

ATTACHMENT 8 – ENTRY TO PROPERTY AGREEMENT

This Right of Entry Agreement ("Right of Entry") is entered in this ____ day _____, 2014 by and between the San Jose' Evergreen Community College District ("SJECCD") and XXXXXXXXXX ("LICENSEE")

1 RECITALS

1.1. WHEREAS, SJECCD is the owner in fee of that certain real property identified as Joint-Use 21st Century Post-Secondary Education Center, as more particularly described via the site map in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

1.2. WHEREAS, LICENSEE desires to obtain SJECCD's permission to enter onto the Property, on a temporary basis, to allow access for the purpose of conducting its own investigation into the condition of the property in connection with RFP Project No. 309 ("ACTIVITY").

1.3. WHEREAS, the Parties wish to enter into this Right of Entry whereby SJECCD will allow LICENSEE to enter the Property, on a temporary basis, for the purpose of performing ACTIVITY.

NOW, THEREFORE, SJECCD and LICENSEE do hereby agree as follows:

2 AGREEMENT

2.1. Right of Entry. SJECCD hereby grants to LICENSEE and its agents, employees and contractors the temporary right to enter onto the Property for the purpose of performing ACTIVITY, and for no other purpose. No heavy vehicles or construction equipment is permitted on the Property without the express written permission of SJECCD. LICENSEE is **strictly prohibited from engaging in any destructive testing** without the express, prior written authorization of SJECCD. Further, any such prior authorization, if obtained, shall be limited to the testing explicitly described therein.

2.2. Term. The term of this Limited Right of Entry shall automatically terminate 30 days from the date first herein written above unless earlier terminated as provided herein. The term may be extended by written notice to LICENSEE in the sole and absolute discretion of SJECCD. Prior to entry onto the Property, LICENSEE shall arrange with SJECCD via written approval (which may occur through email) by the San Jose' Evergreen Community College Director of Facilities or their designee at least two days prior to performing any ACTIVITY on the Property. Failure to provide such notice shall be considered a breach of this Limited Right of Entry.

2.3. Liens. LICENSEE shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to LICENSEE's actions upon the Property. The LICENSEE agrees to hold SJECCD harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Property.

2.4. Indemnification. LICENSEE hereby agrees to indemnify, defend, assume all liability for and hold harmless SJECCD and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons, which may be caused by LICENSEE's activities pursuant to this Limit of Entry or arising out of or in connection with such activities, whether such activities or performance thereof is by LICENSEE or

anyone directly or indirectly employed or under contract with LICENSEE, and whether such damage or claim shall accrue or be discovered before or after the termination of this Limited Right of Entry. The LICENSEE, specifically, and not by way of limitation agrees that it shall be responsible for the repair, maintenance and cleanup of any ACTIVITY. The indemnity and other rights afforded to SJECCD by this section shall survive the revocation or termination of this Limited Right of Entry.

2.5. Compliance with Laws/Permits. LICENSEE shall, in all activities undertaken pursuant to this Limited Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, LICENSEE, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities LICENSEE desires to conduct or have conducted pursuant to this Limited Right of Entry.

2.6. Not Real Property Interest. It is expressly understood that this Limited Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to LICENSEE. This Limited Right of Entry is not exclusive, and SJECCD specifically reserves the right to grant other rights of entry within the vicinity of the Property.

2.7. No Entitlement. Nothing in this Limited Right of Entry shall create any entitlement to perform any of the work contemplated in RFP Project No. 309 nor does this Limited Right of Entry in any way constitute an award of the contract contemplated within that RFP. Further, LICENSEE'S right of entry is limited solely to inspection in anticipation of a possible proposal submission by LICENSEE for RFP Project No. 309, and entry for any other purpose is explicitly prohibited.

2.8. Attorneys' Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Limited Right of Entry, each party shall bear its own attorneys' fees and costs.

2.9. Revocable Licenses and Termination. Notwithstanding any improvements made by LICENSEE to the Property or any sums expended by LICENSEE in furtherance of this Limited Right of Entry, the right of entry granted herein is revocable and may be terminated by SJECCD in accordance with the terms of this Agreement. This Limited Right of Entry may be terminated at any time by either party upon one (1) business day's prior notice in writing to be served upon the other party. In cases of an emergency or a breach of this Agreement by LICENSEE, this Limited Right of Entry may be terminated by SJECCD immediately.

2.10. Restoration of the Property. Upon the termination or revocation of this Limited Right of Entry, LICENSEE shall, at its own cost and expense, restore the Property to the same condition in which it was prior to LICENSEE's entry. In case LICENSEE shall fail to restore the Property to its prior condition within ten (10) business days after the effective date of the termination, SJECCD may proceed with such work at the expense of LICENSEE.

2.11. Continuing Liability. No termination of this Limited Right of Entry shall release LICENSEE from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this Limited Right of Entry and restoration of the property to its prior condition.

2.12. Notice. Except as otherwise provided herein, in all cases where written notice is required under this Limited Right of Entry, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid five days in advance of performing any ACTIVITY. Proper notice shall be effective on the date it is mailed, unless provided otherwise in writing by SJECCD. For the purpose of this Right of Entry, unless otherwise agreed in writing, notice to SJECCD shall be addressed as follows:

To SJECCD/VC: Douglass Smith
SJECCD District office
4750 San Felipe Road
San Jose, CA 95135

With a copy to: Counsel for the San Jose Evergreen Community College District
Jaret & Jaret
1016 Lincoln Avenue
San Rafael, CA 94901

To LICENSEE: [name/address]

2.13. Counterparts. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry on the date first written above.

SAN JOSE' EVERGREEN COMMUNITY COLLEGE DISTRICT
A Public Agency Organized as a California
Community College District

DATED: _____

By: _____
Douglas Smith, Vice Chancellor, Admin Services

<NAME OF ENTRANT>

DATED: _____

By: _____

EXHIBIT "A"

SITE MAP



EXHIBIT “B”

DESCRIPTION OF ACTIVITY

Description of planned scope of work to be provided by Entrant