond to a claim from the Design-Build Entity within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

15.13 Duty to Continue Performance.

Unless provided to the contrary in the Contract Documents, Design-Build Entity shall continue to perform the Work and College shall continue to satisfy its payment obligations to Design-Build Entity, pending the final resolution of any dispute or disagreement between Design-Build Entity and College.

ARTICLE 16 -REQUIRED CERTIFICATIONS

- 16.1 Design-Build Entity shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification" and a "Recycled Content Certification." These forms are included in the Contract Documents and must be signed under the penalty of perjury and dated prior to commencing work on this Project.
- 16.2 In addition to the above listed certifications, Design-Build Entity shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." Design-Build Entity, further, is aware of the following:
- A. Should asbestos containing materials be installed by the Design-Build Entity in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
1. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the

supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).

2. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 3. The asbestos consultant shall be chosen and approved by the College which shall have sole discretion and final determination in this matter.
 4. The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- B. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the College shall be borne entirely by the Design-Build Entity.
- C. Hold Harmless: Interface of Work for the Project with work containing asbestos shall be executed by the Design-Build Entity at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Contract, the Design-Build Entity acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the College, its Governing Board, employees, agents, representatives, including its Architect and assigns, for all asbestos liability which may be associated with this work. The Design-Build Entity further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.

ARTICLE 17 -COLLEGE'S INSPECTOR

- 17.1 One or more inspectors employed by College in accordance with requirements of title 19, 21 and/or 24 of the California Code of Regulations will be assigned to the work. His or her duties are specifically defined in the California Code of Regulations
- 17.2 Inspector shall have access to all plant operations involving work under this contract and shall be provided reasonable advance notice of the time and place of operations which the inspector desires to observe. Inspector shall be provided with all necessary samples of materials and work for testing purposes. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Design-Build Entity shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve contractor from any obligation to fulfill this contract. Inspector, after consultation with the Design-Build Entity, shall have authority to stop work whenever the provisions of the contract documents are not being complied with and contractor shall instruct his employees accordingly.

ARTICLE 18 -MISCELLANEOUS PROVISIONS

18.1 Giving Notice.

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

18.2 Limitations On College's Responsibilities.

- A. College shall not supervise, direct, or have control or authority over, nor be responsible for, the Design-Build Entity's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the Design-Build Entity to comply with Applicable Laws applicable to the performance of the Work. College will not be responsible for the Design-Build Entity's failure to perform the Project in accordance with the Contract Documents.

18.3 Cumulative Remedies.

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.4 Survival of Obligations.

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the Design-Build Entity.

18.5 Controlling Law.

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

18.6 Jurisdiction; Venue.

- A. The Design-Build Entity and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or

in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of San Diego County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

18.7 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.8 College's Right to Audit.

- A. The Design-Build Entity shall make available to College for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to College.
- B. If the Design-Build Entity submits a Change Order Request or a Claim to College, College shall have the right to audit the Design-Build Entity's books, records, documents, and other evidence to the extent they are relevant.
- C. The right to audit shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted, including but not limited to job cost reports, estimates, proposals, bids, proposal papers, documents of other work administered by the Design-Build Entity's home office, and any and all other documentation relied upon by the Design-Build Entity to obtain this Contract. College shall have the right to make and take copies of any records examined.
- D. The right to audit shall include the right to inspect the Design-Build Entity's plans, or such parts thereof, as may be or have been engaged in the performance of the Project.
- E. The Design-Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors.
- F. The right to audit provided herein shall be exercisable through such representatives as College deems desirable during the Design-Build Entity's normal business hours at the Design-Build Entity's office.
- G. In accordance with Government Code Section 8546.7, records of both College and the Design-Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. The Design-Build Entity shall make available to College any of the Design-Build Entity's other documents related to the Project immediately upon request of College. In addition to the State Auditor's rights described above, College shall have the right to examine and audit all books, estimates, records, contracts, documents, Proposals, subcontracts, and other data of the Design-Build Entity (including electronic records, computations and projections) related to negotiating, pricing, or performing the Project in order to evaluate the accuracy and completeness of the cost or pricing data, for a period of four (4) years after final payment.

18.9 Assignment.

- A. Design-Build Entity shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of College. Any assignment without the written consent of College shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.
- B. As set forth in Public Contract Code section 7103.5, 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 awarding body 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 purchases 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.

18.10 All Legal Provisions Included.

- A. Design-Build Entity shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Build Entity observes that drawings and specifications are at variance therewith, he shall promptly notify College in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Design-Build Entity performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to College, he shall bear all costs arising therefrom.
- B. Design-Build Entity shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Design-Build Entity shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable..
- C. Design-Build Entity acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No College official or representative who is authorized in such capacity and on behalf of College to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with

construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by College, at no increase in GMP or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

18.11 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the Design-Build Entity's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

18.12 Air Pollution Control.

- A. The Design-Build Entity shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.
- B. Without limiting the foregoing, the Design-Build Entity must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management College with jurisdiction over the Project and/or California Air Resources Board (CARB). The Design-Build Entity shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine.

18.13 Noise.

- A. The Design-Build Entity shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- B. The Design-Build Entity shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Design-Build Entity shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and

vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Design-Build Entity.

18.14 Change In Name Or Nature of Design-Build Entity's Legal Entity.

- A. Should a change be contemplated in the name or nature of the Design-Build Entity's legal entity, the Design-Build Entity shall first notify College in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the Design-Build Entity's name or nature will affect College's rights under the Contract Documents, including but not limited to the bonds and insurance.

18.15 Complete Contract.

- A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

18.16 Notice of Third Party Claims.

- A. Pursuant to Public Contract Code section 9201, College shall provide Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Contract.

18.17 Severability of Provisions.

- A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

18.18 Correction of Errors and Omissions.

- A. The Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to College.

18.19 Interpretation.

- A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

00 73 13 – SPECIAL CONDITIONS

1.1 Architect of Record.

A. The Architect of Record shall be Steinberg Hart.

1.2 Location of the Project.

1. The Project is located at 1500 N Verdugo Road, Glendale, CA 91208.

1.3 Description of the Project.

A. The Project consists of the items set forth below and related facilities.

1. Please see DSA Approved Plan Set A#03- 121939.

1.4 Status of the Project Area and Rights-of-Way.

A. College, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Design-Build Entity shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, e.g., Glendale Water and Power or SoCal Gas before Design-Build Entity enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.

B. College has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.

C. If such permits are required, all operations of Design-Build Entity shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.

D. Design-Build Entity may be required, as a condition for receiving final payment, to obtain, and provide College's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by College.

E. Design-Build Entity shall, also, as a condition for receiving final payment, obtain, and provide College's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by College.

1.5 Designation of College's Representative.

A. Unless otherwise modified by College, College's Representative shall be Gafcon PM-CM, PMO.

1.6 Project Retention

In accordance with Public Contract Code section 7201, College will withhold 5% of each progress payment as retention on the Project.

1.7 Reverse Liquidated Damages Due to Unreasonable College Delay.

A. In compliance with the provisions of California Public Contract Code section 7102, the Design-Build Entity will be compensated for damages incurred due to delays in completing the Work due solely to the fault of the College, where such delay is unreasonable under the circumstances and not contemplated by the parties and such delay is not the result of Additional Work. The Design-Build Entity and College agree that determining actual damages is impracticable and extremely difficult. As such, the Design-Build Entity shall be entitled to the appropriate time extension and to payment of liquidated damages in the sum of \$8,700 per Day of delay in excess of the time specified for the Completion of the Work. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The Design-Build Entity expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

1.8 Liquidated Damages Due to Design-Build Entity Delay.

A. Time is of the essence. Should Design-Build Entity fail to complete all or any part of the Work within the time specified in the Contract Documents, College will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, College shall therefore be entitled to \$8,700 per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.

B. Liquidated damages may be deducted from progress payments due Design-Build Entity, Project retention or may be collected directly from Design-Build Entity, or from Design-Build Entity's surety. These provisions for liquidated damages shall not prevent College, in case of Design-Build Entity's default, from terminating the Design-Build Entity.

1.9 Utility Outages – Notices to Residents.

A. Should Design-Build Entity's operations require interruption of any utility service, Design-Build Entity shall notify College at least seven (7) Days prior to the scheduled outage.

B. Design-Build Entity shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.10 Temporary Field Office

A. Utility Services. Design-Build Entity, at its expense, shall arrange for, develop and maintain all utilities, including but not limited to water, electric power, sewage disposal and telephone communications, at the Site to meet the requirements of the Work.

- B. Sanitation. The Design-Build Entity shall provide sanitary facilities for all persons working on the project. These facilities shall be kept clean and shall not be unsightly or produce odors.

1.11 Fugitive Dust

- A. In addition to all other environmental and air quality requirements of the Contract Documents, Design-Build Entity must also comply with the most recent version of South Coast Air Quality Management College's Rule 403 – Fugitive Dust, to reduce the amount of particulate matter entrained in the ambient air as a result of the Project.
- B. College has considered these other requirements when determining the Contract Times and no additional time or compensation will be added to the Contract due to these requirements.

END OF SPECIAL CONDITIONS