

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

BOARD FACILITIES COMMITTEE MEETING

2323 North Broadway, Room #103

Santa Ana, California

ADDENDUM TO AGENDA

Thursday, April 7, 2011

➤ **Add:**

2.0 REVIEW OF FACILITIES ITEMS

2.12 Approval of Tender Agreement for Completion of Work Originally Contracted to Tidwell Concrete Construction, Inc., for Humanities Building; Athletics/Aquatics Complex; Santiago Canyon Entry and Parking Lot; Chapman Entry and Roadway; Loop Road Extension Projects at Santiago Canyon College to Great American Insurance Company

The administration recommends approval of the Tender Agreement for completion of work originally contracted to Tidwell Concrete Construction, Inc., for Bid #1136 awarded on April 21, 2010, to Great American Insurance Company as presented.

2.13 Adoption of Resolution No. 11-07 for Completion of Work Originally Contracted to Tidwell Concrete Construction, Inc., for Humanities Building; Athletics/Aquatics Complex; Santiago Canyon entry and Parking Lot; Chapman Entry and Roadway and Loop Road Extension Projects at Santiago Canyon College

The administration recommends adoption of Resolution no. 11-07 for the completion of work originally contracted to Tidwell Concrete Construction, Inc., for Bid #1136 awarded on April 21, 2010, as presented.

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT**BUSINESS OPERATIONS/FISCAL SERVICES**

To:	Board of Trustees	Date:	April 11, 2011
Re:	Approval of Tender Agreement for Completion of Work Originally Contracted to Tidwell Concrete Construction, Inc. for the Humanities Building; Athletics and Aquatics Complex; Santiago Canyon Entry and Parking Lot; Chapman Entry and Roadway; Loop Road Extension Projects at Santiago Canyon College to Great American Insurance Company		
Action:	Request for Approval		

BACKGROUND

On April 21, 2010 the district awarded construction bid #1136 to Tidwell Concrete Construction, Inc. for concrete work at the Santiago Canyon College Humanities Building and Athletics and Aquatics Complex and other concrete work identified in the bid. The value of the bid contract was \$3,921,621. On February 11, 2011, Tidwell Concrete Construction, Inc., without warning, immediately ceased their business operations. Tidwell Concrete Construction, Inc. effectively abandoned the project and contractual requirements of the project. On February 11, 2011, the District's construction attorney (Hugh Lee of Atkinson, Andelson, Loya, Ruud & Romo) issued a Notice of Termination to Tidwell Concrete Construction, Inc. based on their abandonment of the project and demanded Tidwell's surety (Great American Insurance Company) fulfill its obligations to complete the project under the performance bond.

ANALYSIS

The surety company responded quickly and professionally to the District's requests to minimize further costs and delays to the construction projects due to Tidwell's default. The surety procured bids to complete the work required under the original contract with Tidwell. The surety has chosen Guy Yocum Construction, Inc. to complete the remaining unfinished concrete work abandoned by Tidwell Concrete Construction, Inc. A tender agreement between the District and the surety company has been negotiated.

Under the terms of the performance bond, the surety has exercised its' election to tender a Completion Contractor (Guy Yocum Construction, Inc.) for the District to hire to complete the remaining work of the original contract. The surety has stated that their completion contract with Guy Yocum Construction, Inc. is for \$2,637,000. Contract balance held by the District, including retention, for the unfinished Tidwell Construction, Inc. work is \$2,008,599.11. This contract balance will be used to complete the remaining work under the original contract. The surety is responsible for the additional cost to complete the work by the Completion Contractor (Guy Yocum Construction, Inc.).

The District will still be responsible for any Construction Change Directives (CCD's) and Field Change Directives (FCD's) issued by the District in the normal course of construction. These CCD's and FCD's, if any, would have been considered and evaluated as valid change orders under the original contract with Tidwell Construction, Inc.

RECOMMENDATION

It is recommended that the Board of Trustees approve the Tender Agreement for completion of work originally contracted to Tidwell Concrete Construction, Inc. – Bid #1136, awarded on April 21, 2010 to Great American Insurance Company as presented.

Fiscal Impact:	None	Board Date:	April 11, 2011
Prepared by:	Peter J. Hardash, Vice Chancellor, Business Operations/Fiscal Services		
Submitted by:	Peter J. Hardash, Vice Chancellor, Business Operations/Fiscal Services		
Recommended by:	Dr. Raúl Rodríguez, Chancellor		

TENDER AGREEMENT

This Agreement (“Agreement”) is entered into this 11th day of April 2011 (“Effective Date”), by and between the Rancho Santiago Community College District of Orange County (“DISTRICT”) and Great American Insurance Company (“SURETY”) with respect to the Bid #1136 Concrete for the Humanities Building; Athletics & Aquatics Complex; Santiago Canyon Entry & Parking Lot; Chapman Entry and Roadway; and Loop Road Extension Projects at Santiago Canyon College (“Project”). DISTRICT and SURETY may hereinafter be collectively referred to as “Parties.”

RECITALS

A. WHEREAS, on or about April 21, 2010, the DISTRICT entered into a written contract (“Contract”) with TIDWELL CONCRETE CONSTRUCTION, INC. (“Contractor”) to perform work for the Project. A true and correct copy of the Contract for the Project is attached hereto as Exhibit “A” and incorporated herein by this reference;

B. WHEREAS, SURETY issued a performance bond to Contractor, as principal, in favor of DISTRICT, as Obligee, Bond No. 1767491 (“Bond”). A true and correct copy of the Bond is attached hereto as Exhibit “B” and incorporated herein by this reference. In addition, SURETY issued a payment bond No. 1767491 (“Payment Bond”) for the Project;

C. WHEREAS, the DISTRICT represents to the SURETY that the current Project accounting for the Contract is as follows:

Original Contract amount:	\$3,921,621.00
Change Orders to Effective Date:	\$29,695.75
Current adjusted Contract amount:	\$3,951,316.75
Amount paid to date:	<u>(\$1,942,717.64)</u>

“Contract Balance” held by DISTRICT including retention: \$2,008,599.11

The DISTRICT represents to SURETY that no other payments have been made under the Contract, and the DISTRICT currently holds the aforesaid Contract Balance. The SURETY has relied upon these representations in entering into this Agreement;

D. WHEREAS, on February 11, 2011, Contractor abandoned the Project;

E. WHEREAS, DISTRICT terminated the Contract with Contractor by letter dated February 11, 2011, and thereafter has called upon the SURETY to remedy the abandonment by and termination of the Contractor and to complete or to procure completion of the Contract pursuant to the terms of the Bond in accordance with the Contract documents for the Project;

F. WHEREAS, DISTRICT desires to expedite the completion of the work covered under the Contract;

G. WHEREAS, the SURETY has procured bids from qualified, licensed contractors to complete the work required to be performed under the Contract for the Project. Guy Yocum Construction, Inc. has been selected as the responsive and responsible contractor to complete the Contract work (“Completion Contractor”);

H. WHEREAS, the Parties now desire to effect the completion of the remaining work under the Contract for the Project, pursuant to the terms of the Bond;

I. WHEREAS, SURETY is willing and desirous of fulfilling its obligations under the Bond by virtue of the agreement contained herein;

J. WHEREAS, the SURETY has exercised its election under the Bond to tender a Completion Contractor to the DISTRICT to complete the Remaining Work (as defined below)

under the Contract for the Project in discharge of SURETY's obligations to complete the Remaining Work, provided SURETY can be sure that in doing so, the Contract Balance will be used as hereinafter set forth and agreed to among the Parties herein;

K. WHEREAS, the Completion Contractor is willing to enter into an agreement ("Completion Contract") with the DISTRICT to complete the Remaining Work for the sum of \$2,637,000; and

L. WHEREAS, the DISTRICT is willing to accept the SURETY's tender of the Completion Contractor for completion of the Remaining Work as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, and the good and valuable considerations and mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The Recitals set forth above are hereby agreed to by each of the Parties and incorporated herein by this reference as though set forth in full.
2. SURETY hereby tenders Completion Contractor to the DISTRICT to complete all of the work and supply all of the labor and materials necessary to complete Contractor's scope of work remaining to be performed under the Contract as of February 11, 2011, and correction of all existing deficiencies in the reinforcing steel work performed by Contractor ("Remaining Work"). The Remaining Work shall be performed in accordance with this Agreement and the following Contract documents ("Contract Documents"):
 - i. The Contract and all documents referenced and incorporated by reference into the Contract:
 - ii. The Project Manual;

- iii. All plans, drawings and specifications for the Project; and
- iv. Addendums 1 through 4 and approved Change Orders.

- v. Any amendments, changes, or modification to the Contract Documents.

The Parties agree that work and materials described in Construction Change Directives ("CCDs") and Field Change Directives ("FCDs") issued by the DISTRICT to Contractor have not been incorporated into the Contract by change order. Any work contemplated under any CCDs or FCDs issued to Contractor is not included in the Remaining Work. The Parties agree that after this Agreement is executed, should the DISTRICT elect to perform any of the work under the CCDs or FCDs, the DISTRICT will negotiate such matters with Completion Contractor and will not use any of the Contract Balance for funding any such changes to the Contract.

3. DISTRICT recognizes Completion Contractor as acceptable and agrees to enter into a Completion Contract with Completion Contractor. This Agreement is expressly conditioned upon the Completion Contract being duly executed by and between DISTRICT and Completion Contractor pursuant to the terms of the bid submitted by Completion Contractor to SURETY.

4. The amount of the Completion Contract will be \$2,637,000. The Remaining Contract Balance (held by DISTRICT) at the time of this Agreement is \$2,008,599.11. The difference between the Contract Balance and the amount of the Completion Contract is \$628,400.89. SURETY agrees to pay DISTRICT the amount of \$628,400.89, immediately after the DISTRICT enters into the Completion Contract with the Completion Contractor. In addition, SURETY agrees to fully defend, indemnify, and hold DISTRICT harmless from any

stop notice claim for work performed on the Project at the request, direction, or benefit of Contractor, subject to any limitations in the Payment Bond for the Project. This requirement expressly excludes any stop notice claim made by any contractor, person, company or entity with regard to the Remaining Work to be completed by the Completion Contractor.

5. As a condition precedent, this Agreement will not be legally effective and binding on the Parties to it unless and until DISTRICT receives a signed Completion Contract, including any and all forms or documents required by the Contract Documents, from Completion Contractor, and performance and payment bonds acceptable to DISTRICT and SURETY for Completion Contractor's performance of the Completion Contract. After DISTRICT receives the executed Completion Contract and acceptable bonds from Completion Contractor, DISTRICT shall issue its notice to proceed to Completion Contractor within five (5) working days.

6. If DISTRICT and/or Completion Contractor do not execute a Completion Contract, or if DISTRICT does not receive the bonds from Completion Contractor acceptable to DISTRICT and SURETY, or any and all forms or documents required by the Contract Documents, then this Agreement shall automatically, by its terms, be null and void.

7. DISTRICT agrees to immediately notify SURETY's counsel by electronic mail and written confirmation that DISTRICT has received a fully executed Completion Contract and acceptable bonds from Completion Contractor. Upon receipt by DISTRICT of the executed Completion Contract and bonds (performance and payment bonds) acceptable to DISTRICT and SURETY, DISTRICT agrees that SURETY has fully and completely discharged its obligation under its Bond to complete the Remaining Work.

8. Save and except for the Bond obligations released in this Agreement, the Parties

agree that SURETY's remaining obligations, rights, and defenses under its Bond shall remain in full force and effect. Upon that basis, the Parties agree that the SURETY reserves all of its rights, remedies, and defenses under the Bond or the Payment Bond for the Project and that the DISTRICT reserves all of its rights, remedies, and defenses under the Contract Documents.

9. The Parties agree that any payment made by SURETY under this Agreement or its Bond, including the payment contemplated by this Agreement, shall reduce SURETY's Bond penalty accordingly. The Parties further agree that SURETY's maximum liability under its Bond and/or this Agreement shall not exceed the Bond penalty in the amount of \$3,921,621.00 ("Bond Penalty DISTRICT and SURETY agree that DISTRICT reserves the right to an accounting from SURETY regarding any adjusted Bond penalty and DISTRICT reserves its right to dispute such accounting.

10. With regard only to the release of SURETY for its obligation under the Bond for completing the Remaining Work, DISTRICT expressly waives the provisions and protection of Section 1542 of the California Civil Code, 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.

The undersigned expressly acknowledge and understand the significance, effect and consequence of such a waiver, and hereby assumes full responsibility for such waiver.

11. DISTRICT and SURETY agree that SURETY is not released from its Payment Bond obligations. SURETY will continue to be responsible to those claimants who are protected

by the Payment Bond who comply with the terms and conditions of the statute and the Payment Bond. This obligation runs solely to those claimants who performed work and/or supplied materials at the request or direction of, or in any way related to the Contractor. SURETY shall have no obligation or liability under its Payment Bond for work performed for and/or materials furnished to Completion Contractor pursuant to the Completion Contract with DISTRICT.

12. DISTRICT agrees that Completion Contractor shall have 452 calendar days after DISTRICT issues a notice to proceed with the work contemplated by the Completion Contract between DISTRICT and Completion Contractor before DISTRICT is entitled to assess liquidated damages against the Completion Contractor as provided for in the Contract Documents. DISTRICT further agrees that Completion Contractor shall be entitled to all time extensions contemplated under the Contract Documents procedures for requesting Contract time extensions. Except as released in this Agreement, DISTRICT and SURETY agree that any other Contract rights and defenses regarding liquidated damages are reserved.

13. DISTRICT expressly agrees that SURETY shall have no further obligations, liability, duties, or responsibilities for Contract administration or any dealings whatsoever with Completion Contractor.

14. It is understood and agreed that SURETY, by entering into this Agreement, is not acting as a contractor, but instead in its capacity as a performance bond surety.

15. The Parties and each of their signatories hereto warrant that each has the power and authority to execute this Agreement. The Parties agree that if SURETY makes or pursues any claims arising out of or relating to the Contract, the work set forth in the Contract, or this Agreement, such will be deemed proper if made by an officer of SURETY. The Parties have

voluntarily executed this Agreement based on their respective independent investigations.

16. The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties, but, if for any reason any provision is unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Agreement.

17. This Agreement constitutes the entire agreement among the Parties hereto and supersedes any and all prior agreements, arrangements, and/or understandings by and between the Parties. Except as herein modified, all terms and conditions of the Contract shall remain unchanged and in full force and effect.

18. This Agreement shall extend to and be binding upon the Parties hereto and their respective successors and assigns. No rights shall accrue hereunder to or for the use of any other person, firm, corporation, or governmental entity other than the Parties hereto and their respective successors, assigns, and reinsurers.

19. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all of the Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. The Parties further agree that signatures sent by electronic mail in pdf format shall be treated as original signatures to this Agreement.

20. This Agreement has been fully negotiated by the Parties and their counsel and shall not be construed in favor of or against either Party, regardless of who may have drafted it or any of its terms.

21. This Agreement is made, executed and performed in the County of Orange, State

of California, and shall be governed by the laws of the State of California.

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IN WITNESS WHEREOF, the parties hereto have hereunder set their hand and seal the day and year first hereinafter written.

RANCHO SANTIAGO COMMUNITY COLLEGE
DISTRICT acting by and through its Board

BY: _____
DR. RAÚL RODRIGUEZ
SECRETARY TO THE BOARD OF TRUSTEES

GREAT AMERICAN INSURANCE COMPANY

BY: _____
JEFFREY S. JUBERA
BOND CLAIM DIRECTOR

EXHIBIT A (Contract)

AGREEMENT

THIS AGREEMENT, dated the 21st day of April, 20 10, in the County of Orange, State of California, is by and between Rancho Santiago Community College District, (hereinafter referred to as "DISTRICT"), and Tidwell Concrete Construction, Inc., (hereinafter referred to as "CONTRACTOR").

The DISTRICT and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. CONTRACTOR agrees to complete the Project known as BID #1136 Concrete for the Humanities Building, Athletics & Aquatics Complex, Santiago Canyon Entry & Parking Lot, Chapman Entry and Roadway, Loop Road Extension Projects at Santiago Canyon College according to all the terms and conditions set forth in the Project Documents, including but not limited to the Notice Calling For Bids, Information for Bidders, Bid Form, Bid Security, Designation of Subcontractors, Information Required of Bidder, all prequalification forms submitted pursuant to Public Contract Code Section 20111.5, if any, Noncollusion Affidavit, Workers' Compensation Certificate, Faithful Performance Bond, Payment Bond, Escrow Agreement, if applicable, Drug-Free Workplace Certification, Change Orders, Shop Drawing Transmittals, Insurance Certificates and Endorsements, Guarantees, Contractor's Certificate Regarding Non-Asbestos Containing Materials, Disabled Veteran Business Enterprises Certification, if applicable, General Conditions, Supplemental Conditions, if any, Special Conditions, if any, Drawings, Specifications, and all modifications, addenda and amendments thereto by this reference incorporated herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. CONTRACTOR shall perform within the time set forth in Paragraph 4 of this Agreement everything required to be performed, and shall provide, furnish and pay for all the labor, materials, necessary tools, expendable equipment, and all taxes, utility and transportation services required for construction of the Project. All of said work shall be performed and completed in a good workmanlike manner in strict accordance with the drawings, specifications and all provisions of this Agreement as hereinabove defined and in accordance with applicable laws, codes, regulations, ordinances and any other legal requirements governing the Project. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, Division of State Architect, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project Documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT within three (3)

3. DISTRICT shall pay to the CONTRACTOR, as full consideration for the faithful performance of this Agreement, subject to any additions or deductions as provided in the Project Documents, the sum of Three Million Nine Hundred Twenty One Thousand Six Hundred Twenty One Dollars And No Cents (\$ 3,921,621.00).

4. The work shall be commenced on or after the first (1st) day after receiving the DISTRICT'S Notice to Proceed and shall be completed within Four Hundred Ninety Three (493) consecutive calendar days from the date specified in the Notice to Proceed. Rain days are included within this schedule. No extra time will be permitted for rain delays.

5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the DISTRICT will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to DISTRICT as fixed and liquidated damages, and not as a penalty, the sum Three Thousand Five Hundred Dollars (\$ 3,500.00) for each calendar day of delay until work is completed and accepted. Time extensions may be granted by the DISTRICT as provided in Article 63 of the General Conditions. Liquidated damages shall be imposed as set forth in Article 63 of the General Conditions.

6. Termination for Cause or Nonappropriation. In the event CONTRACTOR defaults in the performance of the Agreement as set forth in General Conditions Article 13(a) or if there is a nonappropriation of funds or insufficient funds as set forth in General Conditions Article 13(d), then this Agreement shall terminate or be suspended as set forth in General Conditions Article 13.

Termination for Convenience. DISTRICT has discretion to terminate this Agreement at any time and require CONTRACTOR to cease all work on the Project by providing CONTRACTOR written notice of termination specifying the desired date of termination. Upon receipt of written notice from DISTRICT of such termination for DISTRICT'S convenience, CONTRACTOR shall:

- (i) Cease operations as directed by DISTRICT in the notice;
- (ii) Take any actions necessary, or that DISTRICT may direct, for the protection and preservation of the work; and
- (iii) Not terminate any insurance provisions required by the Project Documents.

In case of such termination for DISTRICT'S convenience, CONTRACTOR shall be entitled to receive payment from DISTRICT for work satisfactorily executed and for proven loss with respect to materials, equipment, and tools, including overhead and profit for that portion of the work completed. In the case of Termination for Convenience, DISTRICT shall have the right to accept assignment of subcontractors. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the DISTRICT.

7. The CONTRACTOR agrees to and does hereby indemnify and hold harmless the DISTRICT, its Governing Board, officers, agents, and employees from every claim or demand made, and every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Any injury to or death of any person(s) or damage to, loss or theft of any property sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the work called for in this AGREEMENT, except for liability resulting from the sole active negligence, or willful misconduct of the DISTRICT.

(b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs either on or off DISTRICT property, if the liability arose due to the negligence or willful misconduct of anyone employed by the CONTRACTOR, either directly or by independent contract,

The CONTRACTOR, at CONTRACTOR'S own expense, cost, and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its Governing Board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its Governing Board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

This indemnity shall survive termination of the contract or final payment thereunder. This indemnity is in addition to any other rights or remedies which the DISTRICT may have under the law or under the Project Documents. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, the DISTRICT may in its sole discretion reserve, retain or apply any monies due to the CONTRACTOR under the Project Documents for the purpose of resolving such claims; provided, however, that the DISTRICT may release such funds if the CONTRACTOR provides the DISTRICT with reasonable assurance of protection of the DISTRICT'S interests. The DISTRICT shall in its sole discretion determine whether such assurances are reasonable.

8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this Agreement, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain the insurance coverages set forth below and in Articles 16, 17, 18 and 19 of the General Conditions. CONTRACTOR agrees to provide all evidences of coverage required by DISTRICT including certificates of insurance and endorsements.

**Public Liability Insurance for injuries
including accidental death, to any one**

person in an amount not less than \$1,000,000.00

and

Subject to the same limit for each
person on account of one accident,
in an amount not less than \$1,000,000.00

Property Damage Insurance
in an amount not less than \$1,000,000.00

Course of Construction
Insurance without exclusion
or limitation in an
amount not less than \$ Value of Contract

Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:

Automotive and truck where operated in amounts as above

Material hoist where used in amounts as above

9. Public Contract Code Section 22300 permits the substitution of securities for any retention monies withheld by the DISTRICT to ensure performance under this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the monies withheld shall be deposited with the DISTRICT, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. The DISTRICT retains the sole discretion to approve the bank selected by the CONTRACTOR to serve as escrow agent. Upon satisfactory completion of the Agreement, the securities shall be returned to the CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request DISTRICT to make payment of earned retention monies directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments into securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the Agreement, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from DISTRICT pursuant to the terms of Section 22300.

10. If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of California and that Jay Moritz, whose title is Contractor, is authorized to act for and bind the corporation.

11. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

12. This Agreement constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Governing Board of the District. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

DISTRICT

By: [Signature]
Signature

Peter J. Hardash
Print Name

Vice Chancellor - Business Operations
and Fiscal Services
Title

CONTRACTOR

By: [Signature]
Signature

Jay Moritz
Print Name

Contractor
Title

731006
Contractor's License No.

33-0729094
Tax ID/Social Security No.

(CORPORATE SEAL OF CONTRACTOR,
if corporation)

EXHIBIT B (Performance Bond)

Bond No. 1767491
Premium \$39,162.00
Executed in Four Counterparts

Santiago Canyon College
Humanities Bldg, Athletics & Aquatics Complex,
"Santiago Cyn. Entry" & Parking Lot,
"Chapman Entry" and Roadway, Loop Road Extension

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENT:

WHEREAS, the Rancho Santiago Community College District of Orange County, California (hereinafter referred to as "DISTRICT"), awarded to Tidwell Concrete Construction, Inc. (hereinafter referred to as the "Contractor/Principal") the contract for the work described as: Bld #1136 Concrete for the Humanities Building; Athletics & Aquatics Complex; Santiago Canyon Entry & Parking Lot; Chapman Entry and Roadway; Loop Road Extension Projects at Santiago Canyon College;

WHEREAS, said Contractor/Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract which contract is incorporated herein by reference;

NOW, THEREFORE, we the undersigned Contractor, as Principal, and Surety, a California admitted surety insurer are held and firmly bound to the DISTRICT for one hundred percent (100%) of the total amount payable by the DISTRICT under the terms of the contract awarded by the DISTRICT to the Contractor/Principal, lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bonded Contractor/Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said contract which is attached hereto and incorporated herein by reference and any alteration and/or amendments thereof, made as therein provided, including, but not limited to, the provisions regarding contract duration and liquidated damages, all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the contract, the above obligation shall hold good for a period of one (1) year(s) after the acceptance of the work by DISTRICT, during which time if Contractor/Principal shall fail to make full, complete, and satisfactory repair and replacements and totally protect the DISTRICT from loss or damage made evident during the period of one (1) year(s) from the date of completion of the work, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligation of Surety hereunder shall continue so long as any obligation of Contractor remains.

Whenever Contractor/Principal shall be, and is declared by the DISTRICT to be, in default under the contract, the DISTRICT having performed the DISTRICT's obligations thereunder, the Surety shall promptly remedy the default, or shall promptly:

Schools Legal Service of O.C.
May 2002

Faithful Performance Bond
Page 1

1. Complete the contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a contract between such bidder and the DISTRICT, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth above. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor/Principal by the DISTRICT under the contract and any modifications thereto, less the amount previously properly paid by the DISTRICT to the Contractor/Principal.

Surety expressly agrees that the DISTRICT may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Surety shall not utilize Contractor/Principal in completing the contract nor shall Surety accept a bid from Contractor/Principal for completion of the work if the DISTRICT, when declaring the Contractor/Principal in default, notifies Surety of the DISTRICT's objection to Contractor's/Principal's further participation in the completion of the work.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the DISTRICT named herein or the successors or assigns of the DISTRICT. Any suit under this bond must be instituted within the applicable statute of limitations period.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Project documents, or of the work to be performed thereunder, shall in any way affect its obligations on this bond; and it does hereby waive notice of any change, extension of time, alteration or modification of the Project documents or of work to be performed thereunder.

Contractor/Principal and Surety agree that if the DISTRICT is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay DISTRICT's reasonable attorney's fees and costs incurred, with or without suit, in addition to the above amount.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 6th day of
April, 2010

**CORPORATE SEAL, IF
APPLICABLE, AND NOTARIAL
ACKNOWLEDGEMENT OF
CONTRACTOR**

Tidwell Concrete Construction, Inc.
Contractor/Principal
By: [Signature]
Signature
Jeff Strzoff Jay Moltz
Operations Manager Controller
Print Name and Title

**SEAL AND NOTARIAL
ACKNOWLEDGEMENT OF
SURETY**

Great American Insurance Company

Surety

By: [Signature]

Signature

Jeri Apodaca, Attorney in Fact

Print Name and Title

**(Mailing Address, Telephone
No. and Facsimile No. of Surety)**

750 The City Drive South, Suite 300

Orange, CA 92868-6905

714-740-3279; 714-740-3300 fax

**(Attach Attorney-in-Fact Certificate
and Required Acknowledgement)**

GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 580 WALNUT STREET • CINCINNATI, OHIO 45202 • 513-388-5000 • FAX 513-723-2740

The number of persons authorized by
this power of attorney is not more than NINE

No. 0 14473

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below its true and lawful attorney-in-fact, for it and in its name, place and stead to execute in behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
JAMES A. SCHALLER		
NANETTE MARIELLA-MYERS		
MIKE PARIZINO		
LISA CRAIL		
LINDA ENRIGHT		
JANE KEPNER		
RHONDA C. ABEL		
JERI APODACA		
RACHELLE RHEAULT		
	ALL OF IRVINE, CALIFORNIA	ALL \$75,000,000.00

This Power of Attorney revokes all previous powers issued in behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 8th day of, MAY, 2009.

Attest

GREAT AMERICAN INSURANCE COMPANY

STATE OF OHIO, COUNTY OF HAMILTON - SE:

DAVID C. KITCHIN (513-412-4802)

On this 8th day of MAY, 2009, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is the Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated March 1, 1993.

RESOLVED: That the Division President, the Division Senior Vice President, the several Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract or suretyship or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this day of, FEB 02 2010

Bond No. 1767491
Premium Included in Performance Bond
Executed in Four Counterparts

Santiago Canyon College
Humanities Bldg; Athletics & Aquatics Complex;
"Santiago Cyn. Entry" & Parking Lot;
"Chapman Entry" and Roadway; Loop Road Extension

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENT:

WHEREAS, the Rancho Santiago Community College District of Orange County, California ("hereinafter referred to as DISTRICT"), has awarded to Tidwell Concrete Construction, Inc., hereinafter referred to as the "Contractor/Principal" a contract for the work described as: Bid #1138 Concrete for the Humanities Building; Athletics & Aquatics Complex; Santiago Canyon Entry & Parking Lot; Chapman Entry and Roadway; Loop Road Extension Projects at Santiago Canyon College;

WHEREAS, said Contractor/Principal is required by Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code to furnish a bond in connection with said contract;

NOW, THEREFORE, we, the Contractor/Principal and Great American Insurance *, as Surety, a California admitted surety insurer, are held firmly bound unto the DISTRICT for one hundred percent (100%) of the total amount payable by the DISTRICT under the terms of the contract awarded by the DISTRICT to the Contractor/Principal lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

* Company

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Contractor/Principal, his/her or its heirs, executors, administrators, successors, or assigns, or a subcontractor, shall fail to pay any person or persons named in Civil Code Section 3181 or fail to pay for any materials, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind, or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Section 13020 of the Unemployment Insurance Code with respect to work and labor thereon of any kind, then said Surety will pay for the same, in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond, such reasonable attorney's fees as shall be fixed by the court, awarded and taxed as provided in Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such person or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or

Schools Legal Service of O.C.
May 2002

Payment Bond
Page 1

relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the DISTRICT and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 and 3112 of the California Civil Code, and has not been paid the full amount of his/her or its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

Any claims under this bond may be addressed to:

Great American Insurance Company

(Name and address of Surety)

750 The City Drive South, Suite 300

(Name and address of agent or representative in California, if different from above)

Orange, CA 92868-6905

714-740-3279

(Telephone and facsimile number of Surety or agent or representative in California)

714-740-3300

IN WITNESS WHEREOF, we have hereto set our hands and seals on this 6th day of
April, 2010

**CORPORATE SEAL, IF
APPLICABLE, AND NOTARIAL
ACKNOWLEDGEMENT OF
CONTRACTOR**

Kidwell Concrete Construction, Inc.
Contractor/Principal
By: [Signature]
Jeff Stolzoff Jay Moritz
Operations Manager Controller
Print Name and Title

**SEAL AND NOTARIAL
ACKNOWLEDGEMENT OF
SURETY**

Great American Insurance Company
Surety

By: [Signature]
Signature

Jeri Apodaca, Attorney in Fact
Print Name and Title

**(Mailing Address, Telephone and
Facsimile No. of Surety)**

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NANETTE MARIELLA-MYERS		
MIKE PARIZINO		
LISA CRAIL		
LINDA ENRIGHT		
JANE KEPNER		
RHONDA C. ABEL		
JERI APODACA		
RACHELLE RHEAULT		
	ALL OF IRVINE, CALIFORNIA	ALL \$75,000,000.00

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GREAT AMERICAN INSURANCE COMPANY

STATE OF OHIO, COUNTY OF HAMILTON - ss:

DAVID G. KITCHIN (513-412-4802)

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CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this _____ day of,

APR 06 2010

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT**BUSINESS OPERATIONS/FISCAL SERVICES**

To:	Board of Trustees	Date:	April 11, 2011
Re:	Adoption of Resolution for Completion of Work Originally Contracted to Tidwell Concrete Construction, Inc. for the Humanities Building; Athletics and Aquatics Complex; Santiago Canyon Entry and Parking Lot; Chapman Entry and Roadway and Loop Road Extension Projects at Santiago Canyon College		
Action:	Adoption of Resolution		

BACKGROUND

On April 21, 2010 the District awarded construction bid #1136 to Tidwell Concrete Construction, Inc. for concrete work for the Santiago Canyon College Humanities Building, Athletics and Aquatics Complex and other concrete work identified in the bid. The value of the bid contract was \$3,921,621. On February 11, 2011, Tidwell Concrete Construction, Inc., without warning, immediately ceased their business operations. Tidwell Concrete Construction, Inc. effectively abandoned the project and contractual requirements of the project. On February 11, 2011, the District's construction attorney (Hugh Lee of Atkinson, Andelson, Loya, Ruud & Romo) issued a Notice of Termination to Tidwell Concrete Construction, Inc. based on their abandonment of the project and demanded Tidwell's surety (Great American Insurance Company) fulfill its obligations to complete the project under the performance bond.

ANALYSIS

The surety company responded quickly and professionally to the Districts' requests to minimize further costs and delays to the construction projects due to Tidwell's default. The surety procured bids to complete the work required under the original contract with Tidwell. The surety has chosen Guy Yocum Construction, Inc. to complete the remaining unfinished concrete work abandoned by Tidwell Concrete Construction, Inc. A tender agreement between the District and the surety company has been negotiated.

A resolution for completion of work originally contracted to Tidwell Concrete Construction, Inc. is necessary in order to award the unfinished work, without competitive bidding, to the surety's Completion Contractor Guy Yocum Construction, Inc. The District's construction attorney has advised that "takeover" work may be exempted, by case law, from competitive bidding requirements upon termination for cause (abandonment of the project) of the original competitively bid original contract.

RECOMMENDATION

It is recommended that the Board of Trustees adopt Resolution No. 11-07 for the completion of work originally contracted to Tidwell Concrete Construction, Inc. – Bid #1136, awarded on April 21, 2010 as presented.

Fiscal Impact:	None	Board Date:	April 11, 2011
Prepared by:	Peter J. Hardash, Vice Chancellor, Business Operations/Fiscal Services		
Submitted by:	Peter J. Hardash, Vice Chancellor, Business Operations/Fiscal Services		
Recommended by:	Dr. Raúl Rodríguez, Chancellor		

**BEFORE THE GOVERNING BOARD OF THE
RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT**

**RESOLUTION FOR COMPLETION OF WORK ORIGINALLY CONTRACTED TO
TIDWELL CONCRETE CONSTRUCTION, INC. FOR THE HUMANITIES BUILDING;
ATHLETICS & AQUATICS COMPLEX; SANTIAGO CANYON ENTRY & PARKING
LOT; CHAPMAN ENTRY AND ROADWAY; LOOP ROAD EXTENSION PROJECTS
AT SANTIAGO CANYON COLLEGE**

RESOLUTION NO. 11-07

WHEREAS, the Governing Board of the Rancho Santiago Community College District (“District”) originally awarded a construction contract for concrete and related work for the Humanities Building; Athletics & Aquatics Complex; Santiago Canyon Entry & Parking Lot; Chapman Entry and Roadway; Loop Road Extension Projects at Santiago Canyon College (“Project”) to Tidwell Concrete Construction, Inc. (“Tidwell”);

WHEREAS, the District and Tidwell entered into a contract for the Project on or about April 21, 2010;

WHEREAS, on February 11, 2011, the District received notice from Tidwell that it was effectively abandoning the Project;

WHEREAS, in a letter dated February 11, 2011, District’s legal counsel issued a Notice of Termination based on Tidwell’s abandonment of the Project and demanded Tidwell’s surety fulfill its obligations under the performance bond;

WHEREAS, given the current state of the work and the uncertainty of the issues left unresolved by Tidwell at the Project, there is a need to complete all remaining work and any remedial and repair work as soon as possible;

WHEREAS, competitive bidding for the completion and repair work on the Project would cause unnecessary and further delays;

WHEREAS, it would work an incongruity and not produce any advantage to the District to competitively bid the completion and repair work due to the immediate need of completing the Project and providing safe and adequate facilities;

WHEREAS, Meakin v. Steveland (1977) 68 Cal.App.3d 490 and Los Angeles Dredging v. Long Beach (1930) 210 Cal. 348 hold that statutes requiring competitive bidding do not apply when competitive bidding would work an incongruity or not produce any advantage;

WHEREAS, in order to complete all necessary work, it is necessary to enter into a contract with a contractor to complete the Tidwell's work;

WHEREAS, Shore v. Central Contra Costa Sanitary District (1962) 208 Cal.App. 2d 465 and Garvey School District v. Paul (1920) 50 Cal.App. 75 hold that a contract for takeover work may be exempted from competitive bidding upon termination for cause of the original contractor; and

WHEREAS, after issuing a request for completion bids to several different contractors, Tidwell's surety has tendered, and the District has accepted, Guy Yocum Construction, Inc. to complete Tidwell's work;

WHEREAS, the District desires by a majority of the vote of the Governing Board to delegate authority to execute and deliver contracts and agreements, and otherwise negotiate and contract with parties engaged in and prospective parties to be engaged in completion and repair of the Project, to the District's Vice Chancellor for Business Operations and Fiscal Services.

NOW, THEREFORE, BE IT RESOLVED that the Governing Board makes the following findings which exist:

1. That the above recitals are true and correct.
2. That immediate completion and repair work on the Project is necessary to provide safe and adequate facilities.
3. That it would work an incongruity and not produce any advantage to the District to competitively bid the completion and repair work on the Project.
4. That the District's Governing Board hereby approves the award of a contract to Guy Yocum Construction, Inc., Inc. to complete the work abandoned by Tidwell.
5. That the District's Governing Board hereby approves the delegation of authority and appoints the District's Vice Chancellor for Business Operations and Fiscal Services, who is hereby authorized and directed, pursuant to a majority of the vote of the Governing Board, to execute and deliver contracts and agreements, and otherwise negotiate and contract with parties engaged in and prospective parties to be engaged in completion and repair of the work abandoned by Tidwell, and to do any and all things necessary, that he may deem necessary or advisable in order to effectuate the purpose and intent of this Resolution, all subject to ratification of the Board of Trustees.
6. That this Resolution shall be effective as of the date of its adoption.

APPROVED, PASSED AND ADOPTED by the Governing Board of the Rancho Santiago Community College District this 11th day of April, 2011, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAINED: _____

I, Dr. Raúl Rodríguez, Secretary to the Board of Trustees of the Rancho Santiago Community College District, do hereby certify that the foregoing Resolution was adopted by the Board of Trustees on the 11th day of April, 2011, by the above described vote of the Governing Board.

Secretary to the Board of Trustees
Rancho Santiago Community College District

