



KERN COMMUNITY COLLEGE DISTRICT
2100 CHESTER AVENUE, FACILITIES DEPARTMENT
BAKERSFIELD, CALIFORNIA 93301

REQUEST FOR QUALIFICATIONS (RFQ)
FOR CONSTRUCTION MANAGEMENT SERVICES

FOR VARIOUS
KERN COMMUNITY COLLEGE DISTRICT PROJECTS

Issue Date: May 8, 2019

Response Due Date/Time: June 5, 2019 at 2pm

I. GENERAL

The Kern Community College District (“Owner”) is issuing this “Request For Qualifications” (“RFQ”) to prospective firms (“Proposers”) interested in submitting Statements of Qualifications to provide Construction Management services to assist in the management and oversight of district-wide construction project(s) and generally provide business administration and management services to ensure the timely and satisfactory completion of those projects. Overall construction management responsibilities may include but are not limited to project management, project controls, value engineering and Construction Management services. Owner intends to select one or more qualified firms (“pool”) to provide the services identified herein, on an as-needed basis. Services for Project(s), in whole or in part, will be selected by Owner at any time during a period of five (5) years commencing on or around August 9, 2019 through August 31, 2024 (the “Term”) and will be rendered in accordance with the terms and conditions of the Master Agreement for Construction Management Services, a sample of which is attached hereto as **Attachment D**, and made a part hereof. By process of this RFQ, Owner will assess the qualifications and abilities of the firms submitting qualifications to meet Owner’s needs for the Project(s), such as bidding, construction administration and closeout, as well as the hourly rates for services.

II. PROJECT INFORMATION

A. Project Description: The Project(s) may include, without limitation, development, new construction, additions/renovations, re-construction and modernization, and/or expansion of Owner’s community college school site(s) and/or other academic and non-academic facilities. Selection of professional consultants by the Owner is not based on competitive bidding, but on the firms’ professional qualifications, related experience and the expertise of key personnel to be assigned to project(s). Firms who are found qualified will be included in a “pool” and placed on a list of qualified Construction Management firms from which the Owner will select or assign a Construction Manager to specific projects, from time-to-time. Firms selected for the “pool” through this RFQ may be requested to submit proposals for specific projects or services through a Request For Proposal process, in the Owner’s sole discretion.

B. Consultant may be assigned any portion, or all, of one or more of the Owner’s projects and/or specific Construction Management services, in Owner’s sole discretion, pursuant to an executed Work Authorization, a copy of which is attached hereto as **Attachment A**. Notwithstanding the foregoing, nothing contained herein obligates Owner to assign any project to a Consultant.

C. Governing Code: The governing codes are the applicable codes of the State of California, as amended, including but not limited to education code, public contract codes, building codes (CCR Title 24), and health and safety codes.

D. Budget: Once Owner issues a “Work Authorization”, defined for purposes hereof as an Owner-generated document which particularizes and fully describes each individual task and Project(s), or portion thereof, to be performed by Consultant and compensation to the Consultant, then with the assistance of Owner, Consultant will commence the development of such Project(s). Each Project(s)’ budget will be established within general cost figures set by Owner and Consultant.

III. GENERAL SCOPE OF CONSTRUCTION MANAGEMENT SERVICES

A. Owner's Project(s) and scope of services to be performed by the Consultant may include, without limitation, the following general categories:

1. Project Management Services: Assist the Owner in managing the project and potentially any subsequently-approved capital projects. Overall project management responsibilities may include, but are not limited to, incorporating systems used by Consultant for project cost/budget controls and schedule controls. Administer all aspects of project management functions from initial project development through close-out to meet project schedules and within budgets, including the categories or disciplines set forth below.
2. Value Engineering and Planning Services: Work with the District staff and project architects/engineers in the development of plans and specifications for selected project. Monitor and maintain schedule of submittals and reviews of plans and specifications in DSA. Perform constructability reviews throughout the design development, including suggested value engineering initiatives. Evaluate and assess project schedules and budgets throughout the design development process. Provide a review and analysis of designer's estimates of cost at the various stages of design. Ensure project, as designed at the corresponding stage, is within the assigned budget prior to further advancement of the design.
3. Comprehensive Project Controls: Perform all project controls tasks, including cost controls, cost estimating, and master project scheduling to monitor the project budget, expenditures and schedule.
4. Construction Management Services: Coordinate and manage all aspects of project construction, including, but not limited to; pre-construction organization and conferences, construction administration with the architect/engineer throughout project construction; monitor and report on contractor activities, coordinate District's testing and inspection consultants, including inspection and reporting by the DSA inspector, implement procedures for review of submittals, shop drawings, RFI's, samples, change orders, applications for payment, nonconformance reports, etc. and coordinate and conduct weekly construction project and job-site meetings and monitor the implementation of the contractor's safety program. In addition, perform all activities necessary to document project close-out, including compiling O&M manuals, warranties and guaranties, review As-Builts and other responsibilities necessary for documentation of project completion in accordance with plans and specifications. Consultant to supplement existing staff in the day to day management of design and construction contracts.
5. Safety: Oversee implementation of the Project safety program including Project team and contractor compliance with Project safety requirements. Review contractor's project-specific safety program and recommend safety best practices.

The foregoing descriptions of services are general in nature and are not intended to provide a complete or comprehensive description of the services required for any given project. The specific

scope of services for each project will be identified in subsequent Request for Proposals. The firm selected will be required to execute a Work Authorization in the form attached to this RFQ.

IV STATEMENT OF QUALIFICATIONS SUBMITTAL REQUIREMENTS

In order to evaluate the prospective firms' qualifications, interested firms are required to submit the requested information in the outline format. For ease in review and to facilitate evaluation, submittals in response to this RFQ should be organized and presented in the format and order as follows:

Submittals must be on 8-1/2"X11" white paper, single spaced and shall be double-sided. Each printed side will be considered one page. Submittals must not exceed twenty-five (25) pages, including attachments.

- A. Cover Page: Indicate the name of the firm, address of the office that will be managing the work, contact name, phone number, email and RFQ title.
- B. Table of Contents: Include a table of contents for each section of the submittal.
- C. Cover Letter of Interest: Provide a cover letter signed by the firm's principal that includes the firm's understanding of the work to be accomplished, and a brief general statement confirming the firm's ability to complete the Project(s). Include acknowledgement of any addenda that was issued.
- D. Organizational Information: Provide specific identification and organization information concerning the firm in this section. If two or more firms are involved in a joint venture in response to this RFQ, information concerning the working relationship between the firms, i.e. prime contractor/subcontractors, must be provided.
- E. Qualifications and Experience: Submit with this RFQ full and complete responses to the Qualifications Questionnaire attached as **Attachment B**, which includes, without limitation, the composition of the team proposed to accomplish the Project(s), an organization chart showing reporting responsibilities and the experience of the personnel that will be doing the work.
- F. Cost Estimating Methodology: Define the firm's cost estimating procedures and state whether an outside cost estimating consulting firm will be utilized or if estimating will be done "in-house".
- G. Hourly Rate Schedule: Provide hourly rates for each position the Construction Manager and any proposed subcontractor is proposing on the Services Fees and Prices form attached as **Attachment C**.
- H. Insurance Requirements: Proposer shall demonstrate that they can meet the insurance requirements as noted in Attachment D. A firm who is selected for a specific project shall furnish to Owner, prior to the commencement of work, an underwriter's certificate of insurance reflecting not less than the following limits:
 - 1. Workers' Compensation as required by law;
 - 2. \$2 Million per occurrence for Comprehensive General Liability; and
 - 3. \$1 Million per occurrence for Automobile Liability.

All insurance shall be issued by a company or companies listed in the current "A.M. Best Company's Key Rating Guide" publication with a minimum of an A-, VIII rating. Owner, its officers, agents and employees shall be named as additional insureds on the General Liability policy. Any deviations from the requisite policy amounts and ratings must be approved by Owner.

V RFQ SUBMITTAL PROCESS

A. Statement of Qualifications and the Qualifications Questionnaire shall be received by Owner, at the address stated below, on or before the date and time stated on the face sheet of this RFQ. No oral, telegraphic, telephonic or facsimile proposals will be considered.

B. Submittals shall be enclosed in a sealed envelope upon which shall be written the title of the RFQ and the name and address of the proposer. All signatures shall be original, in longhand, and shall be free of interlineations, alterations or erasures.

C. Each proposer shall furnish Owner's administrative office with its business street address. Any communications directed either to the address given, or to the address listed on the sealed proposal envelope, and deposited in the U.S. Postal Service by Certified Mail, shall constitute a legal service upon the proposer.

E. Addenda issued by Owner interpreting or changing any of the items in this RFQ, including all modifications of it, shall be responded to, acknowledged and incorporated in the proposal.

F. All submittals received by Owner will be considered a "Public Record" as defined in Section 6252 of the California Government code and shall be open to public inspection, except to the extent the proposer designates trade secrets or other proprietary material to be confidential. Any documentation which the proposer believes to be a trade secret must be provided to Owner in a separate envelope or binder and must be clearly marked as a trade secret. Owner will endeavor to restrict distribution of materials. Proposers are cautioned that materials designated as trade secrets may nevertheless be subject to disclosure and Owner shall in no way be liable or responsible for any such disclosure. Proposers are advised that Owner does not wish to receive material designated as trade secrets and requests that proposers not supply trade secrets unless absolutely necessary. The proposer's qualification package, and any other supporting materials submitted to Owner in response to this RFQ, will not be returned and will become the property of Owner unless portions of the materials submitted are designated as proprietary at the time of submittal, and are specifically requested to be returned.

G. Interested firms shall submit an original and five (5) copies of the requested information and an electronic pdf on a thumb drive in a sealed and marked envelope to the address listed below, as follows:

**RESPONSE TO REQUEST FOR QUALIFICATIONS
Project Management/Construction Management Services
For Various Kern Community College District Projects**

Mail All Qualifications To:

Bakersfield College, Measure J Program Management Office
1801 Panorama Drive, PMO Office Trailers P14
Bakersfield, CA 93305
Attention: ralph.burnette@parsons.com

VI. SELECTION PROCESS AND CRITERIA

A. The selection process is designed to ensure that the Consultant's services are engaged on the basis of demonstrated experience, competence and qualifications of the proposed staff for the type of services to be performed and at fair and reasonable prices for the Owner.

B. All submittals received by the specified deadline will be evaluated by Owner and Owner's Representative for content, related experience and professional qualifications. Owner reserves the right to reject any and all proposals and to waive informalities and minor irregularities in any proposal received. Owner reserves the right to select the proposals which, in its sole judgment, best meets the needs of Owner.

C. All submittals will be subjectively evaluated on the following criteria as further defined in Attachment B, Qualifications Questionnaire:

1. Professional experience of the firm in relation to the work to be performed;
2. Professional experience of the principals to be assigned to the Project(s);
3. Experience of key personnel and references of the proposed construction manager;
4. Nature and quality of recently completed work;
5. Previous references relative to projects of various size and function; and

D. At the election of Owner, in its sole discretion, a short-list of the qualifying firms may be generated, and Owner may invite the short-listed firms to make an oral presentation to the evaluation committee before reaching a final selection. After review of the submittals, and receipt of presentations, if elected by Owner, the firm(s) deemed to best meet the needs of Owner will be contacted.

Upon final selection, the Master Agreement for Construction Management Services, a sample of which is attached hereto as Attachment D, will be processed by Owner for award. The selected qualified firm(s) will be included in the "pool" of Construction Management firms for future consideration as needed by Owner, which will process a Work Authorization for the work, a sample of which is attached hereto as Attachment A.

VII. CONDITIONS TO AWARD

A. Right to Delay/Withdraw/Cancel: Owner reserves the right to delay the selection process, withdraw the RFQ, and/or cancel the Project(s).

B. No Obligation to Assign: In instances where more than a single phase of a Project is involved, assignment to Consultant by Owner of services on one phase or element thereof, does not mandate or obligate Owner in any way to assign the same firm for another of the enumerated Project(s) or phases thereof. In such instance, Owner reserves the right to assign Project(s) as it deems suitable and in the best interest of Owner.

C. No Obligation to Pay: This solicitation does not commit Owner to pay any costs in the preparation or presentation of a submittal to this RFQ.

VIII. PROHIBITED ACTIVITY

A. Restricted Contact: Neither the proposing firm, nor its agents, officers, employees or assigns, shall make any personal contact with any member of Owner’s Board of Trustees prior to Owner’s Board of Trustees’ selection and award of a contract(s) for this work.

B. Conflict of Interest: Proposing firms shall have read and shall be aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relative to conflict of interest of public officers and employees. No officer or employee of Owner or member of its governing body shall have any pecuniary interest direct or indirect, in the resulting Agreement or the proceeds thereof.

IX. QUESTIONS

Proposers must submit all questions or clarifications concerning this Request for Qualifications in writing and submitted via e-mail not later than May 29, 2019 at 2 pm, and should be submitted to:

Bakersfield College, Measure J Program Management Office
1801 Panorama Drive, PMO Office Trailers P14
Bakersfield, CA 93305
Attention: Contracts Administrator
Ralph.burnette@parsons.com

Following the questions deadline shown above, all questions and answers will be summarized and posted on the District’s website ([www. https://www.kccd.edu/current-rfp-listing\[kccd.edu\]](https://www.kccd.edu/current-rfp-listing[kccd.edu])).

The RFQ process will be conducted according to the following schedule:

- Issue Request For Qualifications: May 8, 2019
- Questions due: May 29, 2019
- Statement of Qualifications due: June 5, 2019
- Interviews to be conducted by District selection Committee : To be determined
- Board of Trustees approval: To be determined

Additional Services:			
Special Consultants		Project Item Fee	
CM Representative:			
Consultant's Construction Management Representative:			
Approvals:			
Consultant:		Associate Vice Chancellor of Construction & Facilities Planning	
Signature	Date	Signature	Date
Name:		Name: Eric Mittlestead	
Other/requirements:		Chief Financial Officer	
1. Attached proposal becomes part of this WA.			
2. Number of site visits during Design			
3. Number of site visits during Construction			
4. Number of meetings during Construction			
		Signature	Date
		Name: Deborah A. Martin	
Total Fee Calculation:			
Contractor Fee		Not to Exceed	
Reimbursables		Printing, travel, mileage, etc.	
Miscellaneous			
Total			\$

**ATTACHMENT B
QUALIFICATIONS QUESTIONNAIRE**

Firms shall furnish all the following information accurately and completely. Additional sheets may be attached if necessary. "You" or "your" as used herein refers to the Consultant's firm and any of its owners, officers, directors, shareholders, related parties or principals. Owner has discretion to request additional information depending on the Project.

Please note that failure to fully and truthfully complete the form will result in the failure to qualify for award of any Project(s) and the rejection of any proposal submitted.

(1) RFQ Name: CONSTRUCTION MANAGEMENT SERVICES

Firm Name and Address: _____

Contact Name: _____

Telephone Number: _____

E-mail Address: _____

Type of Firm: (Check One) Individual ___ Partnership ___ Corporation ___ Other: ___

Engineering License # _____

Architectural License # _____

Contractor License # _____

DIR Registration # _____

(2) Names and Titles of all Principals of the Firm:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(3) Have you or any of your principals ever performed services as part of a different entity? _____ If yes, please give name and address of other entities and include information pertaining to principals' associations outside of the firm making this proposal.

(4) Number of years the firm/consultant has been established? Include only years with the current entity, in its current form: _____ Years

(5) Years of experience your firm has in performing Public Works services:

For all public entities: _____ For public schools: _____

(6) Give the public entity's name, telephone number and the name of the contact person for the three (3) largest Public Works projects performed for a public entity other than a school/college/university, that you have completed within the last five (5) years:

(7) List of References: Provide information on the three (3) largest projects performed for a public school, college or university within the last five (5) years.

Contract 1.

Name: _____

Address and Telephone: _____

Contact Person: _____

Type of Project: _____ + _____

Dates of commencement and completion of Project: _____ / _____

Contract Amount: \$ _____

DSA or public agency inspector: _____

Inspector's Name, Address and Telephone: _____

Contract 2.

Name: _____

Address and Telephone: _____

Contact Person: _____

Type of Project: _____

Dates of commencement and completion of Project: _____ / _____

Contract Amount: \$ _____

DSA or public agency inspector: _____

Inspector's Name, Address and Telephone: _____

Contract 3.

Name: _____

Address and Telephone: _____

Contact Person: _____

Type of Project: _____

Dates of commencement and completion of Project: _____ / _____

Contract Amount: \$ _____

DSA or public agency inspector: _____

Inspector's Name, Address and Telephone: _____

(8) List of References: Provide information on three (3) professional references for the Construction Manager that will be managing the project(s).

Name: _____

Job Title: _____

Company: _____

Address, Telephone & Email: _____

(9) Has your firm or any of its principals defaulted so as to cause a loss to an insurance carrier within the last five (5) years? _____ If yes, please give name and

address of other entities and include information pertaining to principals' associations outside of the firm making this proposal. Please give dates, names and address of carrier and details.

(10) Have you or any of your principals been in litigation or arbitration or dispute of any kind on a question or questions relating to a public works construction project during the past five (5) years? _____ If yes, please explain and give name and address of public agency and details of dispute. Please list name and address of other entities and include information pertaining to principals' associations outside of the firm making this proposal.

(11) Have you or any of your principals ever failed to complete a project in the last five (5) years? _____ If yes, please explain and give name and address of owner. Please list name and address of other entities and include information pertaining to principals' associations outside of the firm making this proposal.

(12) Have you or any of your principals been assessed back-charges on any Public Works construction project within the last five (5) years? _____ If yes, please explain and give name and address of public entity, the basis for their claims, and the final result.

(13) Conflicts of Interest: Do you now have, or have you had within the last five (5) years, any direct or indirect business, financial or other connection with any official, employee or consultant of Owner? _____ If yes, please describe.

(14) Have you or any of your principals, within the last five (5) years, filed a claim for additional compensation from a public entity? _____ If yes, please explain and give

name and address of public entity, the basis for their claims, the response of the public agency, and the final result.

(15) Have you or any of your principals ever failed to qualify, or been deemed unqualified on any public works construction project within the last five (5) years? _____ If yes, please explain and give name and address of public entity, the basis for their claims, and the final result.

(16) Staff/Roster Functions: List all members of your staff that will be assigned or responsible for work as a team member on this project (except clerical) and show job titles, functions, years with the firm and projects completed for the firm. Include firm officers' responsible managing employee (RME), construction manager and superintendent. Provide the following information for each individual (copy this page as many times as required).

Name and Title: _____

Function: _____

Years with Firm: _____

Has this individual had prior experience as a team member on one of your public school projects? _____ Yes _____ No

List all school projects this person has performed for you: _____

(17) Provide an organizational chart reflecting your proposed project team for the Project, including all persons on your project team.

(18) Insurance: Indicate the name of all errors and omissions insurance companies utilized by you in the last ten (10) years.

Carrier Name and Address

Period Covered

Carrier Name and Address

Period Covered

Carrier Name and Address

Period Covered

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing information is true, correct and complete. Executed on this _____ day of _____, 20__, at _____, California.

Signature

Print Name

Title

ATTACHMENT C
CONSTRUCTION MANAGEMENT SERVICES
FEES AND PRICES

Provide an hourly rate schedule for applicable positions. Hourly rates shall be based on Project-site, Direct Personnel Expense including direct wage, payroll taxes, benefits, workers' compensation, and vacation/holiday/sick time. Other Specific Project Based positions may be required and will be further defined in the individual RFP.

COMPANY NAME :	
PROJECT STAFF POSITIONS	FULLY BURDENED HOURLY RATE
Construction Manager	
Project Engineer	
Sr. Cost Manager	
Estimator	
Scheduler	
Contract Administrator	
Coordinator	
Document Control Administrator	

Resources to be Provided:

1. Define the specific resource types (or named individuals) that will be provided by Consultant to support the project scopes (include Consultant's personnel and any sub-consultants).
2. Provide a project organization chart which includes roles and responsibilities.
3. Describe how these resource requirements will be met (draw from existing resources, hire, and sub-contract).
4. Provide the level of participation for each resource (full-time, part-time, etc.). If part-time, define the expected level of participation.
5. Consultant's Assigned Project Team Members

ATTACHMENT D

MASTER AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Master Agreement for Construction Management Services ("Agreement") is entered as of _____ by and between the Kern Community College District, 2100 Chester Avenue, Bakersfield, CA 93301 ("District") and _____, herein referred to as Construction Manager ("CM"), (collectively hereinafter the "parties").

WHEREAS:

The District intends to develop and/or engage in new construction, additions/renovations, re-construction, modernization, and/or expansion of District's community college school site(s) and/or other academic and non-academic facilities, as delineated from time to time in accordance with its Master Plan, Measure G Bond Plan, Measure J Bond Plan and 5 Year Scheduled Maintenance Plan ("Project(s)"). District may elect to assign CM to render Construction Management Services as set forth herein on one or more of the Projects, or any portion thereof, at District's sole discretion, and CM agrees to render such Services as assigned by District.

CM represents that pursuant to Government Code sections 4524, et seq., CM possesses an appropriate license by the State of California and is otherwise competent and qualified to perform the duties required by this Agreement

NOW THEREFORE:

The parties agree as follows:

ARTICLE 1. DEFINITIONS

The following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:

- 1.1 Agreement: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
- 1.2 As-Built Drawings ("As-Builts"): Any document prepared and submitted by District's Contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
- 1.3 Bid Set: The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that District can use to go out to bid for construction of the Project.
- 1.4 Conforming Set: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The CM shall ensure that DSA has approved all revisions to the Bid Set that are incorporated into the Conforming Set and for which DSA approval is required.
- 1.5 Construction Budget: The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.

- 1.6 Construction Cost Budget: The total cost to District of all elements of the Project designed or specified by the CM, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the CM and the CM's consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management or any other soft costs.
- 1.7 Contractor(s): The Contractor(s) to whom the District has awarded a contract to construct the project.
- 1.8 Construction Manager (CM): The party listed in the first paragraph of this Agreement, including all sub-consultant(s) to the Construction Manager unless herein indicated otherwise.
- 1.9 Consultant(s): Any and all consultant(s), sub-consultant(s), or agent(s) to the Construction Manager.
- 1.10 District: The Kern Community College District.
- 1.11 DSA: The Division of the State Architect.
- 1.12 Program Manager: District's representative under separate agreement, assisting the District in the management of this Project. Any program manager on a Project would be the District's agent for communication to and from the District, and would be from time to time, authorized to give CM instructions, information or authorizations and to issue written approvals and Notices to Proceed on behalf of District. The District reserves the right to designate a different Program Manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Program Manager, unless that task indicates it shall be performed by the governing board of the District. The District may or may not have a Program Manager for Projects that are not part of the Measure J Bond Program Plan.
- 1.13 Project Manager: To the extent District does not utilize a Program Manager on a project, the District will identify a Project Manager who will perform the duties otherwise performed by a Program Manager, including without limitation being the contact person for the District.
- 1.14 Project Program Report (PPR): A District generated document that tracks the Project(s) scope during initial planning through completion to assure budgetary, schedule, and scope of work compliance. The PPR includes, without limitation, Project description, scope, budget, schedule, and funding sources, and should reflect any known soft costs such as DSA fees, CM's fees, testing and inspection costs, contingency, furniture, and management fees, if applicable. It is updated throughout stages of the Project and is subject to District's approval at each phase or stage of the Project.
- 1.15 Record Drawings: A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.16 Service(s): All labor, materials, supervision, services, tasks, and work that the CM is required to perform and that are required by, and/or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.17 Visually Verify: To verify to the fullest extent possible by timely and reasonable physical inspection and reasonable investigation without any intrusive action.

ARTICLE 2. EMPLOYMENT OF CONSTRUCTION MANAGER - PROJECT ASSIGNMENT

- 2.1 Any Services to be rendered by CM will be assigned by District to CM, in District's sole discretion, by execution of a Board approved Work Authorization, as further described below, at any time during a period of four (4) years commencing from the effective date of this Agreement as noted, above, and hereinafter referred to as the "Initial Term" of this Agreement. Upon expiration of the Initial term, this agreement may automatically renew for one (1) additional term of one (1) year for a maximum of five (5) additional years unless either party provides notice on nonrenewal no later than sixty (60) days prior to expiration of the Initial Term or the renewal term. For any such Project(s), CM agrees to accept such employment and perform the specified Construction Management Services, to include, as applicable, the pre-design, design, technical documentation, agency approval, and construction administration Services (including the Services of all design professionals, special Consultants and Engineers employed as Consultants by the CM on the Project(s)), so as to provide District with site, building and related improvements designed and installed in a professional, structurally sound, timely and cost-effective manner, in accordance with applicable codes and laws, consistent with the highest standards of the profession at the time those Services are performed, all within the approved construction budget.
- 2.2 Work Authorizations. For purposes of this Agreement, "Work Authorizations", a sample of which is attached hereto as **Exhibit A**, are District-generated documents which particularize and more fully describe each individual task, scope of work, and project to be performed, and the associated fee schedule, pursuant to the terms of this Agreement.
- 2.2.1 Each Work Authorization is required to be approved by District's Board of Trustees and fully executed prior to the commencement of any Services by CM. All references to CM's Services on Project(s) hereunder are subject to and predicated upon executed Work Authorizations. In no event shall any language contained herein be construed to exempt such authorization and assignment by District to CM as set forth in this Agreement. No Work Authorization shall be binding on District unless it is executed by District and approved by the Board of Trustees. Each Work Authorization may be individually terminated even if this Agreement is not so terminated.
- 2.2.2 In the event that any Services under individual Work Authorizations continue after the date of expiration of this Agreement, i.e., where a project is started but not completed within the terms of this Agreement, such Services shall continue under the terms and conditions of this Agreement until completion, unless specific notice of termination for those Services is provided in accordance with this Agreement.
- 2.2.3 The basic scope of Services of the CM hereunder (including the Services of all design professionals, special Consultants and architects employed as sub-consultants by the CM on any Project(s) hereunder) will vary from one Work Authorization to another and will be specifically defined by each such Work Authorization and by the terms of this Agreement.
- 2.3 This Agreement includes a performance evaluation of CM by the District and District's Representative, at the conclusion of each phase of a Capital Outlay Project. The evaluation will occur between the CM and the District evaluator. Evaluations are used to give the CM feedback and will influence future District assignments of Construction Management Services.

- 2.4 Upon assignment of any Project(s) to CM hereunder, CM shall timely submit to District for approval the name of the Construction Manager who shall maintain personal oversight of the Project and act as principal contact with District or Program Manager, the engineer, contractors, architects, and with all inspectors on the Project(s). The Construction Manager shall not be changed without the express written consent of the District, which consent shall not be unreasonably withheld.
- 2.5 Time of the Essence. In this Agreement, CM shall perform all Services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work.
- 2.5.1 On request of District, CM shall prepare an estimated time schedule for the performance of Construction Management Services, to be adjusted as the Project proceeds. Such schedule shall include allowances for periods of time required for District's review and approval of submissions and for approvals of authorities having jurisdiction over the Project(s) approval and for funding. The schedule shall not be exceeded by CM, without the prior written approval of District.
- 2.5.2 Any delays in CM's work because of the actions of District or its employees, those in direct contractual relationship with District, by a governmental agency having jurisdiction over the Project(s), or by an act of God or other unforeseen occurrence, not due to any fault or negligence on the part of the CM, shall be added to the time for completion of any obligations of CM.
- 2.5.3 Should CM make an application for an extension of time, CM shall submit evidence that the insurance policies required by this Agreement will remain in effect during the requested additional period of time.

ARTICLE 3. CONSTRUCTION MANAGER'S BASIC SERVICES

CM shall provide the following, professional services specifically defined by and subject to an executed Work Authorization and by the terms of this Agreement.

- 3.1 Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 3.2 Advise the District as to the regulatory agencies that have jurisdiction over the project(s), and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation the Division of the State Architect.
- 3.3 Contract for or employ, at CM's expense, sub-consultant(s) to the extent deemed necessary for Construction Management Services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the CM under terms of this Agreement.
- 3.4 Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.
- 3.5 Chair, conduct and take minutes of periodic meetings between the District and its design professional(s) and of construction meetings during the course of the Project. CM shall invite the District and/or its representative to participate in these meetings. CM shall keep meeting

minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.

- 3.6 Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by CM under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to CM. CM shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 3.7 Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.
- 3.8 CM shall utilize and work within Management Information System (MIS) software program, purchased by the District, to establish communications between District or Program Manager, Construction Manager, design professional(s), consultant(s) and other parties on the Project. CM shall interview the District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, and the desired frequency for distribution of the various reports. User licenses required for the CM to communicate using the MIS program shall be provided by the District.
- 3.9 Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.
- 3.10 Prepare a bidders list for each bid package for approval by the District.
- 3.11 Assist the District in pre-qualifying bidders if prequalification is permitted by the District. This service shall include the following:
 - 3.11.1 Preparation and distribution of prequalification questionnaires;
 - 3.11.2 Receiving and analyzing completed questionnaires;
 - 3.11.3 Interviewing possible bidders, bonding agents and financial institutions; and
 - 3.11.4 Preparing recommendations for the District.
- 3.12 Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 3.13 Assist the District in preparing and placing notices and advertisements to solicit bids for the Project.
- 3.14 Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved Contract Documents from the design professional(s) and the CM shall arrange for delivery to the bidders. The CM shall not be responsible for the cost of printing Bid Documents. The CM shall maintain a list of bidders receiving Contract Documents.

- 3.15 Prepare an estimate of costs for all addenda and shall submit the estimate to the District for approval. The Construction Cost Estimate and other Project costs shall be adjusted as indicated in the Agreement.
- 3.16 Provide and maintain a management team on the Project site(s).
- 3.17 Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 3.18 Cooperate and coordinate with the persons responsible for operation of the District's labor compliance program, if applicable.
- 3.19 Cooperate and coordinate with the persons responsible for operation of District's Owner Controlled Insurance Program, if applicable.
- 3.20 Comply with any storm water management program that is approved by the District and applicable to the Project, at no additional cost to the District.
- 3.21 Ensure that all Project contractor(s), Project sub-contractor(s) and CM's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 3.22 Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The CM shall comply with, and ensure that all contractors and their sub-contractors and Design Professionals and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 3.23 CM is NOT responsible for:
 - 3.23.1 Ground contamination or hazardous material analysis.
 - 3.23.2 Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 3.23.3 Compliance with the California Environmental Quality Act ("CEQA"), except that CM agrees to coordinate its work with that of any CEQA contractors retained by the District, and to provide current information for use in CEQA compliance documents.
 - 3.23.4 Historical significance report.
 - 3.23.5 Soils investigation.
 - 3.23.6 Geotechnical hazard report.
 - 3.23.7. Topographic survey, including utility locating services.

3.23.8. Other items specifically designated as the District's responsibilities under this Agreement.

3.23.9. As-built documentation from previous construction projects.

ARTICLE 4. GENERAL CONSTRUCTION MANAGEMENT SERVICES

- 4.1 General: Monitor and advise the District as to all material developments in the Project. CM shall develop and implement in coordination with the District or Program Manager, reporting methods for schedules, cost and budget status, and projections for the Project. The CM shall be the focal point of all communication to and from construction contractor(s) and shall be copied on all communications between the District or Program Manager and its design professional(s).
- 4.2 Scheduling: Prepare methods to track and report on schedule status for the project. The CM shall develop master schedules and milestone schedules for the project, and shall report on same each month to the District or Program Manager.
- 4.3 Cost Controls: Prepare and implement methods to budget and track all expenditures on the Project. The CM shall generate monthly reports to the District or Program Manager reflecting this information.
- 4.4 Communications to Board: The CM may be required by the District or Program Manager to attend each monthly meeting of the District's Governing Board, and to provide updates at each meeting.

ARTICLE 5. PRECONSTRUCTION PHASE

- 5.1 Provide overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Project team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction contractor(s) to the District and Project design team shall be through the CM. The CM shall receive simultaneous copies of all written communications from the District, Program Manager or the Project design team to the construction contractor(s).
- 5.2 Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Project that involve all members of the Project teams, including the District, Program Manager, design professional(s), and construction contractor(s).
- 5.3 Provide value engineering at the 100% Design Development Phase and 50% Construction Documents Phase. This evaluation will consist of a review of the proposed materials; equipment, systems and other items depicted in the Design Documents and shall be coordinated with the District's design guidelines and design professional(s). The CM will prepare a value engineering report will document the results of the evaluation and make recommendations to the District or Program Manager with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The CM shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.

- 5.4 Perform or subcontract for constructability reviews of each Project at the 50% and 90% Construction Documents. The CM shall review the Design Documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The CM shall also make recommendations to the District or Program Manager with respect to constructability, construction cost, sequence of construction, construction duration and separation of the contracts for various portions of the Project into categories of the work and separate bid trade packages. However, the CM is not responsible for providing, nor does the CM control, the Project design or the contents of the Design Documents. The CM's actions in reviewing the Project design and the Design Documents and in making recommendations as provided herein are advisory only to the District or Program Manager. The design professional(s) are not third party beneficiaries of the CM's work described in this paragraph and the design professional(s) remains solely responsible for the contents of design drawings and the Design Documents.
- 5.5 Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by the District or Program Manager, in coordination with design professional(s) and advise and consult with the District. CM shall review and approve construction contractor(s)' schedules, but shall not dictate any construction contractor(s)' means and/or methods of performance.
- 5.6 Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 5.7 Develop and implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project. The system will allow for monthly progress reports to the District regarding the schedule for the Project.
- 5.8 Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, the CM will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 5.9 Attend all planning, programming and master site planning meetings relating to the Project.
- 5.10 Provide updated cost estimates for the Project at the Design Development, and Construction Documents Phase as directed by District; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 5.11 Advise District regarding "green building" technology and lifecycle costing, when applicable.

ARTICLE 6. PRE-BID PHASE

- 6.1 Develop a master schedule, or coordinate with existing one, and a construction milestone schedule for the Project.
- 6.2 CM shall in consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

- 6.3 Work with the design professional(s) to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for the District's approval.
- 6.4 Work with the design professional(s) to separate the Construction Phase for the Project into bid packages.

ARTICLE 7. BIDDING PHASE

- 7.1 Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Field questions from bidders, referring questions to design professional(s) and District or Program Manager as required. Coordinate with design professional(s)' to respond to bidder questions by addenda.
- 7.2 Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.
- 7.3 Conduct pre-award conferences with successful bidders.
- 7.4 Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.

ARTICLE 8. CONSTRUCTION PHASE

- 8.1 Administer the construction contract(s).
- 8.2 Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. The CM expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.
- 8.3 Coordinate work of the construction contractor(s) and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. CM shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 8.4 Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District or Program Manager, the affected construction contractor(s), and design professional(s).
- 8.5 Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The CM shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, the CM will take appropriate measures to secure compliance, subject to District approval.

- 8.6 Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. The CM shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.
- 8.7 Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.
- 8.8 The CM may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The CM shall provide to the design professional(s) and the District copies of these authorizations.
- 8.9 Develop, implement, and coordinate with assistance from the District or Program Manager, the design professional(s), and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts.
- 8.10 Verify that safety programs are developed and submitted by each of the construction contractor(s) as required by the contract(s). Neither CM nor District shall be responsible for or have any liability for contractor(s) failure to provide, comply with, or enforce said safety programs.
- 8.11 Record the progress of the Project by a daily log.
- 8.12 Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to CM.
- 8.13 Negotiate contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District's governing board.
- 8.14 Maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 8.15. Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 8.16 Assist the District in selecting and retaining special consultants and testing laboratories and coordinate their services.
- 8.17 In conjunction with the Inspector and the design professional(s), monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the respective Construction Documents. As appropriate, with assistance of design professional(s) and the Inspector, make recommendations to the District regarding special inspection or testing of work that is not in accordance with the provisions of the Contract Documents.

- 8.17.1 To guard District against defects in the work of the construction contractor(s), the CM shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
 - 8.17.1.1 Accepted industry standards;
 - 8.17.1.2 Applicable laws, rules, or ordinances; and
 - 8.17.1.3 The Design Documents and Contract Documents;
- 8.17.2 Where the work of a construction contractor does not conform as set forth above, the CM shall, with the input of design professional(s):
 - 8.17.2.1 Notify the District of any non-conforming work observed by the CM;
 - 8.17.2.2 Reject the non-conforming work; and
 - 8.17.2.3 Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
- 8.18 Maintain logs of requests for information (“RFI”) from construction contractor(s), based on information obtained from the design professional(s).
- 8.19 Establish and implement procedures, in collaboration with the District or Program Manager and design professional(s), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction contractor(s) to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.
- 8.20 Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 8.21 Prepare and distribute monthly project status reports for each active project and the Program, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 8.22 In conjunction with the Project Architect and District or Program Manager, assist the District in coordination of furniture, fixtures and equipment phase during construction to ensure coordination with the overall construction schedule.
- 8.23 Maintain at the Project site and, if necessary, at the CM’s office, a current copy of all approved documents, drawings, specifications, addenda, change orders and other modifications, and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s). At the completion of the Project, deliver all such records to District. Construction contractor(s) and design professional(s) share responsibility to prepare “Record Drawings” and “As-Built” documents.

ARTICLE 9. PROJECT COMPLETION

- 9.1 The CM shall observe, with the District's maintenance personnel, the construction CM's check-outs of utilities, operational systems and equipment, and start-up and testing. The CM shall maintain records of start-up and testing as provided by the construction contractor(s) and shall ensure the District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative.
- 9.2 At the punch list phase of the Project or designated portions thereof, the CM, in consultation with the Architect(s) and Inspector, shall ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the Contract Documents ("punch list work") and a schedule for the completion of the punch list work. The CM shall provide this list to the construction contractor(s). The CM shall coordinate construction contractor(s)' performance and completion of punch list work. The CM shall review, with the Architect(s) and District, the completed punch list work. The CM shall ensure, with input of the Architect(s), that the completed punch list work complies with applicable provisions of the construction contract(s).
- 9.3 The CM shall determine, with the Architect(s) and District, when the Project or designated portions thereof are complete.
- 9.4 The CM shall conduct, with the Architect(s) and District, final inspections of the Project or designated portions thereof. The CM shall notify the District of final completion.
- 9.5 The CM shall consult with the Architect(s), Inspector and District and shall determine when the Project and the construction contractor(s)' work are finally completed. The CM shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the contractor(s).

ARTICLE 10. FINAL DOCUMENTS

- 10.1 The CM shall review and monitor all as-built drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The CM shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the project.

ARTICLE 11. WARRANTY

- 11.1 The CM shall implement a Warranty Inspection and Warranty Work procedure that all contractors are to follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

ARTICLE 12. OWNER'S RESPONSIBILITIES

District's responsibilities shall include the following:

- 12.1 To the extent the information relates to CM's scope of work, the District shall provide to CM all information available to District. This information shall include, if available, the following:

- 12.1.1 Physical characteristics;
 - 12.1.2 Legal limitations and utility locations for the Project site(s);
 - 12.1.3 Written legal description(s) of the Project site(s);
 - 12.1.4 Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 12.1.5 Adjacent drainage;
 - 12.1.6 Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - 12.1.7 Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 12.1.8 Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 12.1.9 Surveys, reports, as-built drawings;
 - 12.1.10 Subsoil data, chemical data, and other data logs of borings.
- 12.2 CM shall visually verify this information and all existing Project utilities, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents or other information provided by the District.
- 12.3 If CM determines that the information or documentation the District provides is insufficient for purposes of design or if the CM requires a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that the District has not provided, the CM shall request that the District acquire that information at the soonest possible time after CM becomes aware that this additional information is needed. If the Parties mutually agree, this additional information and service may be procured through the CM, who may invoice the District for those services as Additional Services.
- 12.4 Appoint and pay an Inspector of Record as provided by state law. Said Inspector shall be qualified and approved by CM and by the Division of State Architect, shall be under the general direction of CM, and shall be responsible to, and act in accordance with the policies of the District. The administration by CM and its architects shall be in addition to the continuous personal supervision of the Inspector.
- 12.5 Assist Architect in the distribution of plans to bidders and conduct the opening of bids on the Project(s), if applicable.
- 12.6 Assist District in retaining a testing service for materials testing and inspection as required by Title 24 of the California Code of Regulations.

- 12.7 Direct pay or reimburse the payment of all fees required by any reviewing or licensing agency.
- 12.8 Designate a representative authorized to act as liaison between contractor and District in the administration of this Agreement and the Construction Documents. Such person or persons shall assist CM in making inspections and preparing the list of deficiencies required by law or this Agreement, and accompany Contractor and CM on the final inspection.
- 12.9 Review all documents submitted by CM, including change orders and other matters requiring approval by District's Governing Board. Advise CM of decisions pertaining to such documents within a reasonable time after submission.
- 12.10 Notify CM if any deficiencies in material or workmanship become apparent during contractor's warranty period.

ARTICLE 13. CONSTRUCTION MANAGER'S FEE

13.1 District shall pay to CM, for the performance of all basic Services rendered under this Agreement, the amount specified in **Exhibit A** to this Agreement, modified as specified in any Work Authorization(s) executed between the parties for this work. The amount specified constitutes complete payment for CM's basic Services for the Project(s).

13.2 District shall pay CM for all Additional Services contracted for under this Agreement an amount specified in the required written authorization to commence such Services. CM shall be paid for authorized additional services, as follows:

13.2.1 CM shall be paid the amount agreed upon by the parties in writing after performance of such services by CM, which fee may be negotiated based on a flat amount, or on CM's standard hourly rates, or as otherwise agreed. CM's Fee is not subject to adjustment upon receipt of bids and award of Construction Contract. CM's office hourly rates are represented in **Exhibit B**.

13.2.2 Additional special Consultants, prior approval of which is required, shall be paid in an amount as agreed upon by the parties in writing prior to engagement of such consultants.

13.2.3 If any additional service is provided by CM without prior written authorization by the Program Manager or the District's authorized representative, the District will not be obligated to pay for such service. The CM may be paid by the District for Additional Services that the Program Manager or the District's authorized representative verbally requests, provided that the CM confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Additional Services not sooner than two business days after the District receives CM's written confirmation.

13.2.4 Expenses will not be reimbursed for professional consultants utilized by the CM in the structural, mechanical, HVAC and plumbing, electrical and/or fire suppression engineering disciplines, when indicated in Work Authorization that such consultant is part of the basic service.

13.3 No increase in Fee will be due from change orders generated during the construction period to the extent caused by CM's error or omission. CM's Fee may be adjusted downward for errors that result in extra expenses to the District.

- 13.4 Regardless of the structure of CM's Fee, and notwithstanding any Work Authorization(s) to the contrary, the CM's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.
- 13.5 Reimbursable expenses will be billed at actual cost. There will be no markup for reimbursable costs.

ARTICLE 14. PAYMENTS TO CONSTRUCTION MANAGER

- 14.1 The CM agrees to perform the professional Services provided by this Agreement, and District agrees to pay CM for such Services, in accordance with the fee schedule attached hereto as **Exhibit B**, modified as specified in any Work Authorization(s) executed between the parties for this work.
- 14.2 District reserves the right to retain one percent (1%) of any compensation payable to CM hereunder if CM fails to close-out the Project(s) completed by CM and fails to provide District with documentation confirming Project close-out Certification with DSA, as may be required by District.
- 14.3 In order to receive payment, CM shall present to District, each month, a claim for payment for approval by the Program Manager or District's authorized representative, which claim shall designate Services performed, percentage of work completed, method of computation of amount payable, and amount to be paid.
- 14.4 Payments made for extra work or special services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such Services or in such other manner as the parties shall specify when such Services are agreed upon.
- 14.5 Upon cancellation or termination of this Agreement, CM shall be compensated as set forth in this Agreement.

ARTICLE 15. SUSPENSION, ABANDONMENT OR TERMINATION OF CONTRACT

- 15.1 If CM fails to satisfactorily perform CM's duties hereunder, or if CM fails to fulfill in a timely and professional manner any material obligation under this Agreement, for reasons other than those outside of CM's control, or if CM shall violate any of the material terms or provisions of this Agreement, District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the CM. In the event of a termination pursuant to this subdivision, CM may invoice District for all Services performed up to the notice of termination. District shall have the right to withhold payment and/or deduct, from any amount due to CM, an amount equal to the District's costs and/or damages caused by the CM's negligent actions, errors, or omissions that caused the District to terminate the Agreement.
- 15.2 District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, CM may invoice District and District shall pay for all for Services performed up to the District's notice of termination.
- 15.3 Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

- 15.4 The CM has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from CM to the District. CM may invoice District and District shall pay all undisputed invoice(s) for Services performed up to the CM's notice of termination.
- 15.5 If, at any time in the progress of the Services called for in the Work Authorization(s) for the Project, the District determines that the Project should be terminated, the CM, upon written notice of such termination from the District, shall immediately cease Services on the Project. The District shall pay the CM the fee for the Services provided up to the notice of termination.
- 15.6 District reserves the right to suspend or abandon, at any time, all or any of the work on the Project.
- 15.6.1 If the District suspends the Project for more than one hundred twenty (120) consecutive days, the CM shall be compensated for Services performed prior to notice of that suspension. If the Project is resumed, the Project schedule shall be adjusted and the CM's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the CM's Services.
- 15.6.2 CM hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension or abandonment.
- 15.6.3 If CM's Services are suspended by District, District may require CM to resume Services by giving written notice to CM within two calendar years after the effective date of the suspension.
- 15.6.4 If the District suspends the Project for more than two (2) years, the CM may terminate this Agreement by giving written notice.
- 15.7 Upon suspension, abandonment, or termination, CM shall, if requested by District, turn over to District all preliminary studies, sketches, working drawings, specifications, computations, CAD files and all other matters to which District would have been entitled at the completion of CM's Services. CM shall turn over to District all such documents and other matters immediately upon request, and District shall have the rights as enumerated in this Agreement to use any documents or other work product prepared by CM under this Agreement. District's possession and use of the documents and other matters is not dependent on payment by District of any amount owed to CM, and all the required material shall be given to District. The parties shall take efforts to resolve any dispute.

ARTICLE 16. INDEMNITY

- 16.1 To the fullest extent of the law, CM shall assume the defense of, hold harmless, and indemnify District, District's Governing Board or other governing body, each member of the Board, and District's officers, employees, Program Manager, and volunteers from any and all claims of any kind that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CM in the performance of this Agreement.
- 16.2 In relation to such claims, CM's obligation shall include, but not be limited to, the following:
- 16.2.1 To pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties;

- 16.2.2 To reimburse District for the cost of any settlement paid by District;
- 16.2.3 To reimburse any and all legal expenses and costs, including expert witness fees and consultant fees, incurred in connection with any such claim, or in enforcing the indemnity herein provided.
- 16.3 CM's obligation to indemnify shall not be restricted to insurance coverage limits, or insurance proceeds, if any, received by an indemnified party.
- 16.4 District shall have the right to accept or reasonably reject any legal representation proposed by CM.
- 16.5 In addition to the foregoing indemnification obligations, the CM shall be responsible for the following, to the extent it may arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CM:
 - 16.5.1 The cost of Project delays. Without limiting CM's liability for indirect cost impacts due to these delays, the direct costs for which the CM shall be liable shall equal the amount the District is liable to contractor(s), consultants(s), Inspector(s), and/or Program Manager caused by these delays, including without limitation all interim housing costs caused by these delays, which are provable at law or in equity.
 - 16.5.2 The cost of construction change orders. Without limiting CM's liability for indirect cost impacts, the direct costs for which the CM shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents which are provable at law or in equity. Threshold for "standard of care" is described in 18.3.1.
 - 16.5.3 These amounts shall be paid by CM to District or the District may withhold those costs from amounts owing to CM.
- 16.6 CM shall, by way of written agreements, require each and every one of its sub-consultants and contractors engaged in work related to this Agreement to indemnify and defend District, District's Governing Board or other governing body, each member of the Board, and District's officers, and employees, and Program Manager from any and all claims of any kind that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the sub-consultants or contractors in the performance of work related to this Agreement. CM agrees that any failure to provide any such sub-consultants or contractors agreement for indemnity and defense shall be deemed an act or omission arising out of, pertaining to, and relating to the negligence, recklessness or willful misconduct of CM in the performance of this Agreement.
- 16.7 District shall assume the defense of, indemnify, and hold harmless CM, its officers and employees from any and all claims of any kind arising out of the intentional or negligent acts, errors, or omissions of District, its officers, or employees in the performance of this Agreement.

ARTICLE 17. ERRORS AND OMISSIONS

- 17.1 CM shall be liable for any damages and costs incurred by, and any claims against, District that arise out of, pertain to, and relate to the negligence, recklessness or willful misconduct of CM. Additionally, CM shall not be entitled to any fee for additional services, or reimbursements

of costs, for work arising out of, pertaining to, or relating to CM's negligence, recklessness or willful misconduct, or that of CM's sub-consultants, contractors, and/or employees in the performance of Services under this Agreement.

- 17.2 CM shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by CM under the Agreement as well as coordination with all Master plans, studies, reports and other information provided by District. CM shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
- 17.3 District recognizes and acknowledges that CM's insurable liability attaches only when the CM's act or omission falls below a "standard of care" applicable to design professionals in the same or similar circumstances. A determination of the applicable "standard of care" is a judgment call that will vary depending upon individual project circumstances, and that damages from construction change orders arising from errors or omissions by the CM are often difficult to identify, prove and quantify. For the purposes of this Agreement, the parties agree that such change order-related damage shall be liquidated as provided hereinafter:
- 17.3.1 The parties shall consider combined construction change order costs arising from errors and omissions by the CM or the CM's consultants, up to but not exceeding three percent (3%) for new construction and five percent (5%) for remodeling projects of the initial construction cost of the assigned Project, to be within the "standard of care" for this Agreement. Combined change order costs arising from errors and omissions by the CM or the CM's consultants that are in excess of respective percent of the initial construction cost of the assigned Project shall be considered arising from violations of the applicable "standard of care" for this Agreement.
- 17.3.2 In determining valuations, "omissions" will be calculated at a rate of 20% of the change order costs to provide the respective missing element whereas "errors" will be calculated at the full change order value to correct the condition. The parties agree these valuations are reasonable and take the place of any defense of "betterment" or the like, which defenses are waived by CM.
- 17.3.3 The cost of construction change orders. Without limiting CM's liability for indirect cost impacts, the direct costs for which the CM shall be liable shall equal the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents.
- 17.3.4 These amounts shall be paid by CM to District or the District may withhold those costs from amounts owing to CM.
- 17.4 CM shall be and remain liable for other damages and costs incurred by, and any claims against, District that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CM in the performance of this Agreement. Additionally, CM shall not be paid a fee for required work that is determined to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CM or CM's sub-consultants, contractors, and/or employees in the performance of this Agreement.

ARTICLE 18. LIABILITY OF THE DISTRICT

- 18.1 Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable to CM, regardless of whether any claim is based on contract or tort or any other legal or equitable theory, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or related to the District's performance of its obligations under this Agreement.
- 18.2 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by CM, or by its employees, even though such equipment be furnished or loaned to CM by District, excepting only when the District had prior knowledge of a defect in such equipment which could result in death or serious bodily injury or material property damage.

ARTICLE 19. OWNERSHIP OF DATA AND DOCUMENTS, AND LICENSE AGREEMENT FOR REUSE

- 19.1 All plans, specifications, estimates, instruments of service and other data, regardless of form or format, prepared pursuant to this Agreement shall be and remain District property, whether or not the work for which they were made is executed. The CM retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the CM or its consultants prepares or causes to be prepared pursuant to this Agreement. Such data includes, without limitation, at least the following matters:
- 19.1.1 One set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
- 19.1.2 One set of fixed image CADD files in DXF or DWG format of the drawings that are part of the Contract Documents.
- 19.1.3 One set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural, mechanical and electrical), roof plan, sections and exterior elevations of the Project.
- 19.1.4 All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the CM under this Agreement.
- 19.2 CM grants to District the right to reuse all or part of the aforementioned data and/or documents, at its sole discretion, for the construction of all or part of this or another project constructed by or for District. District is not bound by this Agreement to employ the Services of CM in the event such documents are reused. Any reuse by District of data and/or documents prepared under this Agreement, without employing the Services of CM, shall be at District's own risk. District shall indemnify, hold harmless, and defend CM and its officers, directors, agents, and employees from all claims of any kind arising out of such use, re-use, or modification of said documents prepared by CM.
- 19.3 This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents, or any other works of authorship fixed in any tangible medium of expression, including, but not limited

to, physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by CM pursuant to this Agreement. CM shall require any and all sub-consultants and contractors to agree in writing that District is granted a non-exclusive and perpetual license for the work of such sub-consultants or contractors performed pursuant to this Agreement.

- 19.4 CM represents and warrants that CM has the legal right to license any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, or other documents that CM prepares or causes to be prepared pursuant to this Agreement. CM shall indemnify and hold District harmless for any breach of this Article. CM makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates, or other documents, or any other works of authorship fixed in any tangible medium of expression, including, but not limited to, physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than CM and provided to CM by District.
- 19.5 The CM shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) or BIM Technology. The CM shall deliver to the District, on request, the tape and/or compact disc format and the name of the supplier of the software/hardware necessary to use the design file. As to any drawings that CM provides in a CADD or BIM file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents. Accordingly, the electronic documents provided to the District are for informational purposes only and are not intended as an end-product. The CM makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the District agrees to waive any and all claims against the CM and the CM's consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents.
- 19.6 In order to document exactly what CADD information was given to the District, CM and District shall each sign a "hard" copy of reproducible documents that depict the information at the time CM produces the CADD information. District agrees to release CM from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the CM or consultant(s) subsequent to it being given to the District. District shall cause all identifying CM's marks to be removed prior to use of the documents for another project.

ARTICLE 20. INSURANCE

In the absence of express language to the contrary contained in a fully executed Work Authorization, CM shall comply with the insurance provisions of this part.

- 20.1 CM shall procure and deliver, prior to commencement of the Services of this Agreement, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the CM, his agents, representatives, employees and consultant(s). CM's liabilities, including but not limited to CM's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and CM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by the District.

- 20.2 Minimum Scope and limits of Insurance: Coverage shall be at least as broad as the following scopes and limits:
- 20.2.1 Commercial General Liability. Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit. Limits can be met through a combination of primary and excess policies.
 - 20.2.2 Commercial Automobile Liability, Any Auto. One million dollars (\$1,000,000) per accident for bodily injury and property damage. Limits can be met through a combination of primary and excess policies.
 - 20.2.3 Workers' Compensation. Workers' compensation and other insurance as required under state or federal law. That policy shall include an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers. Limits can be met through a combination of primary and excess policies.
 - 20.2.5 District may require CM to obtain a non-cancelable policy of Project Insurance for a duration of three (3) years after completion of the Project(s). If District requires CM to obtain Project insurance, such insurance shall begin when construction begins, at which time CM shall provide evidence of the existence of such policy to District. The cost of such insurance shall be borne by District.
- 20.3 Deductibles and Self-Insured Retention. Except as provided above, the CM shall inform the District in writing if any deductibles or self-insured retention exceed \$150,000. At the option of the District, either:
- 20.3.1 The District can accept the higher deductible;
 - 20.3.2 The CM's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees, Program Manager, and volunteers; or
 - 20.3.3 The CM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 20.4 Other Insurance Provisions:
- 20.4.1 The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions.
 - 20.4.2 The District, its representatives, consultants, trustees, officers, officials, employees, Program Manager, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the CM; Instruments of Service and completed operations of the CM; premises owned, occupied or used by the CM; or automobiles owned, leased, hired or borrowed by the CM. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

- 20.4.3 For any claims related to the projects, the CM's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the CM's insurance and shall not contribute with it.
- 20.4.4 The CM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 20.4.5 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, terminated, canceled or non-renewed by either party, except after thirty (30) days prior written notice, except in the event of non-payment of premium in which case 10 days prior written notice shall be provided by certified mail, return receipt requested, to the District.
- 20.5 Acceptability of Insurers: Insurance is to be placed with insurers authorized in California with a current A.M. Best's rating of no less than A-,VIII. The CM shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A-,VIII, in which event the District may, at the option of the District, either accept the lower rating, or require the CM to procure insurance from another insurer.
- 20.6 Verification of Coverage. CM shall furnish the District with:
- 21.6.1 Certificates of insurance showing maintenance of the required insurance coverage;
- 21.6.2 Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

ARTICLE 21. DISTRICT'S RIGHT TO AUDIT AND REVIEW RECORDS

- 21.1 District retains the right to review and audit, and the reasonable right of access to CM's and any sub-consultant's premises to review and audit the CM's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies of any and all Project-related records and other information, with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion.
- 21.2 The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that are necessary to discover and verify that the CM is in compliance with all requirements of this Agreement.
- 21.3 If there is a claim for additional compensation or for Additional Services, the District's Right includes the right to examine books, documents, and any and all other evidence, accounting procedures, and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 21.4 The CM shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry.

- 21.5 The CM shall include audit provisions in any and all agreements with CM's consultants and other agents, and shall ensure that these sections are binding upon all sub-consultants to CM's consultants.
- 21.6 CM shall comply with these provisions within fifteen (15) business days of the District's written request to review and audit any or all of CM's Project-related records and information.

ARTICLE 22. CONFLICTS OF INTEREST

CM represents that neither CM nor any of CM's employees, agents, or consultants has any existing interest, and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by CM. CM agrees the provisions of California Government Code Section 1090 applies to CM.

ARTICLE 23. STANDARDIZED MANUFACTURED ITEMS; DISTRICT STANDARDS

CM shall cooperate and consult with District in use and selection of manufactured items on the Project, including, but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials, and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with project design. When design guidelines and construction standards documents are available to District, CM shall be guided by such guidelines and standards in preparing its design and construction documents.

ARTICLE 24. LIMITATION OF AGREEMENT

This Agreement is limited to and includes only the work included in the Project(s) described herein and in each work authorization, and as amended by the parties to include additional work as part of the Project(s). Any subsequent construction at the site of the Project(s), or at any other site owned by District will be covered by, and be the subject of, a separate Agreement for Construction Management Services, or Work Authorization, between District and the CM chosen therefore by District.

ARTICLE 25. MEDIATION

Disputes arising from this Agreement shall be submitted to mediation before a mediator mutually agreeable to the parties. The parties shall select a disinterested third-person mediator within a reasonable period of time. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties fail to select a mediator within a 15-day period, any party may petition the Superior Court of the County of Kern to appoint the mediator. The parties may agree, in writing, to a different process for dispute resolution.

ARTICLE 26. COMPLIANCE WITH LAWS

CM's work shall comply with and meet applicable requirements of federal, state, regional, or local law, including, but not limited to, the Uniform Building Code, the Education Code, Title 19, Title 21 and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services.

ARTICLE 27. INDEPENDENT CONTRACTOR

- 27.1 CM shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the CM performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by CM shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 27.2 CM understands and agrees that the CM's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 27.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that CM is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by CM which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 27.4 Should a relevant taxing authority determine a liability for past Services performed by CM for District, upon notification of such fact by District, CM shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to CM under this Agreement (again, offsetting any amounts already paid by CM which can be applied as a credit against such liability).
- 27.5 A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, CM shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that CM is an employee for any other purpose, then CM agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that CM was not an employee.
- 27.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

ARTICLE 28. SUCCESSORS IN INTEREST AND ASSIGNS

This Agreement is binding upon and inures to the benefit of the successors in interest, executors, administrators, and assigns of each party to this Agreement, provided, however, that CM shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations without the prior written consent of District. Any attempted assignment without such consent shall be invalid.

ARTICLE 29. ASBESTOS CERTIFICATION

CM shall certify to the best of its information pursuant to 40 Code of Federal Regulations, Section 763.99(a) (7), that no asbestos-containing material was specified as a building material in any construction document for the Project and will ensure that contractors provide District with certification that all materials used in the construction of any school building are free from any asbestos-containing building materials (“ACBMs”). Contractor shall include statements in specifications that materials containing asbestos are not to be included. This certification shall be part of the final Project submittal.

ARTICLE 30. DISABLED VETERAN BUSINESS ENTERPRISE CERTIFICATION

The District reserves the right to require compliance with any goal District sets for participation of entities certified as a Disabled Veteran Business Enterprise (DVBE). If District elects to require compliance, such requirements will be set forth in the selection process, and/or contained in the Work Authorization. CM agrees to comply with any such requirements.

ARTICLE 31. MISCELLANEOUS

- 31.1 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and venue for any litigation arising out of the performance of this Agreement shall be, at the election of District, in the County of Kern, and CM waives, to the fullest extent permitted by law, any right to seek a change in venue without the express written consent of District.
- 31.2 Entire Agreement. This Agreement with its exhibits supersedes any and all other prior or contemporaneous oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises, or agreements have been made by any person that are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.
- 31.3 Severability. Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.
- 31.4 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

Executed this _____ day of _____, 2019, at Bakersfield, Kern County, California.

[CM Name]

Kern Community College District

By: _____

By: _____

Printed Name: _____

Printed Name: Deborah. A. Martin

Title: _____

Title: Chief Financial Officer

Additional Services:			
Special Consultants		Project Item Fee	
CM Representative:			
Consultant's Construction Management Representative:			
Approvals:			
Consultant:		Associate Vice Chancellor of Construction & Facilities Planning	
Signature	Date	Signature	Date
Name:		Name: Eric Mittlestead	
Other/requirements:		Chief Financial Officer	
1. Attached proposal becomes part of this WA.			
2. Number of site visits during Design			
3. Number of site visits during Construction			
4. Number of meetings during Construction			
		Signature	Date
		Name: Deborah A. Martin	
Total Fee Calculation:			
Contractor Fee		Not to Exceed	
Reimbursables		Printing, travel, mileage, etc.	
Miscellaneous			
Total			\$

EXHIBIT B
CONSTRUCTION MANAGEMENT SERVICES
FEES AND PRICES

Provide an hourly rate schedule for applicable positions. Hourly rates shall be based on Project-site, Direct Personnel Expense including direct wage, payroll taxes, benefits, workers' compensation, and vacation/holiday/sick time. Other Specific Project Based positions may be required and will be further defined in the individual RFP.

COMPANY NAME :	
PROJECT STAFF POSITIONS	FULLY BURDENED HOURLY RATE
Construction Manager	
Project Engineer	
Sr. Cost Manager	
Estimator	
Scheduler	
Contract Administrator	
Coordinator	
Document Control Administrator	

Resources to be Provided:

1. Define the specific resource types (or named individuals) that will be provided by Consultant to support the project scopes (include Consultant's personnel and any sub-consultants).
2. Provide a project organization chart which includes roles and responsibilities.
3. Describe how these resource requirements will be met (draw from existing resources, hire, and sub-contract).
4. Provide the level of participation for each resource (full-time, part-time, etc.). If part-time, define the expected level of participation.
5. Consultant's Assigned Project Team Members.