

ATTACHMENT NO. 5

ENTRY TO PROPERTY AGREEMENT

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

RECITALS

Whereas, This Proposer has been selected by the District, pursuant to a pre-qualification process conducted in accordance with California Education Code Section 81703, 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, pursuant to the RFP Documents This Proposer has requested that the District permit This Proposer to enter the Site of the proposed Project at the campus of the Palomar College for the purpose of conducting review and investigation of the Site and of Existing Improvements located on the Site; and

Whereas, This Proposer and District desire to enter this Agreement setting forth, without limitation, the conditional right of This Proposer to enter the Site and the responsibilities of This Proposer with respect to any such entry to the Site and any investigations conducted by or on behalf of This Proposer of the Site or Existing Improvements on the Site.

TERMS AND CONDITIONS

Section 1. Right of Entry. Subject to the terms and conditions of this Agreement, This Proposer is hereby granted the right to enter the Site at the campus of the Palomar College for the sole purpose of conducting Inspection and Investigation (as hereinafter defined) of the Site and Existing Improvements, including, without limitation, conditions on or under the surface of the ground. Without limitation to District's rights under Section 9 (Remedies of District for Default), such right of entry is conditioned upon This Proposer's compliance with the terms of this Agreement and is expressly revocable by the District, at will, at any time upon notice to This Proposer at the address for contacting This Proposer provided in its Design-Build Proposal.

Section 2. Inspection and Investigation. The scope of Inspection and Investigation permitted by this Agreement shall be limited to the following: (1) visual inspection of the Site; (2) surveying of the Site; (3) measurements of dimensions of the Site and Existing Improvements; (4) subsurface exploration conducted under the supervision of a licensed soils or geotechnical engineer; and (5) non-destructive examination of Existing Improvements. Entry to the Site or College campus for the purpose of or to prepare for conducting Inspection and Investigation shall not be permitted unless arranged in advance by This Proposer pursuant to a written request submitted to Chris Miller, Director of Facilities, cmiller@palomar.edu. Such request

shall set forth the date(s) and time(s) that all activities related to the Inspection and Investigation will be conducted, the names and company names of all persons who will be present on the Site at any time during the Inspection and Investigation, and a detailed description of any equipment or tools that will be brought onto the College or Site. Inspection and Investigation shall be conducted during the following days and times only: **Monday - Friday, 8:00 AM to 5:00 PM** All activities related to Inspection and Investigation shall be conducted without disturbance of or interference to the conduct of business of the College, its students or adjacent property owners, including, without limitation, the taking by This Proposer of all necessary and commercially reasonable measures to prevent, abate or minimize generation of noise, dust or noxious odors. District shall have the right, but not the obligation, without thereby assuming any responsibility or liability to This Proposer or any other person or entity, to observe and monitor (including, without limitation, photographing) any and all portions of the activities undertaken at the Site or on the College campus that are related to any Inspection and Investigation by This Proposer.

Section 3. Responsibility of This Proposer. Inspection and Investigation is conducted at the sole risk of This Proposer and This Proposer shall solely bear all costs and expenses thereof. This Proposer shall be solely responsible and liable for the safety and protection of, and for any loss or damage of any kind resulting in whole or in part from the Inspection and Investigation conducted by or on behalf of This Proposer to, the following: (1) persons participating in, or property (real or personal) used in connection with, such Inspection and Investigation; (2) persons and property (including, without limitation, vehicles) belonging to or in the possession, custody or control of the District, College, College and District staff or employees, students, visitors to the College and the general public; and (3) adjacent real property (including, without limitation, subadjacent and lateral support thereof) and any improvements thereon.

Section 4. Release of Liability. All persons not employed by the District or College entering the College or Site for the purpose of participating in or observing any Inspection and Investigation on behalf of This Proposer shall be required to execute a Release of Liability in the form attached to this Agreement covering any period of time that such person is present on the Site or College grounds. Any person failing or refusing to execute such Release of Liability, for any period of time that such person is on the Site or the campus of the College in connection with an Inspection and Investigation, shall thereafter be prohibited from entering the Site or College grounds for any purpose related to Inspection and Investigation of the Site.

Section 5. Condition of Property. This Proposer shall, at its own expense, return any portions of the Site or Existing Improvements that have been disturbed, damaged or altered by the activities of such Inspection and Investigation to the same or a better condition than the condition thereof immediately prior to its being so disturbed, damaged or altered.

Section 6. Hold Harmless. To the fullest extent permitted by Applicable Laws, This Proposer agrees to indemnify, defend and hold harmless, the College, the District, Board of Trustees, and each of their members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel reasonably acceptable to the District, from any and all loss, liability, damages, cost or expense (including, without limitation, reasonable attorney's fees), regardless of whether caused in part by such Indemnitee,

arising out of or relating to any of the following: (1) any act or omission of This Proposer or any of its Subcontractors or Subconsultants, of any Tier; (2) the activities of This Proposer or any of its Subcontractors or Subconsultants, of any Tier, on the Site or on other properties owned by the District or College at any time prior to Award of the Design-Build Contract; (3) the presence, discharge, removal or handling of any Hazardous Substances that are introduced to Site or that are released (whether released on or off the Site) as a result of the activities of This Proposer or any of its Subcontractors or Subconsultants, of any Tier; (4) the violation by This Proposer or any of its Subcontractors or Subconsultants, of any Tier, of any Applicable Law in connection with their activities on the Site; or (5) the failure by This Proposer to provide and maintain insurance coverage required by Section 8, below; provided, however, that nothing contained herein shall be construed as obligating This Proposer to indemnify an Indemnatee for any loss, liability, damages, cost or expense resulting from that Indemnatee's sole negligence, that Indemnatee's active negligence or that Indemnatee's willful misconduct, where such sole negligence, active negligence or willful misconduct has been determined by agreement of This Proposer and that Indemnatee or has been adjudged by the findings of a court of competent jurisdiction.

Section 7. Release. This Proposer hereby releases and forever discharge the District, College, the Board of Trustees, and each of their members, officers, employees, agents, insurers and volunteers, from any responsibility, liability, loss or damage, of any kind, related to the entry of persons upon, their presence at, or any action or activity undertaken by This Proposer or others on or around, the campus or grounds of San Diego City College (including, without limitation, the Site) in connection with any Inspection and Investigation undertaken by or behalf of This Proposer.

Section 8. Insurance.

A. Prior to and as a condition of commencing any Inspection and Investigation, This Proposer shall provide to the District evidence satisfactory to the District (including, without limitation, certificates of insurance and certified copies of policies, if requested) that This Proposer, and each Subcontractor and Subconsultant participating in the Inspection and Investigation, has procured and maintains the following insurance coverages:

1. A policy or policies of Comprehensive General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000.00) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts caused by the insured.

2. Comprehensive Auto Liability insurance covering personal injury and property damage in the amount of a combined single limit of One Million Dollars (\$1,000,000.00) covering "Any Auto" utilized in performing any Inspection or Investigation hereunder.

3. Workers' Compensation Insurance as required by law of the State of California.

B. Prior to and as a condition of commencing any Inspection and Investigation, This Proposer shall provide to the District evidence satisfactory to the

District that This Proposer and each Subconsultant (including, without limitation, and soils or geotechnical engineers) participating in the Inspection and Investigation has procured and maintained professional liability (errors and omissions) insurance coverage and has agreed to maintain such insurance in full force and effect for one year after Award of the Design-Build Contract.

C. All insurance policies required by this Section 8 shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days prior written notice to the District. This Proposer agrees that it will not cancel or reduce said insurance coverage.

D. This Proposer agrees that if it does not keep the aforesaid insurance in full force and effect District may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, District may take out the necessary insurance and pay, at This Proposer's expense, the premium thereon.

E. The policies required by Parts A, Paragraphs 1 (Comprehensive General Liability) and 2 (Comprehensive Auto Liability) of this Section 8 shall contain an endorsement naming the District as an additional insured.

F. The insurance provided by This Proposer and/or its Subcontractors or Subconsultants shall be primary to any coverage available to District. The insurance policies (other than workers' compensation) shall include provisions for waiver of subrogation of rights against the District.

G. Nothing herein shall be interpreted as requiring This Proposer to provide insurance coverage that is barred by California Insurance Code Section 11580.04.

Section 9. Remedies of District for Default. In the event that This Proposer defaults in the performance of any of its obligations under this Agreement, the District shall have the right to immediately, with or without prior written or verbal notice, to revoke This Proposer's right of entry and to cause This Proposer and any other persons participating in the Inspection and Investigation on behalf of This Proposer, as well as all of their tools and equipment, to be removed from the Site. Any default by This Proposer of the terms of this Agreement shall be deemed a material failure by This Proposer to comply with the requirements of the RFP Documents and at the discretion of the District may result in immediate disqualification of This Proposer from being further considered for Award of the Design-Build Contract for the Project.

Section 10. Reports. Copies of all reports (including, without limitation, all opinions, data and recommendations) prepared for any subconsultants or subcontractors of This Proposer concerning the Inspection and Investigation of the Site shall be included in This Proposer's submission of its Design-Build Proposal for the Project.

Section 11. Miscellaneous Provisions.

a. Definitions. Capitalized terms used herein 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 an authorized designee.

**PALOMAR COMMUNITY COLLEGE
DISTRICT**

_____, a _____

By: _____

By: _____

Title: _____

Title: _____

ATTACHMENT TO ENTRY TO PROPERTY AGREEMENT

RELEASE OF LIABILITY

I, _____ (print name), the undersigned, in consideration of being granted entry to property owned by the Palomar Community College District, hereby releases and forever discharge the Palomar Community College District, the Board of Trustees of the Palomar Community College District, and each of their members, officers, employees, agents, insurers and volunteers, from any responsibility, liability, loss or damage, of any kind, caused by or related to my entry upon, my presence at, or any action or activity undertaken by me or others on or around, the campus Palomar College (including, without limitation, the portion of said campus or other property owned by the District or College that is being proposed by the District as the site for construction of the proposed Maintenance & Operations Complex during the period of July 6, 2105 through September 30, 2015.

(Signature)

Signed this ____ day of _____, 20__

(Print Name)