

DRAFT

PUBLIC IMPROVEMENT AGREEMENT

by and between

CITY OF CHINO

and

CHAFFEY COMMUNITY COLLEGE DISTRICT

PUBLIC IMPROVEMENT AGREEMENT BETWEEN
THE CITY OF CHINO
AND
CHAFFEY COMMUNITY COLLEGE DISTRICT

Agreement Date: _____

Project Description: Emergency Fire Access Driveway

Tentative Map No.: N/A

Estimated Total Cost of Improvements: \$300,000

Security:

Bond No.: _____

Surety: _____

Designees for the Service of Written Notice:

CITY:	DISTRICT:
Jesus Plasencia Assistant City Engineer 13220 Central Avenue Chino, CA 91710 (909) 334-3417 jplasencia@cityofchino.org	Troy Ament Associate Superintendent, Administrative Services & Emergency Operations 5885 Haven Ave. Rancho Cucamonga, California 91737 (909) 238-3764 Troy.ament@chaffey.edu
CITY PROJECT INSPECTOR	
Isaac Ortega Permit & Inspection Supervisor 13220 Central Avenue Chino, CA 91710 (909) 334-3501 iortega@cityofchino.org	

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PUBLIC IMPROVEMENT AGREEMENT

THIS PUBLIC IMPROVEMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 20____, by and between the CITY OF CHINO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California, ("CITY"), and Chaffey Community College District, a public community college district ("DISTRICT").

RECITALS

A. CITY is the owner of certain real property located in the City of Chino, County of San Bernardino, State of California (the "Property"), as described on Exhibit "A", which DISTRICT has agreed to construct certain works of improvement thereon, as hereafter set forth.

B. DISTRICT has applied for and received conditional approval from the City to make ADA-related improvements to the City's existing sidewalk and street , at the intersection and surrounding area of Eucalyptus Ave. and Satterfield Way (the "Project").

C. The City desires to assure that said improvements proposed for the Project will be constructed in a good workmanlike manner and in accordance with all applicable laws, statutes, ordinances, resolutions and regulations now in force and effect in the City of Chino and the State of California, all of which are incorporated herein.

D. DISTRICT acknowledges familiarity with the various requirements for public improvements contained in the Chino Municipal Code and agrees to comply therewith.

COVENANTS

Based upon the foregoing Recitals which are incorporated herein by reference and in consideration of City's site plan or other entitlements for the Property and permitting development of the Property to proceed, DISTRICT agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1. Works of Improvement. DISTRICT agrees, at its sole cost and expense, to construct or install, or cause to be constructed or installed ADA-compliant improvements to sidewalks, curb ramps, one driveway approach for emergency vehicle access to the DISTRICT's Chino Property, and streets located at the intersection and surrounding area of Eucalyptus Ave. and Satterfield Way ("Works of Improvement"). The estimated construction cost for the Works of Improvement is \$300,000.00.

1.2. Intent of Plans. The intent of the Plans referenced in Section 1.1 is to prescribe a complete work of improvement which DISTRICT shall perform or cause to be performed in a manner acceptable to the City Engineer, (or designee), and in full compliance with all codes and the terms of this Agreement. DISTRICT shall complete a functional or operable

improvement or facility, even though the Plans may not specifically call out all items of work required for DISTRICT's contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made or information necessary to carry out the full intent and meaning of the Plans, DISTRICT or its contractor shall immediately notify its design engineer who will seek approval of the City Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the City Engineer whose decision thereon shall be final.

DISTRICT recognizes that the Plans consist of general drawings. All authorized alterations affecting the requirements and information given on the Plans shall be in writing and approved by the City Engineer. The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the City Engineer's prior written approval, no change shall be made by DISTRICT or its contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.3. Performance of Work. DISTRICT shall furnish or cause to be furnished all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform DISTRICT's obligations under this Agreement.

1.4. Changes in the Work. The City and DISTRICT may mutually agree, in writing, to make changes to the work being performed by the DISTRICT and/or its contractors.

1.5. Defective Work. DISTRICT shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any work found by the City Engineer to be defective.

1.6. No Warranty by City. The Plans for the Works of Improvement have been prepared by or on behalf of DISTRICT or its consultants or contractors, and City makes no representation or warranty, express or implied, to DISTRICT or to any other person regarding the adequacy of the Plans or related documents.

1.7. Authority of the City Engineer. In addition to the authority granted to the City Engineer elsewhere in this Agreement, the City Engineer shall have the authority to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, and all questions as to the satisfactory and acceptable fulfillment of the terms of this Agreement by DISTRICT and its contractor.

1.8. Documents Available at the Site. DISTRICT shall cause its contractor to keep a copy of all approved Plans at the job site and shall give access thereto to the City's inspectors and engineers at all times.

1.9. Inspection. DISTRICT shall ensure that an authorized representative is available to address inquiries at all times during which work is being done who has full authority to act for DISTRICT, or its design engineer, and DISTRICT's contractor(s) regarding the Works of Improvement. DISTRICT shall cause its contractor to furnish the City with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the City inspector requests it, the DISTRICT's contractor, at any time before acceptance of the Works of Improvement, shall remove or uncover such portions of the finished work as may be

directed which have not previously been inspected. After examination, the DISTRICT's contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City Engineer (or designee) shall not be considered as direct control of the individual workmen on the job site. City's inspectors shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by City shall not relieve DISTRICT or its contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.10. Compliance with Law; Applicable Standards for Improvements. In addition to the express provisions of this Agreement and the Plans, DISTRICT shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules and regulations.

DISTRICT shall construct the improvements in accordance with the City standards in effect at the time of the adoption of this Agreement. City reserves the right to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances.

1.11. Suspension of Work. The City Engineer shall have authority to order suspension of the work for failure of the DISTRICT's contractor to comply with law pursuant to Section 1.12. In case of suspension of work for any cause whatsoever, DISTRICT and its contractor shall be responsible for all materials and shall store them properly if necessary and shall provide suitable interim drainage and/or dust control measures, and erect temporary structures where necessary.

1.12. Erosion and Dust Control and Environmental Mitigation. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

1.13. Final Acceptance of Works of Improvement. After DISTRICT's contractor has completed all of the Works of Improvement, DISTRICT shall then request a final inspection of the work. If items are found by the City's inspectors to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City will inform the DISTRICT or its contractor of such items. After the DISTRICT's contractor has completed these items, the procedure shall then be the same as specified above for the DISTRICT's contractor's initial request for final inspection. If items are found by City's inspectors to be incomplete or not in compliance after two (2) "final" inspections, the City may require the DISTRICT or its contractor, as a condition to performing further field inspections, to submit in

writing a detailed statement of the work performed subsequent to the date of the previous inspection which was found to be incomplete or not in compliance at that time.

No inspection or acceptance pertaining to specific parts of the Works of Improvement shall be construed as final acceptance of any part until the overall final acceptance by the City Engineer is made. The City Engineer shall make a certification of completion and acceptance on the Works of Improvement by recordation of a Notice of Acceptance on behalf of the City. Final acceptance shall not constitute a waiver by the City Engineer of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be the date of the Notice of Acceptance.

1.14. Vesting of Ownership. Upon recordation of the Notice of Acceptance, ownership of the Works of Improvement shall vest in the City.

1.15. DISTRICT's Obligation to Warn Public During Construction. Until recordation of the Notice of Acceptance, DISTRICT shall give good and adequate warning to the public of any dangerous condition of the Works of Improvements and shall take reasonable actions to protect the public from such dangerous condition. Until recordation of the Notice of Acceptance, DISTRICT shall provide forty-eight (48) hours' advance written notice to all neighboring property owners and tenants affected by DISTRICT's operations or construction of the hours, dates and duration of any planned construction activities.

1.16. Injury to Public Improvements, Public Property or Public Utility. Until recordation of the Notice of Acceptance of the Works of Improvement, DISTRICT assumes responsibility for the care and maintenance of, and any damage to, the Works of Improvements. DISTRICT shall replace or repair all Works of Improvements, public property, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless whether resulting from the acts of the DISTRICT, prior to the recordation of the Notice of Acceptance. DISTRICT shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss or damage, regardless of cause, occurring to the work or Works of Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

2. Time for Performance.

2.1. Commencement and Completion Dates. Subject to Sections 2.2 and 2.3 below, DISTRICT shall (i) commence with construction and installation of the Works of Improvement one-hundred and twenty (120) days following City's approval of the Plans ("Commencement Date"); and (ii) complete or cause to be completed all of the Works of Improvement within two (2) years after the Commencement Date. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the Works of Improvement hereunder may be extended by up to three (3) additional one-year periods. Extensions shall be executed in writing by the City Engineer. The City Engineer in his or her

sole discretion determines whether or not the DISTRICT has established good cause for an extension. As a condition of such extension, the City Engineer may require DISTRICT to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer. If DISTRICT requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

2.2. Phasing Requirements. Notwithstanding the provisions of Section 2.1, the City reserves the right to control and regulate the phasing of completion of specific Works of Improvement as required to comply with applicable City ordinances, regulations, and rules relating to the timely provision of public services and facilities. In addition to whatever other remedies the City may have for DISTRICT's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, DISTRICT acknowledges City's right to withhold the issuance of further building permits on the Property until such phasing requirements are satisfied. Prior to issuance of building permits, DISTRICT shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both. Final inspections or issuance of Certificates of Occupancy may be withheld from the DISTRICT by the City, if, upon a determination by the City Engineer, completion of specific Works of Improvements or other requirements associated with the development of the Property have not been completed to the City Engineer's satisfaction.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, DISTRICT's time for commencement and completion of the Works of Improvement shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of DISTRICT, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, pandemics, acts or failures to act of a public agency (including City), required changes to the scope of work required by City, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than five (5) days prior to City's receipt of a written notice from DISTRICT or its contractor detailing the grounds for DISTRICT's claim to a right to extend its time for performance hereunder. The City Engineer shall evaluate all claims to Force Majeure and make a reasonable determination regarding the length of any extension of time for commencement and/or completion of the Works of Improvement and the City Engineer's decision shall be final.

2.4. Continuous Work. After commencement of construction of the Works of Improvement (or separate portion thereof), DISTRICT shall cause such work to be diligently pursued to completion and shall not abandon the work for a consecutive period or more than thirty (30) days, events of Force Majeure excepted.

3. Labor.

3.1. Labor Standards. This Agreement is subject to, and DISTRICT agrees to comply with, all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, worker compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including section 1720 to 1740, 1770 to 1780, 1810 to 1815,

1860 to 1861, which provisions are specifically incorporated herein by reference as set forth herein in their entirety. DISTRICT shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the Works of Improvement.

3.2. Nondiscrimination. In accordance with the California Fair Employment and Housing Act ("FEHA"), California Government Code Section 12940 *et seq.*, DISTRICT agrees that DISTRICT, its agents, employees, contractors, and subcontractor performing any of the Works of Improvement shall not discriminate, in any way, against any person on the basis of race, ethnicity, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. DISTRICT shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of this Agreement.

3.3. Licensed Contractors. DISTRICT shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed. All of DISTRICT's contractors and subcontractors shall obtain a valid City of Chino business license prior to performing any work pursuant to this Agreement. DISTRICT shall provide the City Engineer with a list of all of its contractors and subcontractors prior to initiating any work, and all valid Contractor's licenses and business licenses issued thereto as a condition of constructing the Works of Improvements.

3.4. Worker's Compensation. DISTRICT shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to City a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security. At the time DISTRICT executes this Agreement, DISTRICT shall furnish to City an executed copy of the Performance Bond included as Exhibit D.

5. Cost of Construction and Provision of Inspection Service.

5.1. DISTRICT Responsible for All Costs of Construction. DISTRICT shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement. In the event DISTRICT is entitled to reimbursement from City for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between DISTRICT and City prior to construction of the Works of Improvement.

5.2. Payment to City for Cost of Related Inspection and Engineering Services. Developer shall compensate City for all of City's costs reasonably incurred in having its authorized representative make the usual and customary inspections of the Works of Improvement. In addition, Developer shall compensate City for all design, plan check, evaluating any proposed or agreed-upon changes in the work. The procedures for deposit and payment of such fees shall be as established by the City. In no event shall Developer be entitled to additional inspections or a final inspection and acceptance of any of the Works of

Improvement until all City fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

6. Acceptance of Offers of Dedication. The City Council shall pass as appropriate resolution or resolutions accepting all offers of dedication shown on the approvals for the Project, with acceptance to become effective upon completion and acceptance by City of the Works of Improvement.

7. Warranty of Work. DISTRICT shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of final acceptance. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, DISTRICT, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the City in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should DISTRICT fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by DISTRICT. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law.

8. Default.

8.1. Default by DISTRICT. Default by DISTRICT shall include, but not be limited to:

- (a) DISTRICT's failure to timely commence construction of Works of Improvement under this Agreement;
- (b) DISTRICT's failure to timely complete construction of the Works of Improvement;
- (c) DISTRICT's failure to perform substantial construction work for a period for 20 consecutive calendar days after commencement of the work;
- (d) DISTRICT's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which DISTRICT fails to discharge within 30 days;
- (e) The commencement of a foreclosure action against the Property or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
- (f) DISTRICT's failure to perform any other obligation under this Agreement.

8.2. Remedies. The City reserves all remedies available to it at law or in equity for a default or breach of DISTRICT's obligations under this Agreement. The City shall have the right, subject to this Section, to draw upon or use the appropriate security to mitigate the City's

damages in the event of default by DISTRICT. The City's right to draw upon or use the security is in addition to any other remedy available to City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the improvements and, therefore, City's damages for DISTRICT's default shall be measured by the cost of completing the required improvements. The City may use the sums provided by the securities for the completion of the Works of Improvement in accordance with the plans. In the event the DISTRICT fails to cure any default under this Agreement within 20 days after the City mails a notice of such default to the DISTRICT and the DISTRICT's surety, DISTRICT authorizes the City to perform the obligation for which DISTRICT is in default and agrees to pay the entire cost of such performance by the City. The City may take over the work and complete the Works of Improvement, by contract or by any other method City deems appropriate, at the expense of the DISTRICT. In such event, City, without liability for doing so, may complete the Works of Improvement using any of DISTRICT's materials, appliances, plans and other property that are at the work site and that are necessary to complete the Works of Improvement.

8.3. Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to City for a default by DISTRICT hereunder, the DISTRICT agrees that the choice of remedy or remedies for DISTRICT's breach shall be in the discretion of the City. Additionally, any remedy specifically provided in this Agreement shall be in addition to, and not exclusive of, City's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

8.4. Attorney's Fees and Costs. In the event of any dispute arising out of DISTRICT's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

8.5. Waiver. No waiver by the City of any breach or default by the DISTRICT shall be considered valid unless in writing, and no such waiver by the City shall be deemed a waiver of any subsequent breach or default by the DISTRICT.

9. Indemnity/Hold Harmless. City or any officer, employee or agent thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of DISTRICT, its agents, employees, contractors and subcontractors in the performance of this Agreement. DISTRICT further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of DISTRICT, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability or loss arising out of the sole active negligence of the City, its officials, boards,

commissions, the members thereof, agents and employees, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design or construction of the improvements.

After recordation of the Notice of Acceptance, the DISTRICT shall remain obligated to eliminate any latent defect in design or dangerous condition caused by the design or construction defect for a period of one (1) year; however, DISTRICT shall not be responsible for routine maintenance.

10. Insurance Requirements. DISTRICT, at DISTRICT's sole cost and expense and for the full term of this Agreement and any extensions thereto, shall obtain and maintain all of the following minimum insurance requirements in a form approved by the City's authorized designee for Risk Management prior to commencing any work:

(a) Commercial General Liability policy with a minimum \$1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles:

- (i) Premises operations; including X, C, and U coverage;
- (ii) Owners' and contractors' protection;
- (iii) Blanket contractual;
- (iv) Completed operations; and
- (v) Products.

(b) Commercial Business Auto policy with a minimum \$1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

- (i) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and
- (ii) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

(c) Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the DISTRICT:

- (i) This policy shall provide coverage for Workers' Compensation (Coverage A); and

- (i) This policy shall provide coverage for \$1,000,000 Employers' Liability (Coverage B).
 - (ii) Pursuant to Labor Code section 1861, DISTRICT by executing this Agreement certifies: *"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."*
 - (iii) Prior to commencement of work, the DISTRICT shall file with the City's Risk Manager a Certificate of Insurance or certification of permission to self-insure workers' compensation conforming to the requirements of the Labor Code.
- (d) Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:
- (i) "The City of Chino, its officers, employees and agents are hereby added as additional insureds."
 - (ii) "This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City may possess, including any self-insured retention the City may have and any other insurance the City does possess shall be considered excess insurance only."
 - (iii) "This insurance shall act for each insured and additional insured as though a separate policy has been written for each. This, however, will not act to increase the limit of the insuring company."
 - (iv) "Thirty (30) days prior written notice of cancellation shall be given to the City of Chino in the event of cancellation and/or reduction in coverage, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium." Such notice shall be sent to the Risk Manager at the address indicated in Subsection f below.
 - (v) Subsection d(iv) hereinabove "Cancellation Notice" is the only endorsement required of the Workers' Compensation and Employers' Liability policy.
- (e) Admitted Insurers. All insurance companies providing insurance to the DISTRICT under this Agreement shall be admitted to transact the business of insurance by the California Insurance Commissioner.

(f) Proof of Coverage. Copies of all required endorsements shall be attached to the Certificate of Insurance which shall be provided by the DISTRICT's insurance company as evidence of the coverage required herein and shall be mailed to:

City of Chino
Risk Management
13220 Central Avenue
Chino, CA 91710

11. Environmental Warranty.

11.1. Prior to the acceptance of any dedications or Works of Improvement by City, DISTRICT shall provide City with a written warranty in a form substantially similar to Exhibit "C" attached hereto and incorporated herein by reference, that:

(a) Neither the property to be dedicated nor DISTRICT are in violation of any environmental law, and neither the property to be dedicated nor the DISTRICT are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the property to be dedicated.

(b) Neither DISTRICT nor any other person with DISTRICT's permission to be upon the property to be dedicated shall use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

(c) DISTRICT has not caused or permitted the release of and has no knowledge of the release or presence of any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(d) DISTRICT's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated.

11.2. DISTRICT shall give prompt written notice to City of:

(a) Any proceeding or investigation by any federal, state or local governmental

(b) authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

(c) Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(d) DISTRICT's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

12. General Provisions.

12.1. Successors and Assigns. This Agreement shall be binding upon all successors and assigns to DISTRICT's right, title, and interest in and to the Property and any portion thereof. DISTRICT hereby consents to City recording this Agreement as official records of San Bernardino County, affecting fee title interest to the Property to provide constructive notice of the rights and obligations incurred by DISTRICT in the City's approval of this Agreement. DISTRICT.

12.2. No Third-Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor DISTRICT intend to create any third-party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

12.3. No Vesting Rights. Performance by the DISTRICT of this Agreement shall not be construed to vest DISTRICT's rights with respect to any change in any zoning or building law or ordinance.

12.4. DISTRICT is Not Agent of City. Neither DISTRICT nor DISTRICT's agents, contractors, or subcontractors are agents or contractors of the City in connection with the performance of DISTRICT's obligations under this Agreement.

12.5. Time of the Essence. Time is of the essence of DISTRICT's performance of all of its obligations under this Agreement.

12.6. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notice shall be provided to the persons listed on Pages 1 and 2 of this Agreement by the parties for this purpose.

Either party may provide a new designated representative and/or address by written notice as provided in this Section.

12.7. No Apportionment. Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other DISTRICTs for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing, therefore. Nor shall anything in the Agreement commit City to any such apportionment.

12.8. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

12.9. Captions. The captions of this Agreement are for convenience and reference only and shall not be used in the interpretation of any provision of this Agreement.

12.10. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into the terms of this Agreement.

12.11. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

12.12. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

12.13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

13. Authority. The persons executing this Agreement on behalf of the parties warrant the (i) party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into of this Agreement does not violate any provisions of any other agreement to which said party is bound.

14. Governing Board Approval. Parties agree that this Agreement is contingent on approval by the Chaffey Community College District Governing Board.

IN WITNESS WHEREOF, the City and the DISTRICT have caused this Agreement to be executed the day and year first above written.

APPROVED AS TO FORM:

Fred Galante, City Attorney

APPROVED AS TO CONTENT:

Hye Jin Lee, P.E.
Director of Public Works

CHAFFEY COMMUNITY COLLEGE DISTRICT

By: _____
(Signature and Date)

Name: _____
(Please type or print name)

Title: _____
(Please type or print title)

CITY OF CHINO

Linda Reich, City Manager

Dated: _____

ATTEST:

By _____
Natalie Gonzaga, City Clerk

Dated: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____,

*Date**Here Insert Name and Title of the Officer*

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

*Signature of Notary Public**Place Notary Seal Above***OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

EXHIBIT “A”
LOCATION MAP

EXHIBIT "B"

WORKS OF IMPROVEMENT

- A. Relocation of all public utility structures as necessary to properly construct the required improvements. Disposal of all rocks and debris located within any public right-of-way within said development or on the boundary streets thereof.
- B. Installation of concrete curbs, gutters, sidewalks, cross gutters, driveways and intersections as shown on approved construction plans and in accordance with City Standards.
- C. Installation of asphalt concrete or Portland Cement Concrete street pavement on base material as shown on approved construction plans and in accordance with City Standards.
- D. Installation of approved landscaping (plants and materials).

The DISTRICT shall also perform all work and furnish all materials necessary, in the opinion of the Director of Development Services or his designee and on his order, to complete the improvements in accordance with the plans and specifications on file as hereinbefore specified, or any changes required or ordered by said Engineer which, in his opinion, are necessary or required to complete this work.

EXHIBIT “C”

CHAFFEY COMMUNITY COLLEGE DISTRICT EMERGENCY FIRE ACCESS DRIVEWAY ENVIRONMENTAL WARRANTY

As a condition precedent to acceptance of the dedications and public improvements to be conveyed by the above-named DISTRICT to the City of Chino for the above-referenced Project, DISTRICT hereby warrants to the City of Chino that:

1. Neither DISTRICT nor any other person with DISTRICT's permission to be upon the property to be dedicated has used, generated, manufactured, produced, or released, on, under, or about the property to be dedicated, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this warranty, the term “Hazardous Substances” shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as “Toxic Materials” in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

2. DISTRICT has not caused or permitted the release of and has no knowledge of the release or presence of any Hazardous Substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated.

3. DISTRICT's prior and present use of the property to be dedicated has not resulted in the release of any Hazardous Substance on the property to be dedicated.

4. All persons executing this warranty hereby represent and warrant to the City of Chino, and DISTRICT hereby represents and warrants, that the signators hereto have the legal power, right and authority to execute this warranty on behalf of the DISTRICT and that the signators hereto have sufficient knowledge or expertise, either personally, through reasonable inspection and investigation of the property, or through reasonable reliance upon the investigation and professional opinion of DISTRICT's environmental experts, to make the representations herein, and that no consent of any other party is required to execute this warranty and make the representations herein on behalf of the DISTRICT to the City of Chino.

Each of the undersigned persons declares under penalty of perjury that the foregoing is true and correct.

Dated: _____

CHAFFEY COMMUNITY COLLEGE DISTRICT*

By: _____

*Proof of authorization for DISTRICT's signatures is required to be submitted concurrently with this environmental warranty.

EXHIBIT “D”
PERFORMANCE BOND