

**PROFESSIONAL SERVICES AGREEMENT
COUNTERPOINT CONSTRUCTION MANAGEMENT INC.**

This Agreement ("Agreement") for professional services is made on _____, 20____, between UKIAH UNIFIED SCHOOL DISTRICT, a California public school district ("District"), and **Counterpoint Construction Services Inc.**, a **Construction Management** ("Consultant").

1. Scope of Services. Consultant shall provide to District the professional services described in the Scope of Services, attached hereto as **Attachment A** and incorporated herein (the "Services"). Only the District's Governing Board or its Superintendent may authorize any change or addition to the Scope of Services specified in Attachment A.

2. Term. This Agreement shall become effective on **November 22, 2019**, and shall terminate on **December 31, 2020** unless terminated sooner in accordance with Section 11 of this Agreement.

3. Compensation. For the full and satisfactory completion of the Services, District shall compensate Consultant as set forth in **Attachment B** and incorporated herein.

4. Payment. District shall pay Consultant for services satisfactorily provided during each calendar month following within thirty (30) days following District receipt and approval of a detailed invoice. The invoice must include, at a minimum:

- 5.1 A description of the specific Services provided,
- 5.2 the name of the individual providing the Services,
- 5.3 the date(s) upon which the Services were provided,
- 5.4 the time spent providing the Services,
- 5.5 the amount due for the Services and the basis for calculating the amount due, and
- 5.6 an itemized summary of Allowable Reimbursable Expenses.

5. Independent Contractor. The parties agree that Consultant shall act as an independent contractor under this Agreement and shall have control of its work and the manner in which it is performed. Consultant is not an employee of District and is not entitled to participate in any health, retirement, or similar employee benefits from the District.

6. Consultant's Warranties.

7.1 Consultant warrants that all Services provided under this Agreement shall be performed in accordance with generally accepted professional practices and standards for Consultant's profession in the state.

7.2 Consultant warrants that all Services provided under this Agreement shall be performed in accordance with applicable federal, state, and local laws and regulations, including, but not limited to, conflict of interest laws.

7.3 Consultant warrants that Consultant has no present interest which would conflict in any manner with the performance of Services on the District's behalf.

7. Notice. Any notice, billing, or payment required by this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by e-mail as a .pdf (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party shall be given as follows:

Ukiah Unified School District
511 S. Orchard Ave.
Ukiah, CA 95482
707-472-5010 (phone)
Attention :
Chief Business Official

Counterpoint Construction Services Inc.
3663 North Laughlin Road, Suite 200
Santa Rosa, CA 95403
707-824-8440

8. Indemnity. Consultant shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, District, its governing board, officers, agents, employees, and volunteers from and against any and all liability, demands, loss, damage, claims, settlements, expenses, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's acts or omissions with respect to this Agreement, except such Liability caused by the active negligence, sole negligence, or willful misconduct of the District. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers' Compensation or other employee benefit acts, or by insurance coverage limits, and shall survive the expiration or early termination of this Agreement.

9. Insurance. Before providing any services under this Agreement, Consultant shall be required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements.

The required insurance must cover the activities of Consultant and its employees or subcontractors relating to or arising from the performance of services under this Agreement, and must remain in full force and effect at all times during the term of the Agreement. All required insurance must be issued by an insurer licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Consultant fails to provide any of the required coverage, District may, at its sole discretion, purchase such coverage at Consultant's expense and deduct the cost from payments due to Consultant.

9.1 The following insurance policies and limits are required for this Agreement, unless expressly waived or amended in writing by District:

9.1.1 Commercial General Liability Insurance ("CGL"). The CGL policy shall be issued on an occurrence basis, written on a commercial general liability form, and shall include coverage for liability arising from Consultant's acts or omissions in the performance of services under this Agreement with limits of at least one million dollars (\$1,000,000.00) per occurrence. The CGL policy must name District as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and must protect District, its officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Agreement. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.

9.1.2 Automobile Insurance. The automobile liability insurance shall cover bodily injury and property damage in an amount no less than one million dollars (\$1,000,000.00) combined single limit for each occurrence, including owned, hired, and non-owned vehicles.

9.1.3 Workers' Compensation Insurance and Employer's Liability. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, with limits of at least one million dollars (\$1,000,000.00). If Consultant is self-insured, Consultant shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

9.1.4 Professional Liability. This insurance must insure against Consultant's errors and omissions in the provision of services under

this Agreement, in an amount no less than one million dollars (\$1,000,000.00) combined single limit.

9.2 Each certificate of insurance must state that the coverage afforded by the policy or policies shall not be reduced, cancelled or allowed to expire without at least thirty (30) days written notice to District, unless due to non-payment of premiums, in which case at least ten (10) days written notice shall be made to District.

9.3 Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against District.

9.4 The CGL policy must include the following endorsements:

9.4.1 The inclusion of more than one insured shall not operate to impair the rights of one insured against another, and the coverages afforded shall apply as though separate policies have been issued to each insured.

9.4.2 The insurance provided is primary and no insurance held or owned by District shall be called upon to contribute to a loss.

10. Dispute Resolution. In the event that any dispute arises between the parties in relation to this Agreement, the parties agree to meet face to face as soon as possible to engage in a good faith effort to resolve the matter informally. In the event that any dispute arises between the parties in relation to this Agreement, and the dispute is not resolved by informal discussions, the parties agree to submit the dispute to mediation.

10.1 Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within sixty (60) days after the date that such notice is given, or sooner if reasonably practicable. The parties shall jointly appoint a mutually acceptable mediator. The parties further agree to share equally the costs of the mediation, except costs incurred by each party for representation by legal counsel.

10.2 Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute.

11. Early Termination.

11.1 **Termination for Convenience.** District may terminate this Agreement for convenience by giving ten (10) calendar days written notice

to Consultant. In the event District elects to terminate the Agreement without cause, it shall pay Consultant for services satisfactorily provided up to that date.

11.2 Termination for Cause. If either party breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the other party may terminate this Agreement by giving written notice five (5) calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. Consultant shall be entitled to payment for all services satisfactorily provided up to the effective date of termination, except that the District may deduct from that payment the amount of costs the District incurred, if any, because of Consultant's breach of the Agreement.

12. Work Product. District shall be the sole owner of all rights to any work product in any form which has been prepared by Consultant on District's behalf pursuant to this Agreement, unless otherwise specified in writing by the parties.

13. General Provisions.

13.1 Assignment and Successors. Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto.

13.2 Third Party Beneficiaries. There are no intended third party beneficiaries to this Agreement.

13.3 Nondiscrimination. Consultant shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

13.4 Choice of Law and Venue. This Agreement shall be governed by California law, and venue shall be in the Superior Court for the county in which the District's main office is located, and no other place.

13.5 Severability. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.

13.6 Amendment. No amendment or modification of this Agreement shall be binding unless it is in a writing duly authorized and signed by the

parties to this Agreement. **Under California law this Agreement and any amendment or modification thereto shall not be enforceable unless or until it has been approved or ratified by the District's Governing Board.**

13.7 Provisions Deemed Inserted. Every provision of law required to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Agreement shall be amended to make the insertion or correction.

13.8 Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Agreement and supersedes all prior written or oral understandings or agreements of the parties.

13.9 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

13.10 Force Majeure. If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.

13.11 Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

13.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

13.13 **Authorization.** Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.

The parties agree to this Agreement as witnessed by the signatures below:

DISTRICT:

CONSULTANT:

Ukiah Unified School District

Counterpoint Construction

s/ _____

s/ _____

Name/Title [print]

Name/Title [print]

Date: _____

Date: _____

Attachments:

Attachment A: Scope of Services

Attachment B: Consultant's Fee Schedule

Attachment A

I. SCOPE OF SERVICES

A. Program and Design Phase Services

Construction Manager shall provide the necessary service to implement the District's Master Plan, for projects assigned by the District. The construction manager may be tasked with some or all of the following services:

1. Assist the District with the updating the master schedule and master budget.
2. Assist the District with design and/or bond planning meetings.
3. Work with the designated Architect and District Consultants (CEQA, Hazmat, Surveying, Geotechnical, and others) to develop and refine the project design plans. Coordinate the work of the Architect and consultants as needed.
4. Perform Constructability Reviews of projects on plans and specifications with written comments at the 75% and 90% of the design drawings. Review should include but not be limited to site visit, as built check, constructability issues, site access, phasing plan, and detailed coordination of drawings and specification. CM is required to back check and verify that comments in the reviews have been addressed by the designated Architect.
5. Cost estimating services at various stages (schematic design, design development, 75% construction documents, and completed construction documents) of assigned projects to ensure design work is within program budget. Coordinate estimating work with the designated Architect and recommend areas of value engineering to the District.
6. Scheduling services to assist in achieving the required design, submission, and approval of the plans of project milestones. Report on a regular basis the status of all design work including local and state agency approvals.
7. Coordinate with the designated Architect and District in developing detailed construction phasing and coordination plans.
8. Assist the District with any utility coordination, permits, service upgrades and connections as related the program.
9. Attend District Facility meetings and School Board meetings as needed.
10. Assist in finalizing the District front end documents, Division 00 and 01 to conform to the Master Plan, Educational Specification, and Environmental Guidelines.
11. Provide assistance and advice on hiring Project Inspectors and other consultants as needed.
12. Provide document control and filing of all relevant program documents.
13. Upon request, assist the District in establishing an electronic document control

system for the construction work (RFIs, Submittals, Change Orders, and other project correspondences). Implementation of existing web based systems is acceptable and preferred.

14. Upon request, develop a program management plan that details roles, responsibilities, and procedures.

15. Upon request, develop a construction procedures manual that will provide an overview for all team members including the contractor to processes and procedures of the District.

B. Bid and Award Phase Services

Provide comprehensive bid and award phase services for assigned projects including the following:

1. Assist the District with bid marketing to ensure the most responsive and competitive bids.
2. Assist District with legal advertisements and other pre-bid advertisements and outreach.
3. Coordinate printing, and distribution of all plan sets, bid packages, and addenda.
4. Assist the District with pre-bid walks and bidder orientation.
5. Assist the District with reviewing bids for responsiveness and advice on any bidding issues or complications. Assist the District with pre-construction tasks.
6. Assist in processing executed contracts, purchase orders, insurance certificates, performance and payment bonds, and distribution of contract to all legal parties.

C. Construction Phase Services

Provide comprehensive Construction Management services for assigned projects. Construction Manager may be required to assume all management and coordination responsibilities for construction activities, including but not limited to the following:

1. Scheduling services to monitor construction phase work, evaluate contractor baseline schedule, all monthly updates, and all two week look-ahead schedules. Maintain separate as built schedule.
2. Provide cost estimating services required to review, reconcile, and validate contractor change order submission.
3. Track all construction cost vs. budgets and report to the District on a regular basis.
4. Review quality and correctness of work and report any deficiencies not corrected

by the contractor to District.

5. Provide filing system for all projects.
6. Coordinate all public agency permits, connections, and other related coordination work during the construction phase.
7. Schedule and conduct the pre-construction meeting with the contractor and all relevant team members. Coordinate a separate hazardous material abatement pre-construction meeting when applicable.
8. Verify contractor is maintaining the record documents on a regular basis. All revisions should be recorded on a single set at the construction site.
9. Coordinate all work related to removal, relocation, installation of interim housing needed to perform the construction projects. Coordinate work with portable classroom vendor and installer. Coordinate any permits and special traffic requirements.
10. Assist the District with moving and storage work that may be required to perform the construction work of the designated project. Coordinate and manage work with site staff and District staff to minimize disruptions to the school operations.
11. Manage the established document controls for RFIs, Submittals, Change Orders, and other project logs and files.
12. Review shop drawings and submittals for completeness and monitor the status of all submittals, shop drawings, and related correspondence.
13. Document the progress of construction work with reports and digital photos that document project progress, unforeseen conditions, and non-compliant work.
14. Coordinate and lead all weekly construction meeting.
15. Ensure contractors meet all Division 00 and 01 contract requirements.
16. Manage and oversee the Project Inspector is performing their work per his or her contract requirements.
17. Prepare monthly reports for all projects that require executive summary of the program and detailed status of each project.
18. Analyze and review all change orders proposals. Verify scope and accuracy of cost and submit a recommendation to the District.
19. Evaluate all claims and make recommendations to the District on the most effective way to mitigate and/or resolve.
20. Review contractor payment applications request and gather required signature for further processing by the District.

21. Monitor all liens and stop notices and advise the District. Monitor contractor compliance with insurance certificates, endorsements, limits, and other legal documents.
22. Assist District in issuing and managing small contracts needed to accomplish the work of the larger projects and program.

D. Post Construction and Project Close Out Services

Provide comprehensive Close out services for assigned projects. Construction Manager may be required to assume all management and coordination responsibilities for close out activities, including but not limited to the following:

1. Coordinate with Architect and consultants the development of the punch list into a single document. Monitor and assist in the verification and completion of the punch list work.
2. Prepare all close out documents needed for DSA, OPSC Funding, County (File Notice of Completion) and permits.
3. Coordinate submission of all Contractual documentation from the Contractor to the District including Record Drawings, Warranties and Operation and Maintenance Manuals. Review and approve as appropriate.
4. Coordinate all required close out documents and transmit to the District, including resolution of all project issues, RFIs, PCOs, COs, RFIs, ASI, Project Photos, O&M Manuals, and correspondences. All documents to be submitted in an organized and filed in appropriate boxes. Provide electronic version of all relevant information in a safe and reliable format.
5. Assist and coordinate the District move into its new facilities including installation of District equipment and furnishings.
6. Assist in the implementation of commissioning process of the projects or coordinating the training of the new facilities to District staff and personal.
7. Prepare close checklist for DSA and OPSC. Construction Manager to assist Architect and District that all projects are closed with both OPSC and DSA.

Attachment B

Phase A & B: Program, Design, Bid and Award Services (Hourly): Basic services required for planning, administrating, bidding and processing work precedent to the Board award of contract. Depending on the type of project, this can range from straight forward project planning and bidding, to full environmental review and detailed community involvement.

Phase C & D Construction Services and Post Construction (Percent): Basic services required measured from the month in which the Board awards the contract for the project and ending at the scheduled completion time. This phase is intended to expire 30 days after contractor's scheduled completion date to allow for standard contract closeout. If the project is delayed beyond this time, due to no fault of the project manager, additional services may be charged at our hourly rates.

Extended and Warranty Services (Hourly): All services required after the end of the scheduled completion date described above.

Phase of Service Summary:

Program, Design, Bid & Award
Construction Services & Post Construction
Extended/Warranty

Basis of Payment:

Hourly
Percent of Contract Award
Hourly

Percent of Contract Award Fee-based Services:

At the time of award of construction contract, our fee for Construction Services Phase will be established as follows based on Contractor award amount:

Projects less than \$600,000 at time of award: Hourly

Projects between \$600,000 and \$1,500,000 at time of award; 5% of award amount.

Projects between \$1,500,001 and \$9,000,000 at time of award; 4.5% of award amount.

Projects in excess of \$9,000,001 at time of award; 4% of award amount.

Hourly Rates:

Our hourly rates are as follows:

President:	\$ 170.00 per hour
Vice President:	\$ 155.00 per hour
Sr. Project Manager:	\$ 140.00 per hour
Project Manager:	\$ 120.00 per hour
Project Engineer	\$ 95.00 per hour
Project Clerical:	\$ 65.00 per hour

These rates are assessed based upon actual time of service to the nearest half-hour, including direct driving time.

Hourly rates and Fee-Based proposals are all-inclusive, except as excluded below in “Fee Qualifications”, and except as noted as additional services or as reimbursable costs below. All home-office payrolls, overhead, fuel, vehicle, phone, regular mail, fax, computers and cell phone costs are included in our hourly rates.

Fee Qualifications

The following costs shall be reimbursed at the rate of actual cost plus 10%:

- Blueprinting.
- Claims, cost or scheduling consultants hired with consent of District
- UPS, FedEx or Cal-Overnight Charges
- Schedule reproduction (larger than 8.5 X 11)
- Reproduction and binding for monthly reports
- Bid advertisements
- Authorized expenditures
- Permits, fees, utility company fees

Hourly or Lump Sum Additional Services (These services are considered additional services, to be provided if and as agreed between District and Consultant)

- Estimating Services
- Value Engineering
- Preparation of CPM Schedules or As-Built Schedules
- Facility Needs Assessments
- Deferred Maintenance Planning

The following listed items are excluded from our Fee Proposal:

- Responsibility for handling, assessment or abatement of hazardous materials or Substances, including black mold, lead or asbestos
- Liability for site contractor’s compliance with safety regulations, or proper payment and reporting of prevailing wages
- Services provided by the Architect or any of the Architect’s sub-consultants or by registered design professionals
- Services provided by the Geotechnical Consultant
- Inspection services provided by the District’s Inspector of Record
- Special testing and inspection services