CONSTRUCTION SERVICES AGREEMENT

FOR

VICTOR VALLEY COMMUNITY COLLEGE
VOCATIONAL COMPLEX EXPANSION AND RENOVATION

Contract No. ______

Project No. ______________

BETWEEN the DISTRICT:

Victor Valley Community College District
18422 Bear Valley Road
Victorville, California 92395

and the CONTRACTOR:

Name
Street Address
City, California Zip
(____) ___-____

For the following PROJECT:

________________________

Design Consultant is:

________________________
CONSTRUCTION SERVICES AGREEMENT

FOR

VICTOR VALLEY COMMUNITY COLLEGE CAMPUS PROJECT

This Construction Services Agreement ("Construction Contract") is made this XXXXXXXX, 2015, by and between the VICTOR VALLEY COMMUNITY COLLEGE DISTRICT, a California Community College District organized and existing under the laws of the State of California (hereinafter called the "District"), and [INSERT CONTRACTOR NAME], a California Corporation with its principal place of business at [INSERT ADDRESS HERE] ("Contractor").

RECITALS

WHEREAS, the District intends on using proceeds, including but not limited to, Bond Measure JJ proceeds for the purpose of financing the construction of community college facilities and improvements known as the VICTOR VALLEY COMMUNITY COLLEGE CAMPUS PROJECT (the "Project"); and

WHEREAS, the District is authorized under Education Code section 81335 to contract for the construction of facilities pursuant to a “lease-leaseback” arrangement that provides for (1) the letting of real property for a minimum of one dollar per year, (2) the lessee to construct, or provide for the construction of, the aforementioned building thereon for the use of the District during the term of such lease, (3) title to such building to vest in the District at the expiration of such term, and (4) such other terms and conditions as the Board of Trustees of the District may determine to be in the best interest of the District ("Lease-Leaseback"); and

WHEREAS, in order to maximize value and quality that the District will receive in procuring a contractor to construct the Project under a Lease-Leaseback, the District will conduct a competitive, two-step procurement process, including (1) a Request for Prequalification and (2) a Request for Proposals; and

WHEREAS, said procurement process will culminate in the District selecting Contractor as the firm that has offered in its proposals the best value to the District for the completion and delivery of the Project; and

WHEREAS, contemporaneously with the execution of this Construction Services Agreement, the District will enter into a site lease with Contractor (the "Site Lease") under which it will lease to the Contractor the real property described in Exhibit "A" of the Site Lease (collectively, the "Lease Site") whereat Contractor will construct the Project; and

WHEREAS, the Contractor will lease the Lease Site and the Project back to the District for a fixed period of time ("Term") pursuant to a Sublease Agreement (the "Sublease") under which the District will be required to make Sublease Payments and may make Sublease Prepayments to the Contractor for the use and occupancy of the Lease Site and Project; and

WHEREAS, upon the expiration of the Term of the Site Lease and Sublease, title in the Project shall vest solely in the District; and
WHEREAS, the District and Contractor desire to enter into this Construction Services Agreement to ensure that the Project will meet the District's expectations; and

WHEREAS, Contractor is experienced in construction of the type of improvements comprising the Project, is duly licensed as a general contractor in the State of California, and is willing to construct and deliver the Project to the District, all as more fully set forth herein and in the Site Lease and Sublease.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the District and Contractor agree as follows:

ARTICLE 1
DEFINITIONS

Capitalized terms used in the Contract Documents shall have the meanings assigned to them in the General Conditions identified in Paragraph 5.1.2, below. If not defined in such General Conditions, they shall have the meanings assigned to them elsewhere in the Contract Documents. If not defined in such General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context in which they are used.

ARTICLE 2
THE WORK

2.1 SCOPE OF WORK
Contractor shall execute the entire Work called for by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.2 STANDARD OF PERFORMANCE
Without limitation to Contractor’s other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

  2.2.1 comply with the requirements of the Contract Documents;
  2.2.2 comply with Applicable Laws;
  2.2.3 conform to the standard of care applicable to those who provide construction of the type called for by this Construction Contract for projects of a scope and complexity that is comparable to the Project;
  2.2.4 furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and
  2.2.5 apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the District and within the limitations of the Contract Sum Payable and Contract Time.

ARTICLE 3
CONTRACT TIME

3.1 CONTRACT TIME

  3.1.1 Substantial Completion. Contractor shall achieve Substantial Completion of the entire Work not later than ___ (___) Days after the Date of Commencement, subject only to Contract Adjustments to the Contract Time permitted by the Contract Documents.
3.1.2 Final Completion. Contractor shall achieve Final Completion of the Work not later than _____ Days after the actual occurrence of Substantial Completion, subject only to Contract Adjustments to the Contract Time permitted by the Contract Documents.

3.1.3 Notice to Proceed. Under no circumstances shall a Notice to Proceed be issued prior to the approval by the Division of the State Architect of the Plans and Specifications for the Project if and only if such approval is required by the scope of the Project.

3.2 LIQUIDATED DAMAGES TO DISTRICT

3.2.1 District’s Right. District and Contractor acknowledge and agree that if Contractor fails to Substantially Complete the Work within the Contract Time for Substantial Completion, District will suffer substantial Losses, which would be both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the assessment by District of liquidated damages as provided in this Section 3.2.

3.2.2 Per Diem Rate. If Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, Contractor shall pay District or District may deduct from money due or to become due to the Contractor or its Surety, liquidated damages in the amount of __________ Dollars ($______) per Day for each Day thereafter until Contractor achieves Substantial Completion of the entire Work.

3.2.3 Adjustment for Extensions of Time. Liquidated damages payable under this Section 3.2 shall be subject to adjustment for Delays to Substantial Completion for which the Contractor is entitled under the Contract Documents to receive a Contract Adjustment to the Contract Time for Substantial Completion.

3.2.4 No Apportionment for Partial Completion. Liquidated damages shall not be reduced or apportioned: (1) for Substantial Completion of portions of the Work prior to Substantial Completion of the entirety of the Work; or (2) if portions of the Work are deleted pursuant to the District's right to order Deleted Work or a termination by District of a portion of the Construction Contract for convenience or due to an Event of Contractor Default.

3.2.5 Other Remedies. The District's rights under this Section 3.2 shall not be interpreted as either: (1) limiting any right or remedy of the District arising from an Event of Contractor Default other than a failure to Substantially Complete the Work within the Contract Time; or (2) precluding the District's right to order an acceleration, at Contractor's Own Expense, of Contractor's performance of the Work to overcome a Delay with respect to which the District would have the right to assess liquidated damages in the absence of such acceleration.

3.3 LIQUIDATED DAMAGES TO CONTRACTOR

3.3.1 Contractor's Right. It is acknowledged by District and Contractor that if the circumstances described in Paragraph 3.5.2, below, involving Compensable Delay, occur the Contractor and its affected Subcontractors are likely to suffer Losses, which would be both extremely difficult and impracticable to ascertain. On that basis the District and Contractor have agreed, as a reasonable estimate of those Losses and not a penalty, to the payment by District of liquidated damages pursuant to this Section 3.3.

3.3.2 Per Diem Rate. If Contractor is unable, due to a Compensable Delay to achieve Substantial Completion of the Work within the sum of (1) the number of Days comprising the original period of time set forth in Paragraph 3.1.1, above, for Substantial Completion of the overall Work ("original" meaning the number of Days stated in Paragraph 3.1.1, exclusive of Contract Adjustments) plus (2) the number of Days of Contract Adjustments to the Contract Time for Substantial Completion to which Contractor is entitled due to Excusable Delay, then for each Day, after expiration of the Contract Time for Substantial Completion of the Work as extended for Contract Adjustments due to Excusable Delay, that the Contractor is required to continue to perform Work at the Site as a result of such Compensable Delay, Contractor shall be entitled by execution of Change Order or Unilateral Change Order to both an extension of the Contract Time for Substantial Completion due to Compensable Delay and a Contract Adjustment to the Contract Sum for payment of liquidated damages in the amount of ________
Dollars ($________) per Day, for each such Day, with no amount added thereto or calculated thereon for Allowable Markup or any other markup for overhead or profit to Contractor or any Subcontractor.

3.3.3 Payment by District. Notwithstanding any other provision of the Contract Documents to the contrary, any Change Order or Unilateral Change Order for a Contract Adjustment to the Contract Sum Payable for liquidated damages permitted by this Section 3.3 shall be executed following, and not before, the actual occurrence of Substantial Completion and prior to Final Completion. All sums due to the Contractor pursuant to this Section 3.3 shall be due and payable, subject to the District's rights of withholding payment permitted by the Contract Documents or Applicable Laws, as part of the Final Payment to Contractor.

3.3.4 Exclusive Recovery. Liquidated damages payable pursuant to this Section 3.3 constitute the Contractor's sole and exclusive right and remedy for recovery from District of Losses to Contractor and its Subcontractors, of any Tier, due to Delay, regardless of the cause, duration or timing, attributable to Compensable Delay.

3.3.5 Deleted Work. A credit shall be given to District reducing the Contract Sum Payable due to Deleted Work that results in a shortening of the Contract Time. Such reduction in the Contract Sum Payable shall be effected by means of a Contract Adjustment that is based on the product derived from multiplying (1) the number of Days that the Contract Time is shortened by (2) the amount of liquidated damages set forth in Paragraph 3.3.2, above, without any additional credit to County for Allowable Markups.

3.3.6 Termination. District shall have no liability to Contractor to pay any liquidated damages provided for under this Section 3.3 in the event there is a termination of the Construction Contract (whether such termination is a termination for cause by District or Contractor or is a termination by convenience by District) prior to expiration of the Contract Time described in Clauses (1) and (2) of Paragraph 3.3.2, above. In lieu of such liquidated damages, Contractor's sole and exclusive right of recovery for Loss resulting from Compensable Delay shall be its right to a Contract Adjustment for any additional, actual costs incurred and paid by Contractor (with no additional amount added for Allowable Markup or other overhead or profit multiplier or markup) for (1) additional supervision at the Site by employees of Contractor and (2) Contractor's temporary facilities at the Site; provided further, that the Contract Adjustment allowed by this Paragraph 3.3.6 shall, in all circumstances of Compensable Delay, be limited to those additional costs described in Clauses (1) and (2) hereof that were incurred and paid as a direct consequence of Compensable Delay and for which Contractor is not permitted a just and equitable compensation under the accounting processes set forth in Paragraph 14.1.5 and (if applicable) Paragraph 14.3.3 of the General Conditions.

3.3.7 Non-Compensable Delay. Without limitation to any other provisions of the Contract Documents defining what types of Delays are non-compensable, no Contract Adjustment or other form of compensation or reimbursement, of any kind, to Contractor or a Subcontractor, of any Tier, shall be permitted for any Loss resulting, directly or indirectly, from or attributable to any of the following: (1) Unexcused Delay or acceleration to overcome Unexcused Delay; (2) Excusable Delay or any acceleration not authorized by District in writing to overcome Excusable Delay; or (3) concurrency of a Compensable Delay with any different type or class of Unexcused Delay or Excusable Delay, whether such concurrency is a concurrency in cause or in effect.

ARTICLE 4
CONTRACTOR COMPENSATION

4.1 CONTRACT SUM PAYABLE

4.1.1 Amount. District shall pay the Contractor in current funds for the Contractor's performance of the Work in accordance with the Contract Documents the Contract Sum Payable (exclusive of Contract Adjustments) of ______________ Dollars ($________).

4.1.2 Basis. The Contract Sum Payable set forth in Paragraph 4.1.1, above, is based on the Bid submitted by Contractor as adjusted for Alternates accepted by District as set forth in Section 4.4, below.

4.1.3 Adjustments. The Contract Sum Payable is only subject to adjustments as permitted by the General Conditions for Contract Adjustments due to Compensable Changes, Deleted Work or Compensable Delay.
4.1.4 **All-Inclusive Price.** The Contract Sum Payable is the total amount payable by District to Contractor for performance of the Work under the Contract Documents and is deemed to cover all Losses arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Contractor or its Subcontractors.

4.1.5 **Sublease Payments and Retention.** Contractor shall finance the cost of construction of the Project and the District shall be under no obligation to pay the Contractor any amount greater than the agreed to Lump Sum Contract Amount. The District shall pay the Contractor Sublease Payments pursuant to the terms of the Sublease.

4.2 **DISTRICT CONTINGENCY**

4.2.1 **Purpose.** District shall have the option, in its sole and exclusive discretion, to establish (by inserting a dollar amount in Paragraph 4.2.2, below) an amount reserved for District Contingency. District Contingency stated in Paragraph 4.2.2, below, shall be added to the Contract Sum Payable to determine the Contract Price, as hereinafter defined. District Contingency is a budgeted amount for the sole and exclusive benefit and use of the District for additional liability incurred by District to Contractor under the Contract Documents pursuant to authorized Change Order or Unilateral Change Order adjusting the Contract Sum Payable due to Compensable Changes or Compensable Delay. Amounts included in District Contingency are transferable to the Contract Sum Payable, in the sole and exclusive discretion of District, as and when adjustments are authorized by Change Order or Unilateral Change Order to the Contract Sum Payable. As such, except to the extent that such transfers are authorized, amounts included in District Contingency do not constitute a current or contingent liability of District to Contractor and do not constitute amounts that are payable to Contractor by District.

4.2.2 **Amount.** The amount of the District Contingency is initially set at ______________ Dollars ($_________), which is based upon ten percent (10%) of the Contractor’s Bid as adjusted for Alternates accepted by District as set forth in Section 4.4, below. The District Contingency shall be subject to adjustment only as set forth in Subparagraphs 4.2.3 and 4.2.4, below.

4.2.3 **Increases.** At any point during performance of the Work, and notwithstanding the amount of the unexpended balance if any that may then exist in the District Contingency, the District shall have the right to unilaterally order the District Contingency be increased, as judged appropriate in the sole and exclusive discretion of the District, to reflect transfers to District Contingency of all or a portion of the amounts of any Contract Adjustments authorized by Change Order or Unilateral Change Order reducing the Contract Sum Payable for Deleted Work.

4.2.4 **Reductions.** The District Contingency shall, until it is fully expended, be reduced, on a dollar-for-dollar basis, by the amount of any Contract Adjustments authorized by Change Order or Unilateral Change Order increasing the Contract Sum Payable. Such District Contingency Expenditures shall be reflected in each such Change Order and Unilateral Change Order as transfers from District Contingency to cover such authorized Contract Adjustments increasing the Contract Sum Payable.

4.2.5 **Unexpended Amounts.** Any portion of the District Contingency that upon Final Completion and Final Payment has not been expended by District in the manner provided for herein shall be deemed to entirely accrue to and be retained by District, shall not be considered part of the Contract Sum Payable and shall not be payable or owing to Contractor. Such unexpended funds shall furthermore not be considered, for purposes of California Civil Code Section 3186 to be money due or to become due to Contractor nor as money payable to Contractor or to any other person or entity under the terms of the Performance Bond or Payment Bond.

4.2.6 **No Representation by District.** The establishment of a District Contingency shall not, under any circumstances, be interpreted as an express or implied promise, representation or guarantee on the part of the
District of the amount of Compensable Changes or Compensable Delay that will or are expected to occur, either of which may be substantially more or less than the amount of the District Contingency.

4.3 CONTRACT PRICE

The Contract Price is the sum of: (1) the Contract Sum Payable, as adjusted by Change Order or Unilateral Change Order; and (2) and the unexpended balance of the District Contingency, if applicable. Amounts included in the Contract Price that exceed the Contract Sum Payable are established for the purposes of budgeting, not due or payable to Contractor and do not under any circumstances constitute a current or contingent liability of the District to the Contractor. The District is under no obligation, under any circumstances whatsoever, to pay the any portion of the Contract Price that exceeds the Contract Sum Payable. If there is no District Contingency established pursuant to Section 4.2, above, then the Contract Price shall not be applicable to this Contract. If a District Contingency is established pursuant to Section 4.2, above, then at and after the point that the District Contingency has been fully expended and the Contract Price Payable as adjusted by Change Order or Unilateral Change Order equals the Contract Price, the Contract Price shall be deemed to be the Contract Sum Payable.

4.4 ALTERNATES

The Contract Sum Payable is based upon the following Alternates, if any, which are described in the Contract Documents and are hereby accepted by the District:

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Dollar Amount</th>
</tr>
</thead>
</table>

4.5 UNIT PRICES

Unit prices, if any, agreed to by the Contractor and District are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Measurement Unit</th>
<th>Dollar Amount</th>
</tr>
</thead>
</table>

ARTICLE 5
ENUMERATION OF CONTRACT DOCUMENTS

5.1 LIST OF CONTRACT DOCUMENTS

The Contract Documents (as that term is further defined in the General Conditions), exclusive of Modifications, Change Orders, Unilateral Change Orders and Field Orders issued after execution of this Construction Contract, include, without limitation, the following:

5.1.1 Construction Contract. The Construction Contract is this executed Standard Form of Construction Contract Between District and the Contractor.

5.1.2 General Conditions. The General Conditions are the General Conditions of the Construction Contract.

5.1.3 General Requirements, Supplementary Conditions. The General Requirements and Supplementary Conditions are as follows:
5.1.4 **Specifications.** The Specifications are as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Divisions</th>
</tr>
</thead>
</table>

5.1.5 **Drawings.** The Drawings are as follows, and are dated [___, ___] unless a different date is shown below:

<table>
<thead>
<tr>
<th>Sheet Number</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

5.1.6 **Addenda.** The Addenda, if any, are as follows:

<table>
<thead>
<tr>
<th>Addendum Number</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 5.

5.1.7 **Reference Documents.** The Reference Documents, if any, are as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Author</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

5.1.8 **College Construction Health, Safety and Environmental Program.** The College Construction Health, Safety and Environmental Program dated [___, ___].

5.1.9 **Site Lease.** The Contract Documents include the Site Lease by and between the District and the Contractor, together with any duly authorized and executed amendment thereto, under which the District leases the Lease Site to the Contractor. In the event of a conflict in the provisions of any of the Contract Documents, the priority shall be first the General Conditions, then the Construction Contract then the Site Lease, then the Sublease.

5.1.10 **Sublease.** The Contract Documents include the Sublease by and between the District and Contractor, together with any duly authorized and executed amendment thereto, under which the District subleases the Lease Site and the Project from the Contractor. In the event of a conflict in the provisions of any of the Contract Documents, the priority shall be first the General Conditions, then the Construction Contract, then the Site Lease, then the Sublease.

**ARTICLE 6**

**OTHER REQUIREMENTS**

6.1 **PROJECT LABOR AGREEMENT**
The Work □ is □ is not subject to the District's Project Labor Agreement.

6.2 LABOR COMPLIANCE PROGRAM

Pursuant to Labor Code Section 1771.7, the Work □ is □ is not subject to the District's approved Labor Compliance Program, initially approved on July 19, 2004. For questions or assistance concerning the Labor Compliance Program, contact Patricia Padilla or Miguel Cabral, Padilla & Associates, Inc., at (714) 577-5340.

6.3 BOND PROGRAM

The Work □ is □ is not subject to the requirements of the Bond Program.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS’ STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS’ STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826.

WHEREFORE, this Construction Contract is entered into by the undersigned as of the day and year first written above.

VICTOR VALLEY COMMUNITY COLLEGE DISTRICT

By: ________________________________
Title: _______________________________

CONTRACTOR

By: ________________________________
Title: _______________________________

The following information must be provided concerning the Contractor:

Address: ______________________________

Telephone: ( ) ______-________

Employer State

Tax ID #: ______________________________

State Contractor License #: ______________________________