

ATTACHMENT NO. 4

AGREEMENT TO PREPARE AND SUBMIT DESIGN-BUILD PROPOSAL

THIS AGREEMENT (“Agreement”) is entered into on this ___ day of _____, 2015, between _____ [enter name of Proposer] (“This Proposer”) and the Palomar Community College District (“District”):

RECITALS

Whereas, This Proposer has been selected by the District, to receive an invitation to submit a Design-Build Proposal as a participant in a design-build competition, as more particularly described in the Request for Proposals From Design-Build Entities for the design and construction of the Maintenance and Operations Complex at Palomar College; and

Whereas, under the requirements of the aforementioned Request for Proposals, and as a condition to This Proposer and its Design-Build Proposal being considered for possible Award of the Design-Build Contract for the above-referenced Project, This Proposer and District desire to enter this Agreement setting forth, without limitation to the other provisions of the RFP Documents, certain responsibilities of This Proposer in connection with the preparation, submission and evaluation of This Proposer’s Design-Build Proposal.

NOW, THEREFORE, in consideration of the promises, covenants and other valuable consideration set forth herein and in the other RFP Documents, receipt of which is hereby acknowledged, the District and This Proposer agree as follows:

TERMS AND CONDITIONS

Section 1. Compliance by This Proposer. This Proposer shall be solely responsible to comply with all requirements of the Request for Proposal (“RFP”) Documents pertaining to the conduct of the RFP process and the content and submission of its Design-Build Proposal. Failure to so comply shall, in the discretion of the District, entitle the District to exercise its rights and remedies as provided for in this Agreement, the RFP Documents and/or under Applicable Laws.

Section 2. Ownership, Copyright, Confidentiality and Disclosure.

a. Ownership, Copyright. Drawings, renderings, models, building designs, design approaches, design details, construction techniques, procedures, means and methods and other technical design and construction information contained within a Design-Build Proposal shall be deemed the sole and exclusive property of the District, all copyrights thereto shall be deemed assigned to and held by the District, and the Proposer shall retain no property, copyright or other proprietary rights with respect thereto; provided, however,

that: (1) nothing herein shall be interpreted as prohibiting or limiting the right of a Proposer that does not receive Award of the Design-Build Contract to (a) copy, use or incorporate such technical design information contained within its own Design-Build Proposal for its own use in connection the conduct of its business, trade or profession, and/or (b) assign, grant or transfer to any third person or entity (for profit or otherwise) the right to copy or use such technical design information for any purpose; and (2) with respect to the Proposer who receives Award of the Design-Build Contract, such Proposer's rights and obligations with respect to copying, use or incorporation of such technical design information in any projects, structures or work other than the Project shall be governed solely by the terms of the Design-Build Contract. The District's rights hereunder include, without limitation, the right after Award of the Design-Build Contract to incorporate into its design for the Project any of the building designs, design approaches, design details, construction techniques, procedures, means and methods and other technical design and construction information contained in any Design-Builder Proposal that is received from any Proposer submitting a Design-Build Proposal whether or not such technical information constitutes Proprietary Information as that term is defined in Part b, below.

b. Confidentiality of Proprietary Information. "Proprietary Information", as that term is used in this Section 4, means and is limited to (in lieu of any other definitions applicable to proprietary information or trade secrets that may exist or apply under Applicable Laws) technical information in the form of design details, construction techniques, procedures, means and methods and other technical design and construction information that: (1) is patented; or (2) is (a) only known to those persons within the Proposer's company in whom such technical information is confided; and (b) has unique or special qualities (including, without limitation, a unique or special assembly) not generally known in the construction industry among competing contractors designing or constructing structures of the type proposed for the Project; and (3) that the Proposer has clearly and completely marked and identified with the words "PROPRIETARY INFORMATION" wherever and everywhere it appears in the Proposer's Design-Build Proposal. Building designs and similar aesthetic elements of a design that are displayed in the Proposer's model submitted as part of its Design-Build Proposal shall not, under any circumstances, constitute Proprietary Information and may be disclosed and displayed by the District (including, without limitation, to the public) at any time, without prior notice or consent of the Proposer. Notwithstanding and without limitation to the District's rights set forth in Part a, above, the District shall, to the extent not inconsistent with the District's obligations under Applicable Laws pertaining to the disclosure of public records, at all times prior to Award of the Design-Build Contract refrain from disclosing to any competing Proposer the content of any Proprietary Information contained in a Proposer's Design-Build Proposal. The District's obligation of confidentiality as set forth herein shall terminate upon Award of the Design-Build Contract. The aforestated obligation of the District with respect to maintaining the confidentiality of technical information in a Design-Builder Proposal shall constitute the District's sole and exclusive obligation of

confidentiality that shall exist, at any time either before or after Award, with respect to such matters.

c. Confidentiality of Pricing Information. District shall, to the extent not inconsistent with the District's obligations under Applicable Laws pertaining to disclosure of public records, at all times prior to Award of the Design-Build Contract refrain from disclosing to competing Proposers any information on prices or pricing that is contained in a Proposer's Design-Build Proposal. The aforesated obligation of the District with respect to maintaining the confidentiality of prices and pricing information in a Design-Build Proposal shall constitute the District's sole and exclusive obligation of confidentiality that shall exist, at any time either before or after Award, with respect to such matters.

Section 3. Miscellaneous Provisions.

a. Definitions. Capitalized terms used in this Agreement and that are not defined in this Agreement shall have the meanings assigned to them in the RFP Documents.

b. Assignment. This Agreement shall be binding upon This Proposer and its successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any claim hereunder, may be assigned by This Proposer without the prior written consent and approval of the District, which may be granted or withheld in the District's sole discretion. Any assignment by This Proposer in violation of this Section shall be null and void from its inception.

c. No Third Party Beneficiaries. This Agreement is entered into between and for the benefit of the District and This Proposer and shall not be interpreted as creating any third party beneficiary rights in, or as being enforceable by, any other persons or entities other than the District and This Proposer.

d. Governing Law, Venue. This Agreement shall be governed by the law of the State of California. Any legal action by either This Proposer or the District relating to this Agreement shall be filed and maintained in a court of competent jurisdiction located in the County of San Diego, State of California.

e. Execution by District. This Agreement shall be binding upon the District when signed below by the authorized designee. In the event that this Agreement, for any reason, is not executed by the District, this Agreement shall nonetheless be deemed accepted by the District and binding upon the District and This Proposer upon receipt and opening by District of a sealed Design-Build Proposal submitted by This Proposer that has been prepared and submitted in accordance with the requirements of this Agreement and the RFP Documents.

**PALOMAR COMMUNITY COLLEGE
DISTRICT**

DESIGN-BUILD PROPOSER

_____, a _____

By: _____

By: _____

Title:

Title:
