

# COAST COMMUNITY COLLEGE DISTRICT

## CONTRACTOR AGREEMENT

This CONTRACTOR AGREEMENT (“AGREEMENT”) is made in the County of Orange, State of California, and entered into on \_\_\_\_\_ between the Owner, COAST COMMUNITY COLLEGE DISTRICT, a public educational agency, hereinafter referred to as “DISTRICT,” and \_\_\_\_\_ a \_\_\_\_\_, hereinafter referred to as “CONTRACTOR.”

WHEREAS, DISTRICT desires to obtain contractor services for the \_\_\_\_\_, “PROJECT”; and

WHEREAS, CONTRACTOR warrants and represents to DISTRICT that CONTRACTOR is properly licensed (license no. \_\_\_\_\_) and has the requisite and necessary experience, expertise and resources to successfully complete the PROJECT and will provide timely contractor services in conformity with the laws of the State of California;

NOW, THEREFORE, the parties agree as follows:

### **ARTICLE I – CONTRACTOR’S SERVICES AND RESPONSIBILITIES**

1. By this AGREEMENT, CONTRACTOR accepts the relationship of trust and confidence established between CONTRACTOR and DISTRICT. CONTRACTOR covenants with DISTRICT to furnish its professional skill and judgment in accordance with the level of care and skill exercised by members of the profession or occupation currently practicing under similar conditions and in similar locations, and under California law applicable to those specializing in providing CONTRACTOR services for projects of the type, scope and complexity of the PROJECT in performing all services under this AGREEMENT. CONTRACTOR shall use its best professional efforts to complete the PROJECT in an expeditious and economical manner consistent with the interests and goals of DISTRICT. DISTRICT expects that CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR’s employees, DISTRICT’s employees, and members of the public from risk of harm arising out the nature of the work.
2. CONTRACTOR, by this AGREEMENT, agrees to complete the PROJECT known as \_\_\_\_\_ Bid No. \_\_ according to all the terms and conditions set forth in the Project Documents, including but not limited to the Notice Calling for Bids, Information for Bidders, Bid Form, Bid Security, Designation of Subcontractors, Information Required of Bidder, all prequalification forms submitted pursuant to Public Contract Code section 20111.5, if any, Noncollusion Affidavit, Workers’ Compensation Certificate, Faithful Performance Bond, Payment Bond, Escrow Agreement, if applicable, Drug-Free Workplace Certification, Change Orders, Shop Drawing Transmittals, Insurance Certificates and Endorsements, Guarantees, CONTRACTOR’s Certificate Regarding Non-Asbestos Containing Materials, DISTRICT’s Labor Compliance Program, if applicable, General Conditions, Special Conditions, if any, Drawings,

Specifications, and all modifications, addenda and amendments thereto by this reference incorporated herein, The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all and all shall constitute a part of this AGREEMENT.

3. CONTRACTOR shall perform within the time set forth in paragraph 4 of this AGREEMENT everything required to be performed, and shall provide, furnish and pay for all the labor, materials, necessary tools, expendable equipment, and all taxes, utility and transportation services required for construction of the Project. All of said work shall be performed and completed in a good workmanlike manner in strict accordance with the drawings, specifications and all provisions of this AGREEMENT as hereinabove defined and in accordance with applicable laws, codes, regulations, ordinances and any other legal requirements governing the PROJECT. CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the CONTRACTOR, Engineer, Inspector, Division of State CONTRACTOR, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing CONTRACTOR from fully complying with the Project Documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within three (3) working days of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project Documents.
4. The work shall be commenced on or before the fifteenth day after receiving the DISTRICT'S Notice to Proceed and shall be completed within \_\_\_\_\_ consecutive calendar days from the date specified in the Notice to Proceed.
5. **Time is of the essence.** If the work is not completed in accordance with Paragraph 4 above, it is understood that the DISTRICT will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to DISTRICT as fixed and liquidated damages, and not as a penalty, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars for each calendar day of delay until work is completed and accepted. Time extensions may be granted by the DISTRICT as provided in Article 63 of the General Conditions. Liquidated damages shall be imposed as set forth in Article 63 of the General Conditions.
6. CONTRACTOR agrees that the work required to be performed by CONTRACTOR and each subcontractor on the Project shall be subject to the payment of general prevailing rates of per diem wages, as described in the Labor Code. DISTRICT has a Labor Compliance Program ("LCP") initially approved on Pending Action by the California Department of Industrial Relations pursuant to Labor Code Section 1771.7. CONTRACTOR and each subcontractor on the Project agree to comply with the

DISTRICT's LCP. The DISTRICT's LCP is incorporated herein as if fully set forth.  
**Note: DISTRICT's LCP will be completed prior to Pre-Construction meeting.**

7. CONTRACTOR warrants to DISTRICT that it is not now, nor has it or any of its officers been for five years preceding involved in arbitration or litigation concerning CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.
8. CONTRACTOR shall comply with all applicable federal, state, county and city statutes, regulations and ordinances, and shall maintain all necessary licenses and permits. CONTRACTOR represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or disability.
9. If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of \_\_\_\_\_, and that \_\_\_\_\_, whose title is \_\_\_\_\_, is authorized to act for and bind the corporation.
10. The General Conditions and other documents identified in paragraph 2 are incorporated herein by reference as though set forth at length and CONTRACTOR agrees to abide by all the terms and conditions contained therein. In the event of a conflict between the provisions of this AGREEMENT and the General Conditions or other documents, the provisions of this AGREEMENT shall govern.
11. DISTRICT may retain, or has retained, a Construction Manager whose services, duties and responsibilities will be described in a written Construction Management Agreement by and between DISTRICT and Construction Manager. The Construction Manager is or will be the DISTRICT's agent in providing the services specified in the Construction Management Agreement. CONTRACTOR must perform its services in cooperation with the Construction Manager, consistent with this AGREEMENT and the Construction Management Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the PROJECT as determined by DISTRICT and documented by ARCHITECT. DISTRICT will provide to CONTRACTOR a copy of the Construction Management Agreement between DISTRICT and Construction Manager.

## **ARTICLE II – DISTRICT'S RESPONSIBILITIES**

1. DISTRICT shall pay to CONTRACTOR, as full consideration for the faithful performance of this AGREEMENT, subject to any additions or deductions as provided in the Project Documents, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
2. DISTRICT will make reasonable efforts to see that Agreements between DISTRICT and ARCHITECT and CONSTRUCTION MANAGER are compatible and consistent with this AGREEMENT. DISTRICT will provide a copy of this AGREEMENT to ARCHITECT and CONSTRUCTION MANAGER.

3. DISTRICT shall secure, submit and pay for necessary approvals, easements, assessments, building permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. CONSTRUCTION MANAGER shall assist, cooperate and coordinate in DISTRICT's efforts to obtain such approvals, easements, assessments, permits and charges.

4. DISTRICT, its representative(s) and CONSULTANT(s) shall generally communicate with CONTRACTOR only through CONSTRUCTION MANAGER.

### **ARTICLE III – TERM, TERMINATION, SUSPENSION, OR ABANDONMENT**

1. This AGREEMENT shall commence as of the Effective Date and continue through final completion of the PROJECT which shall include obtaining the Certificate of Beneficial Occupancy and the Certificate of Substantial Completion in accordance with the construction contract documents and final acceptance by DISTRICT's Board of Trustees.

2. DISTRICT shall have the right to suspend the PROJECT at any time at its sole discretion. If the PROJECT is suspended by DISTRICT for more than ninety (90) consecutive days, CONTRACTOR shall be compensated for services performed prior to notice of such suspension and shall not be compensated for any unearned fees or costs or anticipated profits on non-performed services.

3. This AGREEMENT may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this AGREEMENT through no fault of the party initiating the termination.

4. In the event CONTRACTOR defaults in the performance of the Agreement as set forth in General Conditions Article 13(a) or if there is a nonappropriation of funds or insufficient funds as set forth in General Conditions Article 13(d), then this Agreement shall terminate or be suspended as set forth in General Conditions Article 13.

5. DISTRICT shall also have the right to terminate this AGREEMENT at any time in its sole discretion and without cause upon not less than seven (7) days written notice to CONTRACTOR. In that event, CONTRACTOR shall be compensated for services performed prior to notice of termination and shall not be compensated for any unearned fees, costs or anticipated profits on non-performed services. Upon receipt of written notice from DISTRICT of such termination for DISTRICT's convenience, CONTRACTOR shall:

- a. Cease operations as directed by DISTRICT in the notice;
- b. Take any actions necessary, or that DISTRICT may direct, for the protection and preservation of the work; and
- c. Not terminate any insurance provisions required by the Project Documents.

6. In the event of termination due to the fault of CONTRACTOR, CONTRACTOR shall not be entitled to any unearned fees or costs and shall be liable for damages suffered by DISTRICT due to CONTRACTOR's failure to perform as provided in this AGREEMENT.

7. In the event of AGREEMENT termination by either party for any reason, DISTRICT reserves the right to receive, and CONTRACTOR shall promptly provide to DISTRICT, all Drawings, Specifications, models, and other documents and materials prepared by CONTRACTOR or others for the PROJECT. In the event of termination, any dispute regarding the amount to be paid shall not alter DISTRICT's unequivocal right to receive and use any such documents or materials upon termination.

#### **ARTICLE IV – INDEMNITY AND INSURANCE**

1. CONTRACTOR agrees, to the fullest extent permitted by law, to indemnify and hold harmless DISTRICT, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by CONTRACTOR's negligent performance of professional services under this AGREEMENT or acts in connection with the PROJECT, or any actions of CONTRACTOR's consultants, subcontractors or anyone for whom CONTRACTOR is legally liable.

2. The coverage of such indemnification shall include, without limitation, reasonable attorneys' fees and court costs incurred by DISTRICT with regard thereto. Said indemnity is intended to apply during the period of this AGREEMENT of CONTRACTOR'S performance and shall survive the expiration or termination of this AGREEMENT until such time as any action against DISTRICT on account of any matter covered by such waiver or indemnity is barred by the applicable Statute of Limitations.

3. The obligation to defend shall arise regardless of any claim or assertion that DISTRICT caused or contributed to the losses. CONTRACTOR's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for DISTRICT shall be reimbursed by DISTRICT except to the extent such defense costs arise, under principles of comparative fault, from CONTRACTOR's (a) negligent acts or omissions; (b) breach of any of the provisions of this AGREEMENT; or (c) willful misconduct.

4. Review, approval or acceptance of CONTRACTOR's work whether by DISTRICT or others and whether by Construction Documents Phase, Bidding Phase, Construction Phase, Guarantee to Repair Period, or otherwise, shall not relieve CONTRACTOR from responsibility for errors and omissions in CONTRACTOR's work.

5. Nothing in this AGREEMENT, including the provisions of this Article, shall constitute a waiver or limitation of any rights which DISTRICT may have under applicable law, including without limitation, the right to implied indemnity.

6. CONTRACTOR shall purchase and maintain during the term of this AGREEMENT, with insurance companies duly licensed by the State of California with a rating by Best's Insurance Rating Service of not less than AVII, policies of insurance which will protect CONTRACTOR and DISTRICT from claims which may arise out of or result from

CONTRACTOR's actions or inactions relating to this AGREEMENT or PROJECT, whether by CONTRACTOR or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

- a. Commercial bodily injury and property damage liability insurance in the combined single limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence for personal injury and/or death and Two Hundred Fifty Thousand Dollars (\$250,000.00) as to property damage including, but not limited to, personal injury liability, broad form property damage liability, blanket contractual liability and products liability, covering the activities of CONTRACTOR under this AGREEMENT, and shall provide DISTRICT with a Certificate of Insurance and Additional Insured Endorsement evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be cancelled without thirty (30) days' prior written notice to DISTRICT. DISTRICT and DISTRICT'S Board of Trustees, shall be named as additional insureds under such policy of insurance to be maintained pursuant to this section, and such policy shall contain a cross-liability endorsement.
- b. Worker's Compensation and Employers' Liability Insurance in the amounts required by law covering all personnel employed on the premises during the term of this AGREEMENT whether said personnel are employed by CONTRACTOR or supplied by persons or entities other than DISTRICT. CONTRACTOR shall maintain during the term of this AGREEMENT, Workers' Compensation insurance with an insurance company duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII.
- c. Comprehensive General and Auto Liability Insurance with an insurance company duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII. Said insurance shall have limits of not less than \$1,000,000 combined single limit, bodily injury and property damage liability per occurrence with no annual aggregate limits, including:
  - 1) Owned, Non-owned and Hired Vehicles
  - 2) Blanket Contractual
  - 3) Broad Form Property Damage
  - 4) Products/Completed Operations
  - 5) Personal Injury

- d. Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:

Automotive and truck where operated in amounts as above

Material hoist where used in amounts as above.

- e. Professional Liability insurance, including Contractual Liability, with limits of \$1,000,000. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter. In the event CONTRACTOR subcontracts or assigns any portion of its duties, it shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph.
- f. CONTRACTOR's Builder's Risk Insurance. CONTRACTOR shall obtain and maintain Builder's Risk "All Risk" Insurance, in accordance with Article 17 of the General Conditions; as set forth in Article 17 of the General Conditions; the coverage under the CONTRACTOR's Builder's Risk Insurance shall include coverage for damage arising out of earthquakes.
- g. Each policy of insurance required in a., b., c., d., e., and f. above (with the exception of Worker's Compensation) shall name DISTRICT and its trustees, officers, agents, and employees as additional insureds; shall state that, with respect to the operations of CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributing with such primary insurance, shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation, and shall waive all rights of subrogation against DISTRICT and its trustees, officers, agents, and employees. CONTRACTOR shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONTRACTOR shall deliver to DISTRICT certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein to be attached hereto as EXHIBIT "C," or this AGREEMENT will automatically be canceled.
- h. In the event CONTRACTOR fails to secure or maintain any policy of insurance required, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONTRACTOR and in such event CONTRACTOR shall reimburse DISTRICT upon demand for the cost thereof.

7. DISTRICT's exercise of any of its rights or remedies prescribed in this AGREEMENT shall not relieve CONTRACTOR from responsibility for damages or other losses

incurred or to be incurred by DISTRICT as a result of CONTRACTOR's breach of its obligations under this AGREEMENT.

8. Public Contract Code section 22300 permits the substitution of securities for any retention monies withheld by DISTRICT to ensure performance under this AGREEMENT. At the request and expense of CONTRACTOR, securities equivalent to the amount withheld as retention shall be deposited with DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to CONTRACTOR. DISTRICT retains the sole discretion to approve the bank selected by CONTRACTOR to serve as escrow agent. Upon satisfactory completion of this AGREEMENT, the securities shall be returned to CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request DISTRICT to make payment of earned retention monies directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments into securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the AGREEMENT, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300.

## **ARTICLE V – ALTERNATIVE DISPUTE RESOLUTION**

Disputes arising from this AGREEMENT or related in any manner to the same shall be resolved as follows:

1. In the event of any dispute, claim, question, or disagreement arising out of or relating to this AGREEMENT, prior to initiating arbitration or any other legal action and as a condition precedent to being entitled to file such legal action or demand for arbitration, the parties hereto shall use their best good faith efforts to settle such disputes, claims, questions, or disagreements, consulting and negotiating with each other in good faith and recognizing their mutual interests in attempting to reach a just and equitable solution satisfactory to both parties.

2. In the event the parties are unable to resolve their dispute through the meet and confer procedure provided for in paragraph 1, any dispute arising under or relating to this AGREEMENT, whether based on contract, tort, statute, or other legal or equitable theory, will be submitted to arbitration in the County of Orange, State of California before a retired California Superior Court Judge or retired California Appellate Court or Supreme Court Justice or before a retired Federal Court Judge or Justice. If the parties are unable to agree as to an arbitrator, the arbitration shall be submitted before the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or Judicate West or the American Arbitration Association ("AAA"). The parties may agree on an arbitrator from the selected entity's panel. If they are unable to agree, the selected entity will provide a list of three available arbitrators and each party may

strike one. The arbitration tribunal shall select the arbitrator from the remaining names. The arbitration shall be held in accordance with the rules of the selected entity and California substantive law shall apply. The arbitrator shall award costs and attorneys' fees to the prevailing party. The parties shall be entitled to only the following limited discovery:

- a. Each party shall exchange all documents relevant to the subject matter of the dispute.
- b. Each party shall be entitled to one deposition limited to four hours.
- c. Each party may serve one set of interrogatories limited to 25 interrogatories, including subparts.
- d. Each party may make application to the arbitrator to order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or as such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses at the hearing to allow the deposition to be taken.
- e. Each party shall advance one-half of the cost of the arbitration proceedings, including any administrative costs and arbitrator expenses subject to being reimbursed by an award of the arbitrator of costs.

3. If any claim arises under the construction contract documents for the PROJECT which is submitted to arbitration, and either CONTRACTOR or DISTRICT claims that the acts or omissions of CONTRACTOR are involved in whole or in part in any claim by or against DISTRICT, such may be asserted at the option of DISTRICT against CONTRACTOR in the same arbitration proceeding involving DISTRICT and CONTRACTOR which shall be conducted under the procedure specified in the General Conditions of the construction contract.

4. Concurrent disputes under this AGREEMENT shall be consolidated into a single arbitration unless the parties otherwise agree in writing and no hearing shall be held prior to final completion of the PROJECT unless DISTRICT and CONTRACTOR otherwise agree in writing.

5. Any arbitration award shall be subject to confirmation, vacation or correction under the procedures and on the grounds specified in the California Code of Civil Procedure, including, without limitation, Section 1296.

## **ARTICLE VI – MISCELLANEOUS PROVISIONS**

1. This AGREEMENT shall be interpreted and governed by the laws of the State of California. If any action is brought arising out of this AGREEMENT, including but not limited to any claims for breach, interpretation, cancellation or specific performance of the same or any tort claims relating thereto, said action shall be brought in the appropriate tribunal in Orange County, California.

2. An inducement to DISTRICT for entering into this AGREEMENT is the professional reputation and competence of CONTRACTOR and its employees. Neither this AGREEMENT nor any interest therein may be assigned by CONTRACTOR without the prior written consent of DISTRICT, which consent may be withheld by DISTRICT in its sole and absolute discretion. Any attempt by CONTRACTOR to assign this AGREEMENT shall be void and a material breach of this AGREEMENT and DISTRICT may immediately terminate this AGREEMENT.

3. CONTRACTOR warrants to DISTRICT that it is not now, nor has it or any of its officers been for five years preceding involved in arbitration or litigation concerning CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

4. DISTRICT and CONTRACTOR, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this AGREEMENT.

5. This AGREEMENT represents the entire and integrated agreement between DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both DISTRICT and CONTRACTOR and approved by DISTRICT's Board of Trustees. All change orders must be in writing and approved in writing by DISTRICT.

6. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either DISTRICT or CONTRACTOR.

7. Time is of the essence for this AGREEMENT. CONTRACTOR acknowledges that all time limits stated in this AGREEMENT and in the PROJECT SCHEDULE are of the utmost importance to DISTRICT. CONTRACTOR shall comply with the PROJECT SCHEDULE, which may be revised from time to time by mutual agreement, for completion of CONTRACTOR's services. The total time schedule for full completion of CONTRACTOR's services for each phase of the PROJECT shall not exceed the durations listed, unless mutually agreed upon in writing by CONTRACTOR and DISTRICT. The durations for DISTRICT review period listed in the PROJECT SCHEDULE shall be computed from the date on which a clear, complete submittal is received by DISTRICT. DISTRICT's failure to meet its commitment to provide written requested information or to review within the stipulated time frames shall be cause for an adjustment in the PROJECT SCHEDULE. However, submittals received for review which are rejected, in writing, as not meeting the deliverables required by submittal requirements of this AGREEMENT and the attachments thereto, shall not be cause for adjustment of the PROJECT SCHEDULE, and any such delay caused by such rejected submittals shall be the sole responsibility of CONTRACTOR.

8. Notwithstanding anything to the contrary, to the extent allowed by law, DISTRICT shall not be liable for any special, indirect, exemplary, punitive, consequential, or incidental damages, including, without limitation, lost revenues, anticipated revenues or profits relating to the same arising from any claim relating directly or indirectly to this AGREEMENT

whether a claim for such damages is based on warranty, contract or tort (including, without limitation, negligence or strict liability) even if the parties are advised of the likelihood or possibility of the same.

9. CONTRACTOR's sole and exclusive remedy in the event CONTRACTOR makes any claim for breach of this AGREEMENT or seeks damages under any theory of law whether based on warranty, contract or tort, including without limitation, negligence or strict liability, shall be against DISTRICT and not its trustees, officers, or employees. No trustee, officer or employee shall be sued or named as a party in any such suit or action and no judgment shall be taken against any trustee, officer, or employee. No writ of execution will be levied against the assets of any trustee, officer or employee of DISTRICT pursuant to the terms of this AGREEMENT. This covenant and agreement contained in this section are enforceable by DISTRICT's trustees, officers and employees.

10. CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent CONTRACTOR. CONTRACTOR understands and agrees that CONTRACTOR and all of CONTRACTOR's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of CONTRACTOR's employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONTRACTOR's employees.

11. No changes or alterations to this AGREEMENT shall be made without a written request from CONTRACTOR and specific prior written approval by the DISTRICT and in no event shall the change or alteration exceed 10% of the amount of the original proposal and/or purchase order or exceed bid limits.

12. In case of a conflict between specifications and drawings and/or actual site conditions, work shall immediately cease until the conflict is resolved by the DISTRICT representative. DISTRICT shall not be responsible for any cost/expenses incurred by CONTRACTOR due to any delays.

13. The parties to this AGREEMENT shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, lock-out terrorism, commandeering of materials, products, plants or facilities by the government. Satisfactory evidence shall be presented to the DISTRICT or CONTRACTOR to establish that the non-performance is not due to the fault or neglect of the party not performing.

14. Unless otherwise specified, CONTRACTOR shall submit invoices in duplicate for materials delivered or services performed under this AGREEMENT. DISTRICT shall make payment for materials, supplies, or other services furnished under this AGREEMENT within a reasonable and proper time after acceptance thereof by the authorized DISTRICT representative.

15. This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

16. In the event of a conflict between the provisions of any exhibit to this AGREEMENT and this AGREEMENT, the provisions of this AGREEMENT shall govern.

**ARTICLE VII – NOTICES**

Any notice or communication required or permitted to be given hereunder or by law shall be in writing and served personally, delivered by courier, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

**TO DISTRICT:** Coast Community College DISTRICT  
Attn: Vice Chancellor Administrative Services  
1370 Adams Avenue  
Costa Mesa, CA 92626

Coast Community College DISTRICT  
Attn: Physical Facilities Coordinator  
1370 Adams Avenue  
Costa Mesa, CA 92626

**TO CONTRACTOR:** \_\_\_\_\_  
Attn: \_\_\_\_\_  
[ADDRESS]) \_\_\_\_\_  
\_\_\_\_\_

**TO CONSTRUCTION  
MANAGER:** \_\_\_\_\_  
Attn: \_\_\_\_\_  
[ADDRESS]) \_\_\_\_\_  
\_\_\_\_\_

Any such notices personally served or delivered by courier shall be effective when received. All notices sent by certified mail shall be effective forty-eight (48) hours after being deposited in the U.S. mail.

Each party shall make a reasonable, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph. A party may change its address for purposes of this paragraph by giving the other party written notice of a new address in the manner set forth above.

IN WITNESS WHEREOF, DISTRICT and CONTRACTOR have executed this AGREEMENT as of the date first written above.

**DISTRICT**

**CONTRACTOR**

\_\_\_\_\_  
C.M. Brahmhatt  
Vice Chancellor of Admin. Services

\_\_\_\_\_  
[Name]\_\_\_\_\_  
[Title]\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_