

MARIN COMMUNITY COLLEGE DISTRICT
MEASURE C BOND PROGRAM

**RESOLUTION 9/29/09 B.11.D.5 FOR APPROVAL OF CHANGE ORDER NO. 1R
TO THE EXISTING CONTRACT WITH
Trison Construction
FOR
Geothermal Field Project (305B/417B)**

WHEREAS, Marin Community College District (the "District") previously awarded a contract for work for the Geothermal Field Project (the "Project") to Trison Construction; and

WHEREAS, subsequent to the award of the Project, it was determined that additional work was necessary as part of the Project (the "Change Order"); and

WHEREAS, the Change Order provides for the work set forth in Exhibit "A;" and

WHEREAS, the total cost for the Change Order is \$737,500.00 and exceeds the limitations set forth in Public Contracts Code Section 20659; and

WHEREAS, it will be more costly and time-consuming to bid this additional work since it is integral to the Project and the work being performed by the Contractor; and

WHEREAS, competitive bidding the additional work covered by the Change Order would result in the delay of the completion of the Project and result in coordination issues if another contractor is performing similar work at the Project site at the same time as Contractor; and

WHEREAS, it would work an incongruity and not produce any advantage to the District to competitively bid the Change Order since such competitive bid work could result in multiple contractors being required to performed work more efficiently and effectively performed by one contractor; and

WHEREAS, a change in contractors in the middle of the Project may cause an inability to enforce the warranty provisions of the Contract; and

WHEREAS, Los Angeles Dredging v. Long Beach (1930) 210 Cal. 348 holds that statutes requiring competitive bidding do not apply when competitive bidding would work an incongruity or not produce any advantage; and

WHEREAS, while pursuant to Public Contract Code section 20659, a community college district is required to competitively bid any change or alteration to a contract that has a value over 10% of the original contract price, California law provides that, "[w]here competitive proposals work an incongruity and are unavailing as affecting the final result or where they do

not produce any advantage . . . the statute requiring competitive bidding does not apply." Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Marin Community College District makes the following findings:

1. That the above recitals are true and correct.
2. That it would work an incongruity and not produce any advantage to the District to bid the completion of the work set forth in the Change Order under the competitive process.
3. That the District approves the immediate completion of the work stated in the Change Order without competitively bidding such work and approves the District's payment in the amount set forth in the Recitals to the Contractor upon the terms and conditions set forth in the Change Order.

PASSED AND ADOPTED by the Governing Board of the Marin Community College District, on September 22, 2009.

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

President, Governing Board

I, Dr. Frances White, Secretary of the Governing Board of the Marin Community College District, State of California, do hereby certify that the foregoing resolution was duly adopted by the said Board at a regular meeting held September 22, 2009.

Secretary, Governing Board

MARIN COMMUNITY COLLEGE DISTRICT
MEASURE C BOND PROGRAM

EXHIBIT A

CHANGE ORDER WORK

PROJECT: GEOTHERMAL FIELDS
 PROJECT No. 305B/417B
 CONTRACTOR: TRISON CONSTRUCTION
 OWNER: Marin Community College District
 ARCHITECT: ALPHATECH

EFFECTIVE ONLY WHEN SIGNED BY OWNER

C.O. NO. 1R
 Date: BOT Approval date 9/22/09

To: Keith Helgeson

You are directed to make the following Changes in this Contract:

Item Number	Description	
1	Settlement agreement This change order is inclusive of any and all claimed impacts and/or delays and constitutes an accord and satisfaction by Trison Construction, Inc. for any and all claims for compensable delays, disruptions, losses in efficiency and any other cost issues arising from the performance of work on the above-referenced Project, known or unknown, including but not limited to all PCO's, Legal Fees, Interest and Prompt Payment Penalties. This change order also constitutes an accord and satisfaction by the Marin Community College District for liquidated damages, backcharges and warranty claims against Trison Construction, Inc. arising from the performance of work on the above-referenced Project.	\$737,500.00
2	Retention reduction Retention shall be reduced from 10% to 5% of all billed amounts. End of Items	\$0.00
SUBTOTAL:		\$737,500.00
TOTAL:		\$737,500.00

NOTE: Unless otherwise noted in the specific item description above, the costs detailed in this Change Order represent the total cost of the work; complete supply and installation of materials and equipment; Contractor's fees, profit, and overhead; administration; general conditions; all other indirect costs; and associated additional bond and insurance premiums.

AGREEMENT	CONTRACT VALUE ADJUSTMENT	
When this Change Order is signed by all parties, it constitutes their agreement: A. That the Contract Price / Time is adjusted as shown and that no further adjustment by reason of the change(s) provided herein shall be made; and B. That all the Terms and Conditions of the Contract, except as modified by this and any previous changes, shall remain in full force and effect and apply to the work so changed.	Original Contract Price:	\$4,929,500.00
	Net Change By Previously Authorized Change Order:	\$0.00
	Contract Price Prior To This Change Order:	\$4,929,500.00
	Contract Price Will Be: <input checked="" type="checkbox"/> Increased: <input type="checkbox"/> Decreased: <input type="checkbox"/> Unchanged: By this Change Order:	\$737,500.00
	New Contract Price Including This Change Order:	\$5,667,000.00
	TIME ADJUSTMENT	
	Contract Time Will Be: <input type="checkbox"/> Increased: <input type="checkbox"/> Decreased: <input checked="" type="checkbox"/> Unchanged: By this Change Order:	0
	Date of Substantial Completion As Of The Date Of This Change Order:	8/30/2008

AGREED BY CONTRACTOR	APPROVED BY ARCHITECT/ENGINEER
Contractor name	A/E name
By: _____	By: _____
Date: _____	Date: _____
ISSUED BY PROJECT MANAGER	RECOMMENDED BY PROGRAM MANAGER
Swinerton Management & Consulting	Marin Community College District
By: _____ <i>Project Manager</i>	By: _____ <i>Leigh Sata, Program Manager</i>
Date: _____	Date: _____
APPROVED BY OWNER	AUTHORIZED BY OWNER
Marin Community College District	Marin Community College District
By: _____ <i>V-Anne Chernock, Director of Modernization</i>	Authorized By: _____ <i>Albert J. Harrison II VP College Operations</i>
Date: _____	Date: _____

Distribution: Owner Consultant Construction Manager Contractor C. O. File Other

DOCUMENT 00 65 19.26

FINAL SETTLEMENT CERTIFICATE FORM

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS 22nd DAY OF September, 2009 by and between the Marin Community College District ("District") and Trison Construction Inc. ("Contractor"), whose place of business is 4000 West 39th Street, Oklahoma City, OK 73112.

RECITALS:

1. District and Contractor entered into PROJECT/CONTRACT NO.: **Geothermal Fields KTD & IVC (305B & 417B)** ("Contract" or "Project") in the County of Marin, California.
2. The Work under the Contract has been completed.

NOW, THEREFORE, it is mutually agreed between District and Contractor as follows:

AGREEMENT

3. Contractor will only be assessed liquidated damages as detailed below:

Original Contract Sum	\$ <u>4,929,500.00</u>
Modified Contract Sum	\$ <u>5,667,000.00</u>
Payment to Date (after payment of Pay App 8R)	\$ <u>4,436,550.00</u>
Liquidated Damages	\$ <u>0.00</u>
Payment Due Contractor	\$ <u>1,230,450.00</u>

4. Subject to the provisions hereof, including but not limited to approval of above amount by the District's governing board, District shall forthwith pay to Contractor the undisputed sum of \$1,230,450.00 (One Million Two Hundred Thirty Thousand Four Hundred Fifty Dollars and Zero Cents) under the Contract, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.
5. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 6 and continuing obligations described in Paragraph 8. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against District,

all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claim is set forth in Paragraph 6 and continuing obligations described in Paragraph 8 hereof.

6. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
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None

7. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 4 hereof, Contractor hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
8. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
9. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the indemnified parties.
10. Contractor hereby waives the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
12. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

*** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING ***

MARIN COMMUNITY COLLEGE DISTRICT

TITLE: _____

NAME: _____

SIGNATURE: _____

TRISON CONSTRUCTION, INC.

TITLE: _____

NAME: _____

SIGNATURE: _____

END OF DOCUMENT

RECORDING REQUESTED BY:

When recorded mail to:
Director of Modernization
Marin Community College District
P.O. Box 144003
Kentfield, CA 94914

Notice of Completion

(In pursuant to Civil Code Section 3093, must be recorded within 10 days after completion)

In execution of this Notice, notice is hereby given that:

1. The undersigned is an owner or agent of an owner of the estate or interest stated below.
2. The name of the owner is Marin Community College District.
3. The address of the owner is 835 College Ave, Kentfield CA 94904.
4. The nature of the estate or interest is: Marin Community College District.
5. The name and addresses of all co-owners, if any, who hold any title or interest with the above-named owner in the property are:

NAMES

ADDRESSES

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6. Work of modernization on the property hereinafter described was completed on: August 30, 2008
 7. The Project Name & Number are Geothermal Fields KTD & IVC (305B & 417B)
 8. The contractor for such work of modernization is Trison Construction
 9. The name of the contractor's Surety Co is Bond Safeguard Insurance Company
 10. The date of contract between the contractor and the above owner is March 11, 2008.
 11. The street address of said property is 1800 Ignacio Blvd in Novato and 835 College Ave in Kentfield.
 12. The property on which said work of modernization was completed is in the Town of Kentfield/City of Larkspur and Novato, County of Marin, State of California, and is described as follows:
Underground geothermal Loop for Heating and Cooling systems for new buildings.

Date

Signature of Owner
Marin Community College District

Verification

I, undersigned, say:

I am _____
("President," "Owner," "Manager," etc.)

Of the declarant of the foregoing completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is correct and true.

Executed on _____, at _____, California.
(City or Town where signed)

(Personal signature of the individual swearing that the contents of the notice are true)