



**AGREEMENT FOR DESIGN, INSTALLATION AND COMMISSIONING
FOR HVAC AND EMS EFFICIENCY PROJECT IMPLEMENTATION (PROJECT #14-013)**

This Agreement for Design, Installation and Commissioning of HVAC and EMS Efficiency Project Implementation ("Agreement") is made as of _____, 20__, between the Solano Community College District ("District") and _____, ("Design-Builder") (together, "Parties").

1. **Services.** Design-Builder shall furnish to the District the labor, equipment, material, and services as described in Exhibits "A-1" and "A-2" attached hereto and incorporated herein by this reference ("Services" or "Work").
2. **Term.** Design-Builder shall commence providing services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such Services as required and will achieve Final Completion of the Services on or before _____, 20__.
 - 2.1. Final Completion means that each of the following has been achieved in accordance with Prudent Industry Practices and the other requirements of the Contract Documents: (a) All units, controls and sensors have been installed; (b) All ancillary work to repair any damage caused by installation is complete; (c) Successful testing of all units, controls and sensors to ensure they function correctly; and (d) The installation is capable of operating safely in accordance with Prudent Industry Practices and all applicable Laws.
3. **Liquidated Damages.** Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Design-Builder's delay; therefore, Design-Builder agrees that it shall pay to the District the sum of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day as liquidated damages for each and every day's delay beyond the Final Completion Date that Final Completion is not achieved or fails to correct a performance deficiency within 48 hours of SCCD notification, excluding weekends

It is hereby understood and agreed that this amount is not a penalty.

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

Grants/Rebates/Incentives. Design-Builder shall be responsible for obtaining all declared rebates from the public utility (PG&E) or any other declared source naming the SCCD as the payee. Design-Builder shall use commercially reasonable efforts to support the District in obtaining an extension, if allowed and if necessary. The District may seek recovery of the declared rebate from the Respondent's Performance Bond Surety and/or the District may seek recovery of declared rebate. This recovery is in the event that the Design-Builder failed to meet all the utilities requirements for rebates.

4. **Submittal of Documents.** Design-Builder shall not commence the Work under this Agreement until the Design-Builder has submitted and the District has approved the



performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Signed Agreement | <input checked="" type="checkbox"/> Insurance Certificates and Endorsements |
| <input type="checkbox"/> Proposal | <input checked="" type="checkbox"/> Performance Bond |
| <input checked="" type="checkbox"/> Notice to Proceed | <input checked="" type="checkbox"/> Payment Bond |
| <input checked="" type="checkbox"/> Terms and Conditions to Contract | <input type="checkbox"/> Specifications |
| <input type="checkbox"/> Noncollusion Declaration | <input type="checkbox"/> Approved Submittals |
| <input checked="" type="checkbox"/> Prevailing Wage Certification | <input type="checkbox"/> Project Schedule |
| <input checked="" type="checkbox"/> Workers' Compensation Certification | <input checked="" type="checkbox"/> Exhibit "A-1" ("System Description") |
| <input type="checkbox"/> Criminal Background Investigation Certification | <input checked="" type="checkbox"/> Exhibit "A-2" ("Scope of Work") |
| <input type="checkbox"/> Drug-Free Workplace Certification | <input type="checkbox"/> Maintenance Services Agreement |
| <input type="checkbox"/> Tobacco-Free Environment Certification | <input checked="" type="checkbox"/> Performance Guarantee |
| <input checked="" type="checkbox"/> Asbestos & Other Hazardous Materials Certification | _____ [Other] |
| <input type="checkbox"/> Lead-Product(s) Certification | _____ [Other] |
| <input type="checkbox"/> Roofing Project Certification | |

The above-referenced documents shall be presented to the District for approval within seven (7) days after execution of the Agreement.

5. **Compensation.** As compensation for the Work, the District shall pay to the Design-Builder _____ DOLLARS (\$) ("Total Contract Price"). Such amount shall not be increased without the express approval of the Board.
6. **Expenses.** District shall not be liable to Design-Builder for any costs or expenses paid or incurred by Design-Builder in performing services for District.
7. **Payment.** On a monthly basis, Design-Builder shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Agreement as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Design-Builder shall be paid a sum equal to ninety percent (90%), a higher retention amount is required pursuant to Public Contract Code section 7201(b)(4), of the value of the Work performed (as verified by District's designated representative and Inspector and certified by Design-Builder) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may deduct from any payment an amount necessary to protect the District from loss because of: (1) any sums expended by the District in performing any of Design-Builder's obligations under the Agreement which Design-Builder has failed to perform or has performed inadequately; (2) defective Work not remedied; (3) stop notices as allowed by state law; (4) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (5) unsatisfactory prosecution of the Work by Design-Builder; (6) unauthorized deviations from the Agreement; (7) failure of the Design-Builder to maintain or submit on a timely basis proper and sufficient documentation as



required by the Agreement or by District during the prosecution of the Work; (8) erroneous or false estimates by the Design-Builder of the value of the Work performed; (9) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Design-Builder is liable under the Contract; and (10) any other sums which the District is entitled to recover from Design-Builder under the terms of the Agreement or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain 10% from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.

- 8. Independent Contractor.** Design-Builder, in the performance of this Agreement, shall be and act as an independent contractor. Design-Builder understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Design-Builder shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Design-Builder's employees. Design-Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
- 9. Standard of Care.** Design-Builder's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of Lighting Practices and all Applicable Law, including the applicable provisions of California Code of Regulations, Title 24, Pacific Gas and Electric, Co.'s applicable rebate requirements ("PG&E"), and the District's Design Guides and Technical Specifications. Design-Builder represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 10. Originality of Services.** Design-Builder agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Design-Builder and shall not be copied in whole or in part from any other source, except that submitted to Design-Builder by District as a basis for such services.
- 11. Copyright/Trademark/Patent.** Design-Builder understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Design-Builder consents to use of Design-Builder's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 12. Notice to Proceed.** After the submittals of the HVAC & EMS system is approved by the District, the District shall provide a Notice to Proceed to Design-Builder at which time Design-Builder shall proceed with the construction Work.



- 13.Site Examination.** Design-Builder has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Design-Builder warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Design-Builder's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.
- 14.Materials.** Design-Builder shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
- 14.1. Anti-Trust Claim.** Design-Builder and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Design-Builder, without further acknowledgment by the parties.
- 14.2. Substitutions.** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District.
- 14.3. Hazardous Materials.** If any hazardous materials are to be provided by Design-Builder, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling at the end of its useful life. Any additional costs and/or District responsibilities related to materials containing hazardous materials must be clearly identified.
- 15.Equipment and Labor.** Design-Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto.
- 16.Warranty/Quality.** Unless a longer warranty is called for elsewhere in this Agreement, the Design-Builder, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.
- 17.Correction of Errors.** Design-Builder shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Design-Builder's failure to comply with the standard of care required herein.
- 18.Lead-Based Paint.** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project,



and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Design-Builder must execute the Lead-Based Paint Certification, if applicable.

19. Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Design-Builder specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Design-Builder also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Design-Builder or a subcontractor. In addition to any other information requested, Design-Builder shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Design-Builder fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

19.1. For all approved changes in the scope of work that result in a net increase in costs to Design-Builder, the following format shall be used, supported by attached documentation.

	WORK PERFORMED OTHER THAN BY DESIGN-BUILDER	ADD
(a)	Material (attach itemized quantity & unit cost plus sales tax)	\$
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	\$
(c)	Add Equipment (attach suppliers' invoice)	\$
(d)	Subtotal	\$
(e)	Add overhead and profit for any and all tiers of Subcontractor, the total not to exceed 10% of item (d)	\$
(f)	Subtotal	\$
(g)	Add overhead and profit for Design-Builder, not to exceed 5% of Item (f)	\$
(h)	Subtotal	\$
(i)	Add Bond and Insurance, not to exceed two percent (2%) of Item (h)	\$
(j)	TOTAL	\$
(k)	Time	___ Days



	WORK PERFORMED BY DESIGN-BUILDER	ADD
(a)	Material (attach itemized quantity & unit cost plus sales tax)	
(b)	Add Labor (attach itemized hours & rates, fully encumbered)	
(c)	Add Equipment (attach suppliers' invoice)	
(d)	Subtotal	
(e)	Add overhead and profit for Design-Builder, not to exceed 15% of item (d).	
(f)	Subtotal	
(g)	Add Bond and Insurance, not to exceed 2% of Item (f)	
(h)	TOTAL	
(i)	Time	___ Days

20.Workers. Design-Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. The District may evaluate the Design-Builder in any manner which is permissible under the law. Any person in the employ of the Design-Builder or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.

21.Design-Builder Supervision. Design-Builder shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

22.Safety and Security. Design-Builder is responsible for maintaining safety in the performance of this Agreement. Design-Builder shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

23.Clean Up. Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

24.Access to Work. District representatives shall at all time have access to the Work wherever it is in preparation or in progress. Design-Builder shall provide safe and proper facilities for such access.

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

26.Occupancy. District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.



27. Force Majeure. Design-Builder shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Design-Builder.

28. Termination.

28.1. For Convenience by District. District may, at any time, with or without reason, terminate this Agreement and compensate Design-Builder only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Design-Builder. Notice shall be deemed given when received by the Design-Builder or no later than three (3) days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Design-Builder for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

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

28.2.1. material violation of this Agreement by the Design-Builder; or

28.2.2. any act by Design-Builder exposing the District to liability to others for personal injury or property damage; or

28.2.3. Design-Builder is adjudged a bankrupt, Design-Builder makes a general assignment for the benefit of creditors or a receiver is appointed on account of Design-Builder's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Design-Builder. If the expense, fees, and costs to the District exceed the cost of providing the service pursuant to this Agreement, Design-Builder shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

28.3. Upon termination, Design-Builder shall provide the District with all documents produced maintained or collected by Design-Builder pursuant to this Agreement, whether or not such documents are final or draft documents.

29. Indemnification. To the furthest extent permitted by California law, Design-Builder shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including,



but not limited to, personal injury, death, property damage, and consultants and/or attorneys fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Design-Builder under or in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Design-Builder proposes to defend the indemnified parties.

30. Insurance.

30.1. The Design-Builder shall procure and maintain at all times it performs any portion of the Services the following insurance:

30.1.1. General Liability. An amount not less than \$2,000,000 each occurrence, \$4,000,000 aggregate for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

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

30.1.3. Workers' Compensation and Employers' Liability Insurance. For all of the Design-Builder's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Design-Builder shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Design-Builder shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

30.1.4. Professional Liability (Errors and Omissions). One Million Dollars (\$1,000,000) for errors and omissions as appropriate to profession of engineer designing, coverage to continue through completion of construction plus two years thereafter.

30.1.5. Builder's Risk Insurance. On a replacement cost value basis, Design-Builder shall procure and maintain, during the life of this Agreement, Builder's Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to



enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

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

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

30.1.7.1. For the general liability and automobile liability policies:

30.1.7.1.1. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Design-Builder; instruments of Service and completed operations of the Design-Builder; premises owned, occupied or used by Design-Builder; or automobiles owned, leased, hired or borrowed by Design-Builder. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

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

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

30.1.7.2. Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

30.1.7.3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled



by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

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

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

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

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

33.Assignment. The rights, burdens, duties, or obligations of Design-Builder pursuant to this Agreement shall not be assigned by the Design-Builder without the prior written consent of the District.

34.Subcontractors. Subcontractors, if any, engaged by the Design-Builder for any Service or Work under this Agreement shall be subject to the approval of the District. Design-Builder agrees to bind every subcontractor by the terms of the Agreement as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Design-Builder shall subcontract any part of this Agreement, Design-Builder shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and the District.

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



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

35.2. Labor Code Requirements. Design-Builder shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District. In addition, the Design-Builder and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Design-Builder or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

36. Certified Payroll Records: Design-Builder and its subcontractor(s) shall keep accurate certified payroll records of employees and shall make them available to the District immediately upon request.

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

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

39. Environmental Attributes and Energy Credits. District shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of any facilities installed on the Project ("Generating Facilities"). This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:

39.1. All Environmental Incentives associated in any way with the installation. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind,



howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the installation or the energy reduction or otherwise from the development, construction, installation or ownership of the Lighting Energy Efficiency Project. Without limiting the forgoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives programs offered by the State of California.

39.2. All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the reduction in energy use.

39.3. All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.

40. Limitation of District Liability. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

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

42. Disputes. In the event of a dispute between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, Design-Builder agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. The demand for mediation of any claim over \$375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice, and the demand shall not be made later than the time of Design-Builder's submission of the request for final payment. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Design-Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Design-Builder's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the claimant submits its written claim until the time



the claim is denied, including any time utilized by any applicable meet and confer process.

43. Attorney Fees and Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

44. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District
Solano Community College District
C/O Kitchell CEM
360 Campus Lane, Suite 203
Fairfield, California 94534

Design-Builder

ATTN: Ines Zildzic

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

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

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

47. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

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

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



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

[REMAINDER OF PAGE INTENTIONALLY BLANK]



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

**SOLANO COMMUNITY COLLEGE
DISTRICT**

[DESIGN-BUILDER]

Date: _____, 20__
By: _____
Print Name: JOWEL C. LAGUERRE, Ph.D.
Print Title: Superintendent-President
Address: 360 Campus Lane, Suite 201
Fairfield, CA 94534
Telephone: 707-864-7112
Facsimile: 707-646-2085
E-Mail: jowel.laguerre@solano.edu

Date: _____, 20__
By: _____
Print Name: _____
Print Title: _____
License No.: _____
Address: _____
Telephone: _____
Facsimile: _____
E-Mail: _____



Information regarding Design-Builder:

Proper Name: _____
License No.: _____
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

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

Employer Identification and/or Social Security Number

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



Exhibit A-1

System Description

THE GENERAL DESCRIPTION WHICH SHOULD FORM THE BASIS FOR PROPOSALS IS IDENTIFIED IN THE RFQ/P#14-013. THIS SCOPE WILL BE FINALIZED WITH THE SELECTED FIRM.



Exhibit A-2

Scope of Work

Design-Builder's entire Proposal is not made part of this Agreement.

[AT A MINIMUM, SCOPE OF SERVICES DESCRIBED IN THE REQUEST FOR PROPOSALS WILL BE INSERTED HERE. THIS SCOPE WILL BE FINALIZED WITH THE SELECTED FIRM.]



PREVAILING WAGE CERTIFICATION

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

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

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

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

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

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

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

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

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

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

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

LEAD-PRODUCT(S) CERTIFICATION

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

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

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

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

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

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

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



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

Date: _____

Name of Design-Builder: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND
(100% of Contract Price)

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

KNOW ALL PERSONS BY THESE PRESENTS:

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

_____ (Project Name)

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

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

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

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

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

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

Surety shall not utilize Principal in completing the Project nor shall Surety accept a Bid from Principal for completion of the Work if the District, when declaring the Principal in default, notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period ending one year after the date of Final Completion during which



time Surety's obligation shall continue if Design-Builder shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The above obligation is separate from and does not affect to the obligations under the Performance Guarantee, the Maintenance Services Agreement, or any warranty obligations that are effective for any period longer than one year following the Final Completion date.

Nothing herein shall limit the District's rights or the Design-Builder or Surety's obligations under the Contract, law or equity, including, but not limited to, the District's rights against Design-Builder under California Code of Civil Procedure section 337.15

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

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

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

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



PAYMENT BOND
Contractor's Labor & Material Bond
(100% of Contract Price)

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

KNOW ALL PERSONS BY THESE PRESENTS:

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

_____ (Project Name)

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

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

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

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying



the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

(Affix Corporate Seal)

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

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