

DOCUMENT 00520

**AGREEMENT**

**FOR DESIGN/BUILD SERVICES**

**SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**

**ATHLETIC FACILITIES IMPROVEMENTS**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between \_\_\_\_\_ whose place of business is at \_\_\_\_\_, hereinafter called "**Design-Build Entity**", and SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, hereinafter called "**District**".

In consideration of the mutual covenants hereinafter set forth, Design-Build Entity and District agree as follows:

**Article I. Work**

- 1.1 Design-Build Entity shall provide, furnish, and perform all necessary planning, architectural, engineering, and all other design services of any type, procurement, permitting and support services, construction, landscaping, clean-up, and all other construction services of any type, provide and furnish all necessary supplies, materials and equipment (except those to be provided by District, if any) and all necessary supervision, labor, and services required for the complete engineering, design, procurement, quality assurance, construction and all necessary installation, start-up and testing required for a complete, operational, and fully functional Project, as further described in Section 01010 Summary of Work and Section 01011 Summary of Work-Design Services (hereinafter, the all-inclusive obligations of the Design-Build Entity set forth in this sentence shall be referred to as the "Work"). Except with regard to any material to be provided and/or installed by District, Design-Build Entity shall fully commission and turn over a complete, operational, and fully functional Project to District as "Turnkey" functional, San Mateo County Community College District Athletic Facilities Improvements. Without limiting the generality of this Document 00520, Design-Build Entity shall provide the following work and Services:
- 1.2 Design-Build Entity shall prepare complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment and for the construction of the complete, operational, and fully functional Athletic Facilities Improvements, and shall furnish the services of all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work, including the pertinent information for natural gas, water supply, and any other utilities, as required.
- 1.3 Design-Build Entity shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Athletic Facilities Improvements, including required permanent interconnection for electricity, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- 1.4 Design-Build Entity shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, and fully functional project. Design-Build Entity shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

- 1.5 Design-Build Entity shall obtain, at Design-Build Entity's expense, all governmental and private approvals, licenses, and permits required to complete the Work; provided, however, District will be responsible for paying the cost of all District imposed fees. Design-Build Entity shall design and construct complete, operational, a fully functional project in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.
- 1.6 Design-Build Entity shall provide a warranty of the length identified in the Contract for this Project.
- 1.7 No construction or alteration of any District facility under the Contract Documents shall commence prior to the receipt of the written approval of the plans and specifications therefor, as to the safety of design and construction, from the District and as required, the Division of the State Architect.

## **Article II. District's Program Manager and Representatives**

- 2.1 District may assign all or part of its rights, responsibilities and duties to a District Program Manager or other representative. District shall inform Design-Build Entity in writing of such assignment and the extent of its representative's authority.
- 2.2 All notices or demands to District under the Contract Documents shall be to District's Representative at:

**Swinerton Management & Consulting**  
**Att: Karen Freeman**  
**1600 W. Hillsdale Blvd., Building 6**  
**San Mateo, CA 94402**

or to such other person(s) and address(es) as District shall provide to Design-Build Entity.

## **Article III. Contract Time and Liquidated Damages**

- 3.1 Design-Build Entity shall complete the Work, with the Schedule Constraints, and within the Milestone Schedule listed in Exhibit A, hereby made part of this Agreement.
- 3.2 Liquidated Damages.  
District and Design-Build Entity recognize that time is of the essence of this Agreement and that District will suffer financial loss in the form of lost revenues, contract administration expenses (including project management and consultants' expenses), delay and loss of public use, if the Work is not completed within the time specified in paragraph 3.1 above plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Paragraph 1.15 of Document 00700 General Conditions, Design-Build Entity and District agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by District because of a delay in completion of the Work.

Accordingly, District and Design-Build Entity agree that Design-Build Entity shall pay District the following liquidated damages measures that apply separately and cumulatively:

- 3.2.1 Design-Build Entity shall pay District **\$2,000** for each calendar Day that expires after the time specified in Exhibit A of this Document 00520 for the submission of complete Design Submittals until District receives the complete Design Submittals as specified in Section 001101.
- 3.2.2 Design-Build Entity shall pay District **\$2,000** for each calendar Day that expires after the time specified in Exhibit A of this Document 00520 for Substantial Completion until Substantial Completion.
- 3.2.3 Design-Build Entity shall pay District **\$2,000** for each additional calendar Day that expires after

the time specified in Exhibit A of this Document 00520 for Final Completion.

- 3.2.4 Design-Build Entity shall pay District **\$2,000** for each calendar Day that Work occurs, in an Area of Work listed in Exhibit A of this Document 00520, which does not comply with Schedule Constraint Requirements. If Work ceases prior to a Schedule Constraint date, but is not Substantially Complete, liquidated damages shall still apply.

These measures of liquidated damages shall apply cumulatively and shall be presumed to be, except as provided below, the damages suffered by District resulting from delay in completion of the Project.

- 3.3 Liquidated damages for delay shall only cover and be in lieu of the actual damages suffered by District as a result of delay referenced above. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective work or damages suffered by others who then seek to recover their damages from District (for example, delay claims of other design consultants or subcontractors), and defense costs thereof.

#### **Article IV. Contract Sum**

- 4.1 District shall pay the Design-Build Entity as the "Contract Sum" for completion of Work in accordance with the Contract Documents, as the amount set forth in Design-Build Entity's Bid, attached hereto.
- 4.2 The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Design-Build Entity, its subcontractors, subconsultants, architects, engineers, and vendors or otherwise arising out of Design-Build Entity's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

#### **Article V. Design-Build Entity's Representations and Warranties**

In order to induce District to enter into this Agreement, Design-Build Entity makes the following representations and warranties:

- 5.1 Design-Build Entity has visited the Site and has examined thoroughly and understood the nature and extent of the Work, Site, locality, actual conditions, as built conditions, and all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto.
- 5.2 Design-Build Entity has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as built drawings, drawings or reports, available for design and construction purposes, of physical conditions, including Underground Facilities, which are identified in Document 00320 Geotechnical Data and Existing Conditions, or which may be apparent at the Site and accepts the determination set forth in these documents and Document 00700 General Conditions of the limited extent of the information contained in these documents upon which the Design-Build Entity may be entitled to rely. Design-Build Entity agrees that except for the information so identified, Design-Build Entity does not and shall not rely on any other information contained in these documents.
- 5.3 Design-Build Entity has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 5.2 of this Document 00520) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Design-Build Entity considers necessary for the performance or

furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Design-Build Entity for such purposes.

- 5.4 Design-Build Entity has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Design-Build Entity has given District prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by District is acceptable to Design-Build Entity.
- 5.6 Design-Build Entity is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.7 Design-Build Entity has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design-Build Entity.
- 5.8 Prior to the District's Issuance of a Notice to Proceed with Construction, the Design-Build Entity will list all Subcontractors performing Work pursuant to the Subcontractor Listing requirements of California Public Contracting Code Section 4104 on the Form included in Section 00430 Subcontractors List Form.
- 5.9 For Subconsultants, the Design-Build Entity shall re-submit this form listing subcontractors performing construction services within 20 days of Notice of determination that Proposal represents Best Value to the District.

#### **Article VI. Contract Documents**

- 6.1 The Contract Documents consist of the following documents, including all changes, addenda and modifications thereto, which comprise the entire agreement between District and Design-Build Entity concerning the Work:

Request for Proposal, Dated 1/9/04, except as noted in this Document below in 6.2.  
Design-Build Entity's Proposal, Dated \_\_\_\_\_

**(At the time of award all documents will be listed.)**

- 6.2 There are no Contract Documents other than those listed above 00520, Article VI. Document 00320 Existing Conditions and Geotechnical Data, Document 00340 Hazardous Materials Surveys, the Design Guidelines, and the information supplied through these documents, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 General Conditions.

#### **Article VII. Miscellaneous**

- 7.1 Terms used in this Agreement are defined in Document 00700 General Conditions and Section 01420 References and Definitions, and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance is any person, signing this Agreement for or on behalf of District or acting as an employee or representative of District, liable on this Contract, or upon any warranty of

- authority, or otherwise, and it is further understood and agreed that liability of District is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Design-Build Entity shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the to the Subcontractor Listing requirements of California Public Contracting Code Section 4107
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public contract or a subcontract to supply goods, services or materials pursuant to a public contract, the Design-Build Entity or subcontractor irrevocably offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act, (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Design-Build Entity, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are in the Contract Documents or on file at District's office, and shall be made available to any interested party on request. Pursuant to Section 1861 of the Labor Code, Design-Build Entity represents that it is 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 Design-Build Entity shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement shall be deemed to have been entered into in the City of San Mateo, County of San Mateo, and governed in all respects by California law (excluding conflicts of laws). The exclusive venue for all disputes or litigation hereunder shall be in the County of San Mateo. Both parties hereby waive their rights under California Code of Civil Procedure, Section 394, to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue.
- 7.9 Design-Build Entity accepts the claims procedures established by Document 00700, Article 1.12, as established under California Government Code, Section 930.2, *et seq.*
- 7.10 District shall have the right to review all phases of Design-Build Entity's design including, but not limited to, drawings, specifications, shop drawings, samples and submittals, as specified in the Contract Documents. Such review, approval and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of District's monitoring and accepting the design as developed and issued by the Design-Build Entity, consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

“District”

SAN MATEO COUNTY COMMUNITY COLLEGE  
DISTRICT, a public entity

By: \_\_\_\_\_  
James Keller, Executive Vice Chancellor

“Design-Build Entity”

[NAME, TYPE OF ENTITY]

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

EXHIBIT A

SCHEDULE

Milestone Event

Latest Date for Completion of Milestone

Design Submittals
Substantial Completion
Final Completion

<b>As specified in Section 01101</b>
<b>640</b> calendar Days from Issuance Date of Notice to Proceed
<b>690</b> calendar Days from Issuance Date of Notice to Proceed

Area of Work

Schedule Constraint Requirements

Cañada new tennis courts
Cañada existing tennis courts
Cañada baseball facility
Cañada soccer facility
Cañada site accessibility work
CSM football field synthetic turf
CSM tennis courts
CSM softball field
CSM parking adjacent to softball
CSM upper field facility
CSM football facility/stadium/track
CSM baseball facility
CSM site accessibility
Skyline soccer field facility*
Skyline field/track facility*
Skyline baseball facility
Skyline tennis courts
Skyline indoor soccer facility*
Skyline site accessibility
* No work on more than one of these components at the same time

No constraint
No constraint
No work from January 1 – August 1
No work from August 1 – January 1
No work first week of classes**
<b>Installation complete August 1, 2004</b>
No work from January 1 – May 1
No work from January 1 – June 1
No constraint
No work from January 1 – August 1, work must be concurrent with new track
No work from August 1 – December 1
No work from January 1 – June 1
No work first week of classes**
No work from August 1 – January 1
No work from August 1 – January 1
No work from January 1 – August 1
No constraint
No work from August 1 – January 1
No work first week of classes**
** Fall and Spring Semesters

END OF DOCUMENT