

**REQUEST FOR QUALIFICATIONS AND PROPOSALS  
FOR CONSTRUCTION MANAGEMENT SERVICES FOR  
MEASURE L BOND PROGRAM**

**SAN MATEO UNION HIGH SCHOOL DISTRICT**

650 N. Delaware Street  
San Mateo, CA 94401

RFQ/P Issued: 5/22/2020

Proposals due: 6/12/20

Award Issued: 6/25/20

## **SAN MATEO UNION HIGH SCHOOL DISTRICT**

### **REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P) FOR CONSTRUCTION MANAGEMENT SERVICES FOR MEASURE L BOND PROGRAM**

#### **I. GENERAL BACKGROUND AND PURPOSE OF RFQ/P**

The San Mateo Union High School District (the “District”) provides award-winning high school and adult education to the residents of Foster City, San Mateo, Burlingame, Hillsborough, Millbrae and San Bruno. Approximately 8,900 students attend six highly-rated comprehensive high schools, a special Middle College program in conjunction with the College of San Mateo, an alternative/continuation high school, and a robust Adult School Program.

The District through this RFQ/P is seeking proposals from qualified construction management firms to provide full construction management services for the District’s Measure L Bond Program (“Program”). Measure L is a \$385 million Prop 39 bond authorization, and if approved by the voters on March 3, 2020, will upgrade District high schools, improve school safety, provide modern classroom technology, acquire, construct, repair classrooms, facilities, sites/equipment and update classrooms/labs for science, math/engineering instruction. A more detailed description of the Program and project list for use of Measure L funds can be found in **Exhibit A** attached hereto (“Project List”). It is the District’s intent to selection a qualified firm to provide construction management services for the Program. As construction management services are needed for specific projects on the Project List, the selected firm will be requested to submit a more detailed fee and services proposal, at which time the firm will develop a detailed scope of services, proposed fee and schedule.

The projects to be constructed under the Program will be delivered under a variety of construction delivery methods; e.g., design-bid-build, design-build and lease-leaseback. Each firm responding to this RFQ/P must be experienced with all construction delivery methods and prepared and equipped to provide full construction management services to the District in a highly competent, expeditious and timely manner so as to enable the District to meet critical time deadlines and schedules.

Interests firms must submit their proposal in pdf format **VIA EMAIL BY NO LATER THAN 4:00 P.M., JUNE 12, 2020** as follows:

Attn: Linda Carlton  
Director of Maintenance, Operations and Facilities Use  
San Mateo Union High School District  
Email address: [lcarlton@smuhsd.org](mailto:lcarlton@smuhsd.org)

This RFQ/P does not commit the District to award a contract or pay any costs incurred in the preparation of a proposal responsive to this RFQ/P. The District reserves the right to accept all or part of any proposal or to cancel, in part or in its entirety, this RFQ/P. The District further reserves the right to accept the proposal(s) that it considers to be in the best interest of the District. This is a request for proposals and is not an offer by the District to contract with any party responding to this RFQ/P. The District reserves the right to reject all Proposals and issue a new request for proposals or withdraw this RFQ/P at any time.

## **II. GENERAL INFORMATION AND INSTRUCTIONS**

### **A. Submittal of Proposals**

Proposals should be reviewed for accuracy before submission to the District since proposals may not be adjusted after submission to the District. The District will not be responsible for errors or omissions in any proposal. The District reserves the right to reject any and all proposals, or to waive any irregularities, or informalities in the proposals.

### **B. Signatures**

All proposals must include a signature of an authorized officer of the firm submitting the proposal. A signature form has been included with this document.

### **C. Disqualified Proposals; Withdrawal of Proposals**

Any proposal received after 4:00 p.m. on June 12, 2020 will be refused and returned to the firm unopened. Firms may withdraw proposals either personally or in writing, at any time prior to 4:00 p.m. on June 12, 2020, at the following location and/or addressed to:

Attn: Linda Carlton  
Director of Maintenance, Operations and Facilities Use  
San Mateo Union High School District  
Email address: [lcarlton@smuhsd.org](mailto:lcarlton@smuhsd.org)

### **D. Questions and Contacts**

Firms must carefully read the entire RFQ/P prior to submitting questions as most questions will be answered in this RFQ/P. All questions must be submitted in writing via e-mail to Linda Carlton, Director of Maintenance, Operations and Facilities Use at [lcarlton@smuhsd.org](mailto:lcarlton@smuhsd.org). The deadline for questions is June 5, 2020 by 4:00 PM. After this deadline, the District will not answer, address, and/or review any questions that interested firms may submit. Replies involving any substantive issues will be issued by addenda and mailed to the firm making the inquiry and posted on the District's website. Only answers provided by formal written addenda will be binding on the District. In order to control information disseminated regarding this RFQ/P, firms interested in submitting Proposals are directed not to make personal contact with members of the Board of Trustees and District Administration with the exception of Linda Carlton, Director of Maintenance, Operations and Facilities Use.

### **E. Full Opportunity**

The District affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), and Disabled Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to submit proposals in response to this RFQ/P and no respondent will be discriminated against on the basis of race, color, gender, sexual orientation, political affiliation, age, ancestry, religion, marital status, national origin, medical condition or disability in any consideration leading to the award of the contract. No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award of contract.

**F. Issuance of Additional RFQ/P**

The District reserves the right in its sole discretion to issuance additional requests for qualifications/proposals, as the District determines the need for additional qualified construction management firms for the Program.

**G. District Required Forms**

Proposals must include signed District Required Documents that are attached hereto as follows:

**Exhibit B:** Qualification Certification

**Exhibit C:** Non-collusion Affidavit

**H. Rights of the District; Amendments**

The District reserves the right to cancel or revise this RFQ/P in part or in its entirety. If the District cancels or revises this RFP/Q, all firms will be so notified by addenda. The District also reserves the right to extend the dates when qualification applications are due, responses are due, announcement of the results of its best value analysis, or the date on which the award will be made.

**III. CONTENTS OF PROPOSALS**

**A. General**

In order for proposals to be considered, proposals must be clear, concise, complete, well organized, and demonstrate both the firm's qualifications and its ability to follow instructions. The quality of answers, not length of responses or visual exhibits, is what is important in the proposal. All firms shall follow the order and format specified below. Each section of the proposal shall be tabbed to correspond to the numbers/headers shown below:

**B. Submittal Letter**

The cover letter shall be brief (two page maximum). Include the proposal's title and submittal due date, the name, address, fax number, telephone number and website of the responding firm (or firms if there is a joint venture or association). If the firm is proposing to co-respond with another principal firm, the cover letter must specify the type of services to be provided by each firm and the proposed percentage allocated to that phase or function for the co-respondent.

**C. Table of Contents**

Include complete and clear listings of headings and pages to allow easy reference to key information.

**D. DVBE Requirements**

Describe DVBE contract capabilities and ability to meet any State requirement related to DVBE.

**E. Description of Firm**

Describe the history of the firm, number of years in business, the date the firm was established under its business name, number of employees (licensed professionals and technical support), and the location of the office where the services will be performed. State the dollar value of K-12 facilities projects done in the past calendar year (January, 2019 to December, 2019). Include a statement of the overall scope of work anticipated in the next year? In the next two years?

## **F. Project Team**

Identify key team members, including sub-consultants, and state their qualifications relevant to the services requested in this RFQ/P, including those key team members who will be providing services on a day-to-day basis. Also provide a resume of each key team member. Each proposal must include evidence that the firm is legally permitted and properly licensed for the scope of services requested in this RFQ/P and is and to conduct business in the State of California.

The District expects that the key team members will remain intact through the duration of the individual projects. If a team member leaves the Firm's employment, the District reserves the right to approve that team member's replacement.

## **G. Knowledge of K-12 Facilities Design and Construction and other Related Public Education Facilities Experience**

Provide information about prior construction management services furnished by your firm in the last ten (10) years on a minimum of five (5) K-12 educational projects, including whether projects were closed out with DSA successfully, and list the following for each project:

- district name and name of contact person, title, telephone number, and email address to be contacted for a reference
- project name and location
- beginning and end dates of project (i.e., Notice of Completion and DSA final certification)
- square footage
- main program elements
- original budget, bid amount & final amount at close-out
- number of RFI's and Change Orders of each project
- briefly state relevance of projects included for consideration in this RFQ
- specify role of firm or individual if work was not exclusively by the firm (i.e., joint venture, association)
- key individuals of the firm involved and their roles in the project
- any sub-consultants that worked with the firm

For all projects where your firm has provided construction management services over the past ten (10) years, explain the reasons projects, if any, were not closed out with DSA successfully.

Firms are also required to provide written responses to questions and information requested in **Exhibit D**, attached hereto.

## **H. Services Required of Selected Firm**

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**RFQ/P – Construction Management Services**

Provide project based design-phase services in conjunction with all architectural firms awarded work by the District; assist with bidding; manage the construction contracts and “close-out” the projects. Assist the District in the selection of the most appropriate construction delivery method (design-bid-build; design-build, etc.). More specifically:

- Design Phase—Work with District staff and architects to develop and refine designs to correlate design and scope to project budget; assist with verification of site conditions; perform constructability reviews at appropriate stages of design; assist in segregating bid packages for maximum cost effectiveness; advise District staff regarding owner-supplied equipment and other potential cost-saving measures; report to District staff on the status of design and State and local agency approvals versus the approved schedule; assist in obtaining all necessary approvals; attend meetings as required;
- Pre-Construction & Bidding Phase—each project and assist the District staff and other consultants (architects, engineers, etc.) in the development of the initial budget and budget updates for each project; work with District staff in conducting pre-bid conferences, conduct pre-construction meetings, assist with prequalification and the evaluation of responses, participate in the bidding process and reporting to District staff on bid results, assist in dealing with any bid protests and assist District staff in coordinating contracts with selected low bidders including the evaluation of bonds, insurance, conformance with DIR requirements, DVBE compliance and CEQA compliance;
- Construction Phase—Assist District staff in the administration and coordination of the following aspects of the construction project: monitor the work of contractors on a daily basis; enforce performance, scheduling and notice requirements; monitor schedule and cost information for each contractor for each project; document the progress and cost of each project; report and advise proactively on potential schedule and budget variances and impacts on schedules and budgets; recommend potential solutions to schedule and cost issues; work cooperatively with architects and contractors; attend weekly job site meetings and prepare and circulate weekly job site minutes when required; evaluate and process payment applications; evaluate and process change order requests; evaluate and track requests for information (RFI's) and responses; work with District staff and architect to develop lists of incomplete or unsatisfactory work (punchlists); submit necessary reports to State authorities including DSA verified reports; ensure that all documents from all parties are submitted to DSA in a timely manner to complete project closeout; and
- Post-Construction Phase—Work with District staff to ensure completion of all punchlist work; coordinate contractor closeout requirements including obtaining all guarantee documents, keys, as-built drawings, daily logs and verified reports; monitor warranty work if requested; coordinate systems training with District staff and contractors and assist in the moving District staff into new/renovated facilities upon project closeout.

#### **I. Experience in Working with State and Local Agencies**

Describe the experience of key personnel in working with and receiving approval from State Agencies including but not limited to the California Department of Education, the Division of State Architect, California Department of Fish & Game and the Department of Toxic Substances Control. Also, describe experience working with local jurisdictions including City/Counties Engineering Departments, Public

Works Departments, Local Fire Departments, County Environmental Health Services Departments among other permitting agencies.

**J. Proof of Insurance**

Please provide proof of insurance coverage as set out in this section. The intent of the required insurance is to protect the District from any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of the firm or subconsultant, or their agents, while performing services under the terms of the Construction Management Services Agreement (defined below in Section L and attached hereto as **Exhibit E**). The firm will be required to provide proof of insurance coverage, and such insurance coverage shall be maintained in full force and effect during the term of the Construction Management Services Agreement, as follows:

- Commercial General Liability: Limits of at least \$2,000,000 per occurrence and \$2,000,000 aggregate. District shall be included as additional insured on the CGL on a Primary, Non-Contributory basis (Including Completed Operations). Additional Insured will be notified by construction management firm within 30 days of insurance policy cancellation for reasons other than non-payment of premium. Additional Insured will be notified by construction management firm within 10 days of insurance policy cancellation for non-payment of premium.
- Automobile Liability: Limits of \$1,000,000 each accident for owned, hired and borrowed and non-owned motor vehicles. District shall be included as additional insured on the auto policy on a primary, non-contributory basis. Additional Insured will be notified by construction management firm within 30 days of insurance policy cancellation for reasons other than non-payment of premium. Additional Insured will be notified by construction management firm within 10 days of insurance policy cancellation for non-payment of premium.
- Workers' Compensation Insurance: Workers' compensation insurance as required by California law, with an insurance carrier satisfactory to District, for all persons whom they may employ in carrying out the services contemplated under this RFQ/P. If construction management firm is self-insured, construction management firm shall furnish a valid Certificate of Permission to Self-Insure, signed by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, California. The policies represented by the certificates must contain the provision (and the certificates must so state) that the insurance cannot be canceled until thirty (30) days after written notice of intended revocation has been given to District.
- All insurance required under this section shall contain a waiver of subrogation if available.

**K. Litigation History**

Provide a comprehensive five (5)-year summary of the firm's litigation, arbitration and negotiated/settled history with previous clients. State the issues in the litigation, the status of the litigation, names of parties, and outcome. A proposal failing to provide the requested information on lawsuits or litigation, and responses which assert attorney-client privilege and fail to provide the information requested, will be considered non-responsive, disqualified from the selection process, and will not be evaluated.

**L. Structure and Rates; Proposed Services Agreement**

Firms are required to provide their fee structure and rates for construction management services. This will include hourly billing rates by position (proposed); staffing plan (proposed); and reimbursable schedule

(proposed). Firms shall provide in the proposal a Schedule of Rates (“SOR”) by position, by company entity, for each position proposed the firm, whether the firm is submitting as a prime with subconsultant(s), or as joint venture or partnership. The SOR shall identify proposed reimbursables by category. Travel and related expenses shall be reimbursed in accordance with the federal government Joint Travel Regulation.

A form of the project specific Construction Management Services Agreement (“Agreement”) is attached hereto as **Exhibit E**. The final form of the Agreement will incorporate the final scope of work and not-to-exceed fee negotiated between the District and the selected firm, which shall be negotiated with the successful firm for each individual project. Firms are required to identify and explain any proposed changes or exceptions to the form of Agreement. Suggested language revisions not noted in firm’s proposal will not be considered by the District. The selected firm will be expected to enter into the Agreement within fifteen (15) days following notification of selection for any specific project. The Agreement will be subject to approval by the Board of Trustees at a duly noticed meeting.

#### **M. Appendix**

Firms shall attach to the proposal a firm brochure and resumes of key personnel.

### **IV. SELECTION PROCESS**

The process that will be used by the District in selecting the qualified construction management firm to perform services is outlined in this Section as follows:

#### **A. Selection Committee**

The Director of Maintenance, Operations and Facilities Use may appoint a Selection Committee.

#### **B. Oral Interviews**

At the discretion of the District, firms may be interviewed. The District will issue an Addendum notifying firms of the date for oral interviews. Due to applicable COVID-19 “shelter in place” orders, if interviews are conducted, such interviews will be conducted by Zoom teleconference.

#### **E. Notice of Intent to Award; Board of Trustees Selection of Qualified Firm**

The Selection Committee will make a recommendation to the Board of Trustees of the firm most qualified for award of the Agreement. The Board of Trustees reserves the right to not award the Agreement to the recommended firm.

Target Date for Award: June 25, 2020

#### **F. Protest and Appeal of Qualification Status**

A firm not awarded the RFQ may protest and appeal the District’s determination, but only if the firm follows the protest and appeal procedures in this Section.

1. No later than three (3) business days following the posting of the agenda for the award of the RFQ, the protesting firm shall submit via email to the addressee below a protest stating the grounds for the protest for determination as follows:



Attn: Linda Carlton  
Director of Maintenance, Operations and Facilities Use  
San Mateo Union High School District  
Email address: [lcarlton@smuhsd.org](mailto:lcarlton@smuhsd.org)

Within one (1) business day after receipt of the protest, Linda Carlton, Director of Maintenance, Operations and Facilities Use, will issue a written determination of the firm's protest via email. If the firm desires to continue to protest the District's determination, the firm must via email a written appeal to Linda Carlton at [lcarlton@smuhsd.org](mailto:lcarlton@smuhsd.org). The appeal will be considered by the Board of Trustees at the next regularly scheduled public noticed meeting of the Board of Trustees.

The procedure and time limits set forth in this paragraph are mandatory and are the protesting firm's sole and exclusive remedy in the event of protest. The protesting firm's failure to promptly comply with these procedures shall constitute a waiver of any and all rights to further pursue the protest, including without limitation filing a Government Code Claim or instituting legal proceedings. A firm that desires to submit a protest may not rely on a protest submitted by another firm, but must timely pursue its own protest.

#### **V. SELECTION CRITERIA (150 or 175-Point System)**

Construction management firms submitting qualifications and proposals are advised that all submissions will be evaluated to determine the best qualified firm to meet the needs of the District. The selection criteria will include, but not be limited to, the items listed below. Proposals will not be scored for proposers who fail based on the pass/fail questions below.

The District may perform investigations of responding firms that extend beyond contacting the references identified in the proposal. The District may request a firm to submit additional information pertinent to the review process. The District also reserves the right to investigate and rely upon information from other available sources in addition to any documents or information submitted.

##### Pass/Fail Questions

- Has your firm contracted for and provided construction management services for a project with a value of at least \$10,000,000 within the past ten (10) years? (Yes = 0 points, No = not qualified)
- Does your firm currently hold all licenses necessary to perform the services for the Program and have those license(s) been consistently active for at least five (5) years without revocation or suspension? (Yes = 0 points, No = not qualified)
- Has your firm been found non-responsible, disqualified, forbidden, or otherwise prohibited from performing services and/or bidding on work for any public agency within California within the past five (5) years? (Yes = not qualified, No = 0 points)
- Has your firm defaulted on a contract or been terminated for cause by any public agency on any project within California within the past five (5) years? (Yes = not qualified, No = 0 points)
- Has your firm or any of its owners or officers been convicted of a crime involving: bidding for, awarding of, or performance of a contract with a public entity; making a false claim(s) to any public

entity; or fraud, theft, or other act of dishonesty to any contracting party within the past ten (10) years?  
(Yes = not qualified, No = 0 points)

Qualification Criteria (100 possible points)

- Ability to communicate with District personnel regarding the construction management of projects to support the Program. (5 possible points)
- Experience and expertise of the firm related to California public school building projects that are similar in size, scope, complexity, or construction costs to the projects in the Project List. (35 possible points)
- Capable personnel to perform the services requested in this RFQ/P. (10 possible points)
- Past record of meeting time schedules and budgets for comparable projects. (20 possible points)
- Completeness and quality of the proposal. (5 possible points)
- Recommendations from those familiar with and/or visits to several of the firm's services. (20 possible points)
- A local office for the firm with the ability to fully staff the project without travel costs or delays. (5 possible points)

Proposal Criteria (50-75 possible points)

- Proposed fixed fee and hourly fee schedule for additional services as required and described above. (40 possible points)
- Implementation of the District's Agreement. (10 possible points)
- Oral interview. (25 points) **Note that the District has the discretion to decide whether or not interviews are necessary.** The District will issue an addendum to this RFQ/P with pertinent information if it decides to conduct interviews. If the District elects to proceed without conducting interviews, the "best qualified" selection will be based on a 150-point system. If the District elects to proceed with interviews, "best qualified" selection will be based on a 175-point system; i.e., if interviews are conducted, the District will add the points received in the oral interview.

If the District decides to hold interviews, firms may designate up to three (3) key personnel to attend the interview. Firms shall not designate marketing or sales personnel to attend the interview. Interviews will begin with an opening presentation by the firm. The duration of this presentation is limited to a maximum of twenty (20) minutes. The firm may at its discretion use PowerPoint or other visual aids during the presentation, provided that the District is given one (1) printed copy and one (1) electronic copy of any visual aids used during the presentation. Following the interview, there will be a question and answer period for the District to ask questions of the firm's key personnel. This part of the interview is expected to last approximately twenty-thirty (20-30) minutes, or longer, as the District deems appropriate and in its sole discretion. Following the period of questions and answers, the firm

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may make a five (5) minute closing statement. Up to 25 points will be awarded for the interview based on the opening presentation, responsiveness to questions, communication/interpersonal skills, demonstrated knowledge and overall performance.

## **VI. FINAL DETERMINATION AND AWARD**

The final determination and award of the construction management firm for the Program is at the sole discretion of the Board of Trustees. The Board of Trustees reserves the right to accept or reject any or all proposals and or to cancel this RFQ/P.

## **EXHIBIT A**

### **MEASURE L PROJECT LIST**

The Project List includes the following types of upgrades and improvements at District schools, facilities and sites:

#### **IMPROVE AGING CLASSROOM INFRASTRUCTURE AND SUSTAINABILITY**

##### **School Repair and Upgrade Projects Which Promote Student Achievement**

**Goals and Purposes:** Many of the District classrooms and school facilities were built decades ago, and as a result many are aging and need basic health and safety upgrades. This measure will fund the repair of deteriorating restrooms and leaky roofs, replace outdated electrical, lighting, heating, and air conditioning systems, as well as update fire alarm and sprinkler systems.

The rising cost of housing in San Mateo County makes it hard to retain and attract quality teachers and staff. Some commute from as far as Tracy because they cannot afford to live nearby, and many others leave to work in more affordable areas. This measure will assist in the construction of affordable housing dedicated to school employees, so the District can attract and retain high-quality teachers and staff.

This measure is a smart investment as it will improve energy efficiency and sustainability by renovating buildings; improving heating, ventilation, and air conditioning; and installing turf fields that do not need water. These improvements will reduce energy and water use, makes our schools more sustainable, and save money that can be redirected back into the classroom.

- Repair or upgrade aging and leaky plumbing and drinking water systems.
- Repair deteriorating walls and facilities containing asbestos.
- Provide or convert classrooms, labs and educational facilities to accommodate student population increases.
- Repair deteriorating electrical, wiring, heating, cooling and ventilation systems to increase energy efficiency and reduce utility bills.
- Remove hazardous materials like asbestos.
- Update science, technology and computer labs, including spaces for students to conduct hands-on science, technology and engineering education.
- Repair older facilities' walls to prevent rats and mice from entering classrooms.

#### **STUDENT SAFETY AND ACHIEVEMENT: LOCAL SCHOOL FUNDING TO SUPPORT HIGH QUALITY INSTRUCTION IN MATH, SCIENCE, ENGINEERING AND TECHNOLOGY**

##### **Projects That Improve Student Safety and Success**

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Goals and Purposes: Many of our high schools are lacking the up-to-date technology students need to succeed. Some classroom technology hasn't been updated in over 25 years, which is before Google and Facebook even existed and before most people had cell phones. This measure will upgrade classrooms, and science labs and computer labs, as well as improve electrical systems and wiring for computers and internet access, to ensure our students will have equal access to exemplary learning.

This measure will upgrade classrooms, computer systems, and science labs to improve student learning and achievement. These investments will provide students with the technology and skills they need to compete in an increasingly advanced and competitive economy.

Many of our local high schools have outdated and insufficient security features that do not meet current standards or reflect modern safety challenges and risks. This measure will make campus access improvements and other security system upgrades for emergencies to provide safe learning environments for students.

Schools will benefit from a variety of safety and achievement projects, such as:

- Update fire and carbon monoxide alarm systems that meet current safety standards.
- Provide educational facilities which better prepare students for a competitive global economy.
- Provide the classrooms and facilities needed to support high quality instruction in math, science, engineering, and technology.
- Replace out-of-date classroom and instructional technology.
- Provide the classrooms and facilities needed to support high quality instruction.
- Enable campuses to securely lockdown in emergencies.

In addition to the projects listed above, the repair and renovation of each of the existing school facilities may include, but not be limited to, some or all of the following: add or renovate student and staff restrooms; repair and replace electrical, plumbing, heating, ventilation and air conditioning systems; upgrade of facilities for energy efficiencies; repair and/or replace worn-out and deteriorated roofs, boilers, chillers, windows, walls, floors, doors, water lines and drinking fountains; construct or renovate offices and facilities for professional development of teachers, more efficient administration and multi-purpose learning spaces; install wiring and electrical systems to safely accommodate computers, technology and other electrical devices; upgrade or construct classrooms and support facilities including administrative, maker spaces, student union/activity centers, physical education facilities, gyms, tennis courts, music rooms, classrooms or facilities, science and computer labs/classrooms, libraries and buildings, covered eating areas, maintenance facilities and yards; repair and replace fire alarms, emergency communications, public address and security systems; improve facilities to satisfy ADA requirements; resurface or replace asphalt, broken concrete and improve hard courts, turf, install artificial turf on fields, irrigation, and downspout drainage systems and campus landscaping; install signage and pathway lighting, solar systems and fencing; expand parking and drop-off areas; improve all site utilities; acquire land; construct new school buildings; provide interim funding for the construction of teacher and staff housing; upgrade or replace interior and exterior painting, floor covering (including carpets), and school facades; demolition; upgrade or construct kitchens, food service areas, wellness center, and school cafeterias; construct various forms of storage and support spaces and classrooms; improve outdoor learning environments and quads; repair, upgrade and install interior and exterior lighting systems and back-up power generators; improve courtyards, sand volley ball and athletic structures, athletic fields and facilities which support student health, fitness and safety, lockers, stadium

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and hard court bleachers and exterior lighting; acquire vehicles, trucks and buses; construct; replace outdated security fences and security systems (including access control systems and security cameras), provide lunch shelters, indoor space for assemblies or for rainy day lunch; upgrade music labs, multi-purpose rooms, learning centers and media centers; add or upgrade parking lots. In addition to the listed projects stated above, the Project List also includes the acquisition of a variety of instructional, maintenance and operational equipment, including the reduction or retirement of outstanding lease obligations and interim funding incurred to advance fund projects from the Project List; payment of the costs of preparation of all facility planning, facility studies, assessment reviews, facility master plan preparation and updates, environmental studies (including environmental investigation, remediation and monitoring), design and construction documentation, and temporary housing of dislocated District activities caused by construction projects.

The upgrading of technology infrastructure includes, but is not limited to, network rewiring, cabling, computers, portable interface devices, servers, switches, routers, modules, sound projection systems, laser printers, digital white boards, document projectors, upgrade voice-over-IP, clock/telephone/ intercom systems, call manager and network security/firewall, wireless technology systems, refresh classroom technology, miscellaneous IT and instructional equipment, data storage, phones, identity cards and the construction and installation of a data center in the cloud for the District's enterprise systems, such as resource planning, websites, domain name systems, cloud applications and information security. The budget for each project is an estimate and may be affected by factors beyond the District's control. The final cost of each project will be determined as plans and construction documents are finalized, construction bids are received, construction contracts are awarded and projects are completed. Based on the final costs of each project, certain of the projects described above may be delayed or may not be completed. Demolition of portable classrooms and existing facilities and reconstruction of facilities scheduled for repair and upgrade may occur, if the Board determines that such an approach would be more cost-effective in creating more enhanced and operationally efficient campuses. Necessary site preparation/restoration may occur in connection with new construction, renovation or remodeling, or installation or removal of relocatable classrooms, including ingress and egress, removing, replacing, or installing irrigation or drainage systems, utility lines, trees and landscaping, relocating fire access roads, and acquiring any necessary easements, licenses, or rights of way to the property. The listed projects will be completed as needed. Each project is assumed to include its share of furniture, equipment, architectural, engineering, and similar planning costs, program/project management, staff training expenses and a customary contingency for unforeseen design and construction costs. Proceeds of the bonds may be used to pay or reimburse the District for the cost of District staff when performing work on or necessary and incidental to bond projects. Bond proceeds shall only be expended for the types of projects and purposes identified herein.

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**EXHIBIT B**

**QUALIFICATION CERTIFICATION**

I, the undersigned, certify and declare, with specific reference to the California False Claims Act, Government Code sections 12650, *et seq.*, that I have reviewed all of the information presented in this submittal and know its contents. The matters stated in the submittal are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C**

**NON-COLLUSION AFFIDAVIT**

(Public Contract Code Section 7106)

\_\_\_\_\_, deposes and says that  
*Authorized Representative*

he/she is \_\_\_\_\_ of \_\_\_\_\_  
*Title Company Name,*

the party providing the foregoing proposal; that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the respondent has not directly or indirectly colluded, conspired, connived, or agreed with anyone else to put in a sham proposal; that the respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other respondent, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the respondent has not, directly or indirectly, submitted his or her price or any breakdown thereof, or the contents thereof, or divulged information of date relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member of agent thereof to effectuate a collusive or sham proposal.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Typed or Printed Name*



## **EXHIBIT D**

### **REQUESTED INFORMATION AND QUESTIONS**

1. Describe your firm's claim history. Has your firm ever been named in a claim?
2. Describe one particularly challenging construction project and the steps that your firm took to ensure its success.
3. What steps does your firm take to ensure accountability to the Board of Trustees and the Prop 39 Citizens Oversight Committee?
4. Describe your firm's process for analyzing potential change orders to ensure the owner is getting a fair deal.
5. Describe your firm's fee schedule. Does your fee adjust based on the value of the construction contract? Does this include change orders to the construction contract?
6. A project is delayed as the result of unforeseen conditions. The project duration increases from 12 to 18 months. How does this duration increase impact your fees?
7. Has your firm ever contributed financially to offset the impact of an oversight in providing construction management services for a project? If yes, explain the oversight.
8. An issue arises on a project that is years beyond warranty. How do you handle the issue?
9. Describe how your firm prepares cost estimates. How many estimates do you provide during the design process and what are the reasons your firm would provide multiple estimates.
10. A bid comes in well above the approved budget. What steps do you take?
11. The District receives a bid protest. What steps do you take?
12. How does your firm handle registering projects with the California Department of Industrial Relations?
13. Legal Counsel recommends that a bid protest be waived as a minor irregularity. The contractor disagrees and requests the opportunity to address the Board of Trustees. How do you respond?
14. What is your firm's fee schedule for additional services?
15. Describe how your firm prepares schedules. How frequently are they updated?
16. Describe how your firm analyzes a contractor's Schedule of Values?
17. A summer modernization project requires complete removal of furnishings. What is your process?
18. While kicking off a project, you discover there are past projects on the site that are not closed out with DSA. What is your process?
19. Describe how your firm addresses "Owner Furnished" materials.
20. The District's recently completed Performing Arts Center is hosting a dance competition and the sewer backs up. It is 10:30 on a Friday night and the 600 participants are due back at 8:00 Saturday morning. What steps do you take to address the problem?
21. The Principal of San Mateo High School calls indicating that OSHA is on site responding to teacher complaints about the odor from an ongoing roofing operation. What do you do?
22. An HVAC project comes in significantly over budget. Upon further investigation you find out the District's proprietary controls system was bid at double the budget. What steps do you take?
23. You have requested a "Recovery Schedule" for a project that may not be ready for the start of school. What steps do you take to analyze it?
24. The Project Architect continues to specify products that are well outside the budget. How do you respond?

25. There is a major conflict between the contractor and the Project Inspector that is impacting the project. How do you intervene?
26. Describe how your firm conducts a Constructability Reviews”.
27. A project has bid twice and come in well over budget both times. What are your next steps?

## **EXHIBIT E**

### **FORM OF AGREEMENT FOR CONSTRUCTION MANAGEMENT AGREEMENT**

This Agreement for Construction Management Services ("Agreement") is made and entered into this \_\_\_\_, day of \_\_\_\_\_, 20\_\_, by and between the San Mateo Union High School District ("District") and [\_\_\_\_\_*insert name of Construction Management firm*] ("Construction Manager"). This Agreement shall include all terms and conditions set forth herein, as well as Exhibits "A", "B", "C", "D" and "E" attached hereto and incorporate herein by reference.

### **RECITALS**

**WHEREAS**, the District desires to obtain construction management services relating to various construction projects funded by the District's Measure "L" Bond Program ("Program"). A list of Projects in the Program is set forth in **Exhibit "A"** (collectively "Projects" or "Project").

**WHEREAS**, for and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

#### **1. RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

- 1.1. Scope: Construction Manager shall provide the services described herein and under all Exhibits for the Program, including, without limitation, all work necessary to develop a Program Management Plan for the building program funded by Measure "L" and additional funds from other sources. Services of the Construction Manager do not involve actual construction activities. Construction Manager may assist District with non-bond projects, such as scheduled maintenance projects, if requested.
- 1.2. Coordination: In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will accept District direction only through the District's designated representatives, keep District designated representatives informed and maintain coordination with District personnel through District's designated representatives as may be requested and desirable. Construction Manager shall cooperate and coordinate all services required pursuant to this Agreement with the District's administrative staff at each campus, as well as any architects, inspectors or other consultants retained by the District in connection with the Program.
- 1.3. Construction Manager's Services: Construction Manager shall act as an independent contractor and representative of the District to furnish all work, labor materials, services including, without limitation, architectural and engineering coordination and administrative services as required and in accordance with the terms and condition of this Agreement ("Services"). Construction Manager's Services will be performed and completed in accordance with the schedule attached as **Exhibit "C."**

- 1.4. Standard of Care: The Construction Manager shall perform its Services in accordance with the standard of care normally practiced by program management firms in performing services of a similar nature for California community college districts at the time and place the services are performed. The Services (or any product thereof) shall, without limitation, comply with applicable laws, codes, standards, rules, and regulations that the District and its professional consultants must comply with. Construction Manager shall be properly registered with the Department of Industrial Relations and qualified to perform public works in accordance with Labor Code sections 1725.5 and 1771.1 at all times during the term of this Agreement.

## **2. CONSTRUCTION MANAGER STAFF**

- 2.1. The Construction Manager has been selected to perform the work herein because of the skills and expertise of key individuals. Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Construction Manager. Construction Manager shall conform to District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Construction Manager.
- 2.2. The Construction Manager agrees that the following key people in Construction Manager's firm shall be associated with the Project in the following capacities and will continue their assignments on the Project and Program during the entire term of this Agreement and any extensions. All key individuals and key people shall be employees of the Construction Manager.

Principal in Charge:	_____
Construction Manager:	_____
Project Superintendent:	_____
Administrative Assistant:	_____

- 2.3. The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. In either case, District shall be allowed to interview and approve replacement personnel. Construction Manager agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require prior consultation and written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Construction Manager and Construction Manager shall not charge District for the cost of training or "bringing up to speed" replacement personnel.
- 2.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Construction Manager shall within thirty (30) work days, provide a permanent

replacement person acceptable to the District. District may condition its approval of replacement personnel upon a reasonable transition period wherein new personnel will learn the Program and Projects and get “up to speed” at Construction Manager’s cost.

- 2.5. Construction Manager represents that the Construction Manager has no 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 Construction Manager.
- 2.6. The Construction Manager’s primary representative and immediate support staff shall perform their work at an office at the District offices (Building B) for the duration of the term of this contract. Office space, parking for office space, as well as telephone and internet connectivity will be provided by the District. All necessary furniture, equipment, services, and supplies will be furnished by the Construction Manager.

### **3. TERM OF AGREEMENT AND SCHEDULE OF WORK**

- 3.1. This Agreement is effective as an initial three year term and two, one year renewal options as approved by the District’s Board of Trustees annually on or before the date first set forth above. Any annual extensions or renewal options of this Agreement at the end of the three-year initial term will be solely at the option of the District based upon Construction Manager’s performance, program status, funding and other factors. If determined to be in the best interest of the District, the District will extend the Construction Manager’s agreement for additional one-year term(s). All costs and compensation terms set forth in this Agreement shall be firm for the initial three years.
- 3.2. Any extensions or renewals beyond the initial three years will be set forth in a written addendum or amendment to this Agreement executed by the District and Construction Manager. The total term of this Agreement, however, shall not exceed five years in accordance with the Education Cod, or as otherwise extended and approved by the District’s Board of Trustees.
- 3.3. The Construction Manager shall commence work under this Agreement on the effective date first set forth above and shall prosecute the work diligently in accordance and within the timeframes set forth in the schedule attached as **Exhibit “C”**. Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.
- 3.4. Construction Manager agrees that the schedule attached as **Exhibit “C”** includes reasonable allowances for completion of all Services required under this Agreement, including all time required for District’s review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Program and Projects. Construction Manager shall achieve its

scheduled activities unless an excusable event, as determined by the District, causes delay (excusable delay), and unless Construction Manager gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event.

- 3.5. Construction Manager shall recover justified extra costs resulting from any excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services under this Agreement, (ii) were incurred by Construction Manager as a direct result of the delay and not otherwise within Construction Manager's scope of Services and not arising from the errors and omissions of the Construction Manager, (iii) are documented to the District's satisfaction and (iv) are otherwise authorized in **Exhibit "B"**.
- 3.6. Should the progress of the Services required under this Agreement at any time fall behind schedule for any reason other than excusable delays, Construction Manager shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

#### **4. FEE AND METHOD OF PAYMENT**

- 4.1. The Construction Manager's total compensation for the Services described in this Agreement shall be a total not to exceed fee of \$\_\_\_\_\_ for the initial three-year term and not to exceed \$\_\_\_\_\_ for the entire five year term, payable monthly for Services actually rendered in accordance with the Fee Summary in **Exhibit "B"**. The not to exceed amounts are based on the staffing plan the parties agreed to at the time of the signing of this Agreement. However, if Construction Manager is required by District to increase the number of staff above the approved staffing plan, the not to exceed fee shall be increased accordingly upon approval by the District's Board of Trustees and shall be set forth in a document signed by the parties. Further, these not to exceed amounts include all approved reimbursable expenses, general conditions, personnel costs, and any other costs to be paid to the Construction Manager under this Agreement. Invoices shall be submitted in a form acceptable to the District and by the 5<sup>th</sup> day of the month for Services provided within the previous month. Invoices shall include a breakdown of the time spent and a description of the task for all personnel costs being invoiced by the Construction Manager.
- 4.2. District shall not incur any charges under this Agreement, nor shall any payments become due to Construction Manager for any payment period on the Projects, until District receives all deliverables required under **Exhibit "D"**, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Construction Manager has partially completed one or more deliverables due during a payment period, and if Construction Manager demonstrates diligent progress thereon, then District may make a partial progress payment based upon Construction Manager's percentage

completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District.

- 4.3. District will not withhold entire payment if a questioned or disputed amount is involved, but will issue payment in the amount of the total invoice less any disputed amount(s). District will make payment for disputed amounts(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise Construction Manager, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, Construction Manager's transmittal of all deliverables to District required under this Agreement.
- 4.4. Except as may be provided by applicable law governing emergency conditions, the District's Board of Trustees has not authorized its employees, officers and agents to request Construction Manager to perform Services or to provide materials, equipment and supplies that would result in Construction Manager performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in this Agreement unless the District amends this Agreement in writing and approves the amendment as required by law to authorize the additional services, materials, equipment or supplies. Any additional services must be approved and authorized in writing by the District. Compensation for any additional services shall be approved and authorized in writing by the District and in accordance with the rates as indicated in **Exhibit "B"**.
- 4.5. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's work incurred in the performance hereof, including, without limitation, all costs for personnel, travel within a 75-mile radius of the District, mailing/shipping of items, per diem expenses, any other direct or indirect expenses incident to providing the Services under this Agreement. Deliverables shall be printed at the District's Printing Shop; otherwise, the cost of printing shall be reimbursed to the Construction Manager. Similarly, the cost of mailing/shipping of deliverables shall be reimbursed to the Construction Manager.
- 4.6. Approved reimbursable expenses are set forth in **Exhibit "B"**.

## **5. OWNERSHIP OF DOCUMENTS, DATA AND SYSTEMS**

- 5.1. Any interest (including copyright interests) of Construction Manager or its contractors or sub-consultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Construction Manager or its sub-consultants in connection with the Program or Projects, shall be and remain the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this

Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works created by Construction Manager or its sub-consultants under this Agreement are not works for hire under U.S. law, Construction Manager hereby assigns to District all copyrights to such works. District hereby approves Construction Manager's retention of use of copies of such works for reference and as documentation of experience and capabilities.

- 5.2. Upon termination in accordance with this Agreement, all documents and information set forth in this Section above shall be immediately delivered to the District. In no case shall Construction Manager refuse to release said documents and information to the District after ten (10) days written notice by the District. Construction Manager agrees that the Program and Projects are ongoing and failure to release such documents and information is a material breach of this Agreement and may result in District damages, the costs of which will be charged to the Construction Manager. Said Project and Program records shall be indexed and appropriately organized for use by District personnel. The Construction Manager shall be entitled to keep copies of all documents submitted to the District.
- 5.3. Construction Manager shall implement an information management system approved by the District to track costs, RFI's documents and other information relevant to the Program and Projects.

## **6. TERMINATION OF AGREEMENT FOR CAUSE**

- 6.1. If at any time District believes Construction Manager may not be adequately performing its obligations under this Agreement, that Construction Manager may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Construction Manager's performance, District may request from Construction Manager prompt written assurances of performance and a written plan to correct the observed deficiencies in Construction Manager's performance. Such plan shall include, as applicable, evidence of necessary resources, correction plans, sub-consultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the deficiency. Construction Manager shall provide such written assurances and written plan within ten calendar days of receipt of written request. Construction Manager acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 6.2. Construction Manager shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Construction Manager's right to proceed under this Agreement, in whole or in part, for the following causes:



- 6.2.1 Should Construction Manager make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Construction Manager in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Construction Manager or of all or any substantial part of the properties of Construction Manager, or if Construction Manager, its directors or shareholders, take action to dissolve or liquidate Construction Manager; or
- 6.2.2 Should Construction Manager commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from District to Construction Manager demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Construction Manager to avail itself of this time period in excess of ten (10) calendar days, Construction Manager must provide District within the 10 day period a written plan acceptable to District to cure said breach, and then diligently commence and continue such cure according to the written plan. Such plan shall include, as applicable, evidence of necessary resources, correction plans, sub-consultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach.); or
- 6.2.3 Should Construction Manager violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services under this Agreement and does not cure such violation within ten (10) days of the date of the notice from District to Construction Manager demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Construction Manager to avail itself of this time period in excess of ten (10) calendar days, Construction Manager must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan. Such plan shall include, as applicable, evidence of necessary resources, correction plans, sub-consultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach.)

6.3. In the event of termination by District as provided herein for cause:

6.3.1 District shall compensate Construction Manager for the value of the approved Services performed and delivered to District upon termination as determined in accordance with this Agreement, subject to all rights of offset and back-charges, but District shall not compensate Construction Manager for its costs in terminating this Agreement or any cancellation charges Construction Manager may owe to third parties;

6.3.2 Construction Manager shall deliver to District possession of all tangible aspects of its Services under this Agreement in their current condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project or Program records, cost data of all types, drawings and specifications and contracts with vendors and sub-consultants, and all other documentation associated with a Project or the Program; and

6.3.3 Construction Manager shall remain fully liable for the failure of any Services performed and documents or reports provided through the date of such termination to comply with the provisions of this Agreement. The provisions of this Section shall not be interpreted to diminish any right that District may have to claim and recover damages for any breach of this Agreement, but rather, Construction Manager shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with this Agreement.

6.4. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Construction Manager shall have no greater rights than it would have had if a termination for convenience below had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Construction Manager.

## **7. TERMINATION OF AGREEMENT WITHOUT CAUSE (FOR CONVENIENCE)**

7.1. District may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, including without limitation specific individual Projects or portions thereof, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Construction Manager, at least thirty (30) calendar days prior to the effective date of the termination, a Notice of Termination for Convenience specifying the extent to which performance of the Services under the Agreement is terminated.

7.2. After receipt of a Notice of Termination for Convenience, and except as otherwise directed by District, Construction Manager shall:

- 7.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
- 7.2.2 Place no further orders or subcontracts (including agreements with Sub-consultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under this Agreement which is not terminated;
- 7.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
- 7.2.4 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Construction Manager under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
- 7.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;
- 7.2.6 Transfer title and possession to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to District; District acknowledges that said documents were prepared for the purpose of the Projects and Program;
- 7.2.7 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
- 7.2.8 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Construction Manager's possession and in which District has or may acquire an interest.

- 7.3. In the event of a termination without cause, the District shall pay to the Construction Manager for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of Notice of Termination for Convenience plus any sums due the Construction Manager for District Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the District or in the possession of the Construction Manager. In addition, Construction Manager will be reimbursed for reasonable termination costs through the payment of the monthly average of all fees and costs incurred by the Construction Manager for the last three months prior to the date of the Notice of Termination for Convenience. This payment is agreed to compensate the Construction Manager for any damages resulting from early termination and is expressly acknowledged by the Construction Manager to be adequate and sufficient consideration for entry into this termination for convenience clause.
- 7.4. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of this dispute, Construction Manager agrees to continue the work diligently to completion and the District agrees make payments for all undisputed services. If the dispute is not resolved, Construction Manager agrees it will neither rescind the Agreement nor stop the progress of the work, but Construction Manager's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Program has been completed or at a time agreeable to the District, and not before.

## **8. SUSPENSION OF SERVICES**

- 8.1. District may, without cause, order Construction Manager to suspend, delay or interrupt Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Construction Manager written notice of the extent of the suspension at least thirty (30) calendar days before the commencement thereof.
- 8.2. If Construction Manager's services under this Agreement are suspended for more than three (3) months, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the District of such suspension, and for reasonable costs for work in progress by the Construction Manager at such time. If services are resumed after being suspended for more than three (3) months, the Construction Manager's compensation shall be resumed in a similar manner prior to the suspension, adjusted for reasonable remobilization costs.

- 8.3. If Construction Manager's Services under this Agreement are suspended for more than 30 days, and if no arrangement is made between the District and the Construction Manager to retain specific staff during the period of suspension, reassignment of any or all of the personnel assigned to a Project or the Program to other projects may occur. In the event that the Construction Manager's services are then resumed, the Construction Manager shall re-staff to the same level as at the time of suspension (provided that the scope of remaining work shall not have been reduced) and shall make a good faith effort to use the original personnel as is practical. Where individuals assigned to a Project or the Program at the time of suspension are not reasonably available at the time of resumption, the Construction Manager shall assign other personnel of similar skill and experience subject to the requirements of this Agreement, subject to approval by the District.
- 8.4. Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Construction Manager is responsible.

## **9. INDEMNITY/ HOLD HARMLESS**

- 9.1. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Construction Manager agrees to indemnify, defend and hold District entirely harmless from all liability arising out of:
- 9.1.1 Any and all claims under workers' compensation acts and other employee benefit acts with respect to Construction Manager's employees or Construction Manager's sub-consultants' employees arising out of Construction Manager's work under this Agreement;
- 9.1.2 Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Construction Manager or any person, firm or corporation employed by the Program Manager upon or in connection with the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District;
- 9.1.3 Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Construction Manager, or any person, firm or corporation employed by the Construction Manager, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the Project, including injury or damage either on or off District property; but not for any loss, injury, death or

damages caused by sole or active negligence, or willful misconduct of the District.

- 9.2. The Construction Manager at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy and judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.
- 9.3. Construction Manager shall place in its subconsulting agreements and cause its Sub-consultants to agree to indemnities and insurance obligations in favor of District and other indemnitees in the exact form and substance of those contained in this Agreement.

## **10. RESPONSIBILITIES OF THE DISTRICT**

- 10.1. The District designates its Deputy Superintendent of Business Services as its representative who shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's Services as follows:
  - 10.1.1 The District shall provide to the Construction Manager information regarding the District's requirements for the Program and Project.
  - 10.1.2 If the District observes or otherwise becomes aware of any fault or defect in the Project or the Construction Manager's Services, the District shall give prompt written notice thereof to the Construction Manager. The District's failure or omission to do so, however, shall not relieve the Construction Manager of its responsibilities and Services under this Agreement.
  - 10.1.3 The District designates its Director, Facilities, Planning and Construction, to act in the District's behalf with respect to the Program and Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.
  - 10.1.4 Unless otherwise agreed in writing, the District shall contract directly for the provision of design, construction, and other services, work, and goods to implement the Project and Program that are not provided by the Construction Manager under this Agreement. In some instances, the District may direct that communications with the District's other contractors and consultants shall be through the Construction Manager.

## **11. LIABILITY OF DISTRICT**

- 11.1. Other than as provided in this Agreement, District's 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, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.

- 11.2. 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 Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.
- 11.3. Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative, except as expressed or inferred herein.

## **12. DOCUMENT CONTROL, AUDIT & INSPECTION OF RECORDS**

- 12.1. Construction Manager shall develop and implement document control procedures for all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Construction Manager during the course of performing the Services and providing services with respect to any Project or the Program, for the duration of the agreement. All such records shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places.
- 12.2. Construction Manager shall implement a process where all DSA-approved construction documents and as-built documents for all Projects are uploaded and archived into the District's database.
- 12.3. Construction Manager shall maintain full and adequate records in accordance with District requirements to show actual costs incurred by Construction Manager in its performance of this Agreement, and to make available to District during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to District or relative to Construction Manager's activities under this Agreement. Construction Manager will furnish to District, its authorized agents, officers and employees such other evidence or information as District may request with regard to any such expenditure or disbursement charged by Construction Manager. Monthly records of Construction Manager's personnel and other costs, and reimbursable expenses pertaining to both Basic Services and Additional Services, shall be kept on a generally recognized accounting basis, and shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Construction

Manager will permit District, and District's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.

12.4. Construction Manager shall maintain all items described in this Section for the duration of this Agreement in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement, final completion and acceptance of the last Project, and/or until after final audit has been resolved, whichever is later. The State of California and any other governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon District by this Section. Construction Manager shall not destroy any Project or Program records until after advising District and allowing District to accept and store the records.

12.5. The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

### **13. INSURANCE**

Prior to performing any services pursuant to this Agreement, Construction Manager shall furnish to District Certificates of Insurance or any other required or requested documents showing satisfactory proof that it maintains the insurance required by this Agreement as set forth in **Exhibit "E"**. Construction Manager shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in **Exhibit "E"**. In the event Construction Manager fails to maintain any required insurance, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Construction Manager under this Contract (or Construction Manager shall promptly reimburse District for such expense).

### **14. NONDISCRIMINATION**

Construction Manager shall not discriminate against any employee or applicant for employment, nor against any sub-consultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veterans status. To the extent applicable, Construction Manager shall comply with all federal, state and local laws (including, without limitation, District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

### **15. COVENANT AGAINST CONTINGENT FEES**

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to



solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, deduct from the Contract Price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

## **16. ENTIRE AGREEMENT/MODIFICATIONS**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Construction Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others. Construction Manager, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs. Construction Manager shall require its sub-consultants (if any) to do the same, and the sub-consultants price proposals shall accompany Construction Manager's price proposals.

## **17. NON-ASSIGNMENT OF AGREEMENT/ SUBCONTRACTING**

- 17.1. In as much as this Agreement is intended to secure the specialized services of the Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Construction Manager and any such assignment, transfer, delegation or sublease without Construction Manager's prior written consent shall be considered null and void.
- 17.2. Construction Manager shall not utilize sub-consultants unless approved by written instrument executed and approved by the District in writing. Any sub-consultant used by Construction Manager must be properly prequalified by the District.
- 17.3. To the extent Construction Manager is permitted by District in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder, Construction Manager shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code section 3321). Construction Manager shall remain fully liable and responsible for all acts and omissions of its sub-consultants in connection with the Services, the Projects or the Program, as if it engaged it the acts and omissions directly.

## **18. LAW, VENUE**

- 18.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 18.2. The county in which the District office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement. Construction Manager waives any right it may have to transfer any action to a county other than San Mateo under Code of Civil Procedure section 394.

## **19. COMPLIANCE WITH LAWS**

- 19.1. Construction Manager represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Construction Manager shall comply with all security requirements imposed by authorities with jurisdiction over any Project or the Program, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.
- 19.2. Construction Manager further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

## **20. DISPUTE RESOLUTION**

- 20.1. Construction Manager shall provide District with written notice of all claims and disputes arising from the performance of this Agreement within a reasonable time (not exceeding ten (10) days) from their first occurrence. Upon District's request, Construction Manager shall then provide a complete written summary of the dispute, including without limitation cost calculations and contractual justifications. Prior to any other action or resort to any other legal remedy, the matter shall be referred to the District's representative and a principal of the Construction Manager who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the District's representative and principal of the Construction Manager shall then take place within five days of the request. The procedures described in this Section are the mandatory, exclusive means by which Construction Manager may assert claims or disputes against the District for any matter arising from or relating to this Agreement, and any Construction Manager failure to comply strictly with these requirements shall waive Construction Manager's right to assert any dispute or claim on any matter not administered as required herein.
- 20.2. Provided that District continues to compensate Construction Manager for all undisputed invoices in accordance with this Agreement, Construction Manager shall continue its Services throughout the course of any and all disputes. Nothing

in this Agreement shall allow Construction Manager to discontinue Services during the course of any dispute and Construction Manager's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Construction Manager agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Construction Manager also agrees that should Construction Manager discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

- 20.3. In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in San Mateo County, California or other location agreeable to the District, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the San Mateo County Superior Court from an approved list of AAA qualified construction mediators. The mediation will occur at a time agreeable to the District that will not adversely impact completion of a Project or the Program.

## **21. SEVERABILITY**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

## **22. EMPLOYMENT STATUS**

- 22.1. Construction Manager 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 Construction Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 22.2. Construction Manager understands and agrees that the Construction Manager'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.
- 22.3. If a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager 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 Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

- 22.4. Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (again, offsetting any amounts already paid by Construction Manager which can be applied as a credit against such liability).
- 22.5. 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, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager 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 Construction Manager was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.
- 22.7. Construction Manager shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.

### **23. WARRANTIES OF CONSTRUCTION MANAGER**

- 23.1. Construction Manager represents that it has reviewed **Exhibit "A"** and that in its professional judgment the Services to be performed under this Agreement can be performed for the fee set forth in the Payment Schedule established in **Exhibit "D"** and within the times specified in the **Exhibit "C"**.
- 23.2. Construction Manager warrants that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits as provided for in Government Code section 4525 et seq. and required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Construction Manager warrants that it has required knowledge of all applicable building codes, laws, regulations and ordinances. Construction Manager further warrants that it has expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project

scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction projects for California community colleges.

23.3. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.

23.4. Construction Manager warrants that, to the extent California or Federal law relating to prevailing wages apply to it on the Project or for the Services under this Agreement, it will comply with the said law and indemnify the District for Construction Manager's failure to do so.

## **24. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS**

Construction Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over five thousand dollars (\$5,000).

## **25. COMMUNICATIONS**

Communications between the parties to this Agreement may be sent to the following addresses:

### **District:**

Elizabeth McManus  
Deputy Superintendent of Business Services  
650 N. Delaware Street  
San Mateo, CA 94401

### **Construction Manager**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **26. OTHER PROVISIONS**

26.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

26.2 Neither the District's review of, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement.

26.3 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable

in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.

- 26.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding. No such waiver shall be effective unless expressly provided for in a writing signed by both parties.
- 26.1. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first written above

**San Mateo Union High School District**

***[Insert Construction Manager]***

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT “A”**

### **RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

This Exhibit “A” is attached to, and made a part of and incorporated by reference to the Agreement made and entered on \_\_\_\_\_, 20\_\_ by and between the San Mateo Union High School District (“District”) and [\_\_\_\_\_ *insert name of Construction Management firm*] (“Construction Manager”).

#### **1. Measure “L” Construction Program**

##### **1.1 Bond Program**

District expects to undertake a series of construction Projects throughout the District to be funded by the State, the District’s Measure “L” Bond Program and other funding sources. Project delivery methods will vary, and may include design-build, design-bid-build, multiple-prime, lease-leaseback and other methods as suitable to each Project. For purposes of the Agreement, the entire Measure “L” Bond Construction Program is referred to as the “Program” and the individual or group of construction projects comprising the Program are referred to as “Project” or “Projects.” A preliminary list of anticipated Projects is set forth in Appendix “1” attached hereto.

##### **1.2 Program Costs**

District has developed the following preliminary outlines of the Program, including initial estimates of costs for various Program components and Projects (see Appendix “1” attached hereto). However, as the Program is dynamic, those numbers may change as the Program is further developed and implemented. All amounts and descriptions set forth in Appendix “1” are estimates only and subject to change without affecting any other terms and conditions in this Agreement.

##### **1.3 Program Definition Services**

Construction Manager’s Work includes defining the work of the Program. Starting with District’s information developed to date, Construction Manager shall perform all services necessary to thereafter develop and prepare a master scope of work, budget and schedule for the Program that shall address scope of work, budget and schedule for each Project site and each individual construction Project at each Project site. The master scope of work, budget and schedule shall be divided by campus and shall include the following:

- 1.3.1 Master Program Schedule, for all new construction, modernization and upgrades, and enrollment growth sites.
- 1.3.2 Master Program Schedules for the entire Program, including each of the individual Projects.
- 1.3.3 Master Program budget for entire Program.

- 1.3.4 Individual Project budgets including a conceptual cost estimate (line item cost projection, using appropriate unit prices) for the scope of work being proposed for each Project, including “Budgeted Bid Day Construction Cost” or “Budgeted Bid Day Procurement Cost” for each Project.
- 1.3.5 Scope of work for each Project.
- 1.3.6 Milestones for each Project.

#### **1.4 Construction and Procurement Budgets**

Construction Manager shall develop and secure District’s agreement upon a “Budgeted Bid Day Construction Cost” or “Budgeted Bid Day Procurement Cost” for each Project, which shall represent Construction Manager’s best estimate of the anticipated value of the construction or procurement contract for each such Project when initially let. Once established, Construction Manager shall treat the “Budgeted Bid Day Construction Cost” or “Budgeted Bid Day Procurement Cost” so identified as District’s required construction or procurement cost for the Project, and administer each Project accordingly.

Construction Manager shall recognize in its construction and procurement budgets prepared under this Agreement a minimum 10% design and construction contingency. District shall have full discretion regarding disposition of this and any other District’s contingency budgets. In performing its Work under this Agreement, Construction Manager shall not rely upon, refer to or commit District’s contingency budgets either for design, construction, or any items within those contingency budgets, without District’s advance written consent. Such contingency budgets shall not be referred to in determining adequacy of performance under this Agreement.

When completed, the Program will set forth a general schedule for work on the Projects, including general milestone schedules and further information on District’s approved and anticipated budgets. Each Project will have a separate contractor (or contractors) or supplier (or suppliers) and may also have a separate architect and/or engineer (“A/E”) and any other professional consultants or entities necessary to complete the Project.

#### **1.5 Scope and Duration of Services**

Construction Manager shall provide on individual Projects the services required in Sections 2, 5, 6, 7, 8, 9 and 10 of this Exhibit.

#### **1.6 Changes in Projects and the Program**

The Program is dynamic and may change in its schedule, the scope of individual Projects, combining individual Projects, or other reasonable changes. Changes to the Program, unless a cardinal change to the entire concept, do not require a change in this Agreement, and Construction Manager shall perform the services



referred to herein on revised Projects so long as generally consistent with the work described herein. This Section 1.6 applies to all phases of the Program, including phases following the Program Definition Phase.

## **2. General or Basic Services**

### **2.1 Scope of Construction Manager's Work**

General Services (also Basic Services) comprising Construction Manager's services and responsibilities (work) for the Program and each Project comprising the Program shall include all the services and activities specified in this Agreement and Exhibit.

### **2.2 General Requirements of Construction Manager's Work**

2.2.1 Construction Manager shall report to the District Deputy Superintendent of Business Services. The District Superintendent or Deputy Superintendent of Business Services shall have the signature authority for District. District may delegate portions of this authority to other District staff members, but such delegation shall only be effective if in writing and approved by the District's Board of Trustees. Construction Manager shall perform its services under this Agreement in accordance with the organization chart attached hereto as Appendix "2".

2.2.2 Subject to any express limitation herein, Construction Manager shall provide District all professional program management services necessary to assist District in the execution, performance and timely delivery of all construction contracts, procurement contracts, A/E contracts, hazardous materials abatement contracts, procurement of furniture, fixtures and equipment, other contracts, professional services and any other services required for completion of the Program and each Project comprising the Program, including, but not limited to:

2.2.2.1 Community relations and public information services with input and assistance from District staff as required;

2.2.2.2 Coordinating California Environmental Quality Act ("CEQA"), Education Code and Title 24 compliance by District's consultants;

2.2.2.3 Coordinating the Program and each Project with various local and State governmental and administrative agencies with jurisdiction, and community groups;

2.2.2.4 Management of contracts with Project A/Es, environmental consultants, hazardous materials abatement consultants, hazardous waste disposal consultants, geotechnical consultants, construction contractors, and such other entities or services

required to obtain integrated and functioning Projects set forth in the Program and full performance of each contract;

- 2.2.2.5 Review, coordination and recommendations for action on all deliverables and submittals of consultants, architects, engineers, and contractors on each Project;
- 2.2.2.6 Preparing, maintaining, and updating schedules for the Program Plan and each Project;
- 2.2.2.7 Preparing, maintaining, and updating Program budgets and Project budget, overall cost management, and cost control;
- 2.2.2.8 Overall Program Management and administration of design contracts, construction contracts, and, coordinate field inspections for each Project;
- 2.2.2.9 Advice on all aspects of each Project, including but not limited to, continuing evaluation of schedule requirements, budget requirements;
- 2.2.2.10 Consultation on risk management including contract development, implementation, and administration;
- 2.2.2.11 Retaining other consultants (prequalified by the District) as necessary for the performance of its services within the limits of the scope and budget in the Construction Manager's contract;
- 2.2.2.12 All services referenced throughout this Agreement.

2.2.3 Notwithstanding the foregoing and subject to Section 2.3, Construction Manager is not required to duplicate the services of construction contractors, Project A/Es, suppliers, environmental consultants, or other consultants, and does not assume their liabilities or responsibilities if their work is deficient, unless District had specifically requested Construction Manager to duplicate said services or if required under this Agreement. If there is a duplication of any required services under this Agreement, the Construction Manager shall notify the District in writing for resolution and direction prior to performing any such duplicative services. This Section does not in any manner diminish Construction Manager's responsibility or liability for its Work under this Agreement or any damages resulting from, exacerbated or contributed to by any deficiencies in Construction Manager's own performance.

2.2.4 Performance of services will require Construction Manager to work with, meet with, and attend meetings with District staff, members of the community, with other governmental agencies, with architects, engineers, contractors, and with such other consultants to the extent necessary to manage and coordinate all aspects of the design and construction (or

procurement) of each Project, the Program, and performance of Construction Manager's duties under this Agreement.

- 2.2.5 Construction Manager shall perform any required services which are a result of any errors or omissions by Construction Manager, at no additional cost to District.

## **2.3 Coordination of Contractors, Architects, Engineers, Consultants and Others**

- 2.3.1 Construction Manager shall, at all times, coordinate all of its required services with the contractors, architects, engineers, and other District consultants. Construction Manager must review and comment upon coordination, scheduling and reporting requirements in District's intended forms of Professional Services Agreements and construction contracts, both District's standard forms and also "as negotiable" provided they are made available to Construction Manager prior to execution of each Agreement. The purpose of such review and comment is to determine if such forms of construction contracts and Professional Services Agreements are suitable for Construction Manager to perform its duties under this Agreement. By execution of this Agreement, Construction Manager represents and agrees that it will review the District standard forms of Construction Contracts and Professional Services Agreements and the Construction Manager will recommend and implement any changes necessary to perform its duties under this Agreement
- 2.3.2 Subject to Section 2.2.3 above, Construction Manager shall require and enforce full coordination of all construction contractors, suppliers, architects, engineers and sub-consultants involved in completing each Project and the Program generally. The objectives of this coordination shall be threefold:
  - 2.3.2.1 The development of complete, comprehensive, coordinated and workable designs in which the work of each architect, engineer, and each sub-consultant interfaces well and is properly coordinated, architecturally sound and well-engineered, with details that work together with regard to all affected disciplines.
  - 2.3.2.2 Construction or procurement of each Project and the Program within approved schedules, budgets, in full compliance with all contracts and requirements including warranties and close out documentation.
- 2.3.3 Construction Manager shall require architects, engineers and consultants to conduct at least monthly design coordination meetings with all sub-consultants employed on their individual Projects, and shall require Program-wide design coordination meetings between consultants on different Projects as necessary to comply with this Agreement. These meetings are in addition to the required construction meetings required in the construction contracts.

## **2.4 Reporting and Coordination with Program Scheduling and Operations**

- 2.4.1 Construction Manager shall use its best efforts to cause to be completed all services required under this Agreement and all Projects in accordance with the approved Master Schedule.
- 2.4.2 For each work phase on each Project under this Agreement, Construction Manager shall prepare, submit and update monthly for District's acceptance a task list coordinated with the Master Schedule. Construction Manager's task list shall outline dates and time periods for information from District for the performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies having jurisdiction over the Project. The purpose of the task list shall be as a "to do" list for District the required approvals, interfaces, reviews and other tasks that District must do to coordinate with Construction Manager's Work and the ongoing Projects.
- 2.4.3 No full payment shall be due Construction Manager for any phase of the Work unless the required schedules and task list is provided, maintained and accepted by District. Construction Manager shall make all efforts to submit the required schedules and task list in advance of submitting their invoice to give the District sufficient time to review them and for Construction Manager to make changes, if necessary. District shall make all efforts to complete its review and, therefore, avoid delaying payment to Construction Manager.
- 2.4.4 Construction Manager shall adjust and cause its retained subconsultants (and subcontractors, if any) to adjust activities, personnel levels, and the sequence, duration and relationship of services to be performed, when necessary to comply with the accepted schedules.
- 2.4.5 District's acceptance of Construction Manager's schedules and task lists will not relieve Construction Manager of full responsibility for all obligations imposed by this Agreement, nor will it create any duty of care or impose on District any responsibility for the sequence, means, methods, schedule or progress of Work, nor will it interfere with or relieve Construction Manager from Construction Manager's full responsibility thereof.

## **2.5 Deliverables Required Under This Agreement**

Deliverables required under this Agreement are outlined in Exhibit "D", and must be supplied by Construction Manager. Each deliverable shall be reviewed with the District Director, Facilities Planning & Construction. Deficiencies in deliverables and modifications to conform to program requirements and modifications to achieve acceptability of deliverables to District shall be promptly performed, and the cost thereof included in the fee for General Services. At Construction Manager's option, deliverables may be supplied in the Monthly Progress Report, and may be combined when applicable to more than one Project.

## **2.6 Intentionally Omitted**

## **2.7 Design Coordination Reporting**

2.7.1 Construction Manager, based on its work and conferences with each Project A/E and other applicable consultant, shall meet with, make written recommendations in its monthly report to, and coordinate with District's Facilities Department, at least once a month in its monthly report, or more frequently if necessary, regarding ongoing design, construction and other work, with respect to the following subject matters on a Project and Program-wide basis:

2.7.1.1 Value engineering (including value engineering design, quantity surveys of materials, equipment or labor, or audits or inventories),

2.7.1.2 Constructability (including actual and reasonable constructability in light of District's objective to secure a completed Project with the lowest reasonable construction costs),

2.7.1.3 Project scheduling,

2.7.1.4 Scheduling of Construction Manager's own Work and coordination with work of other consultants,

2.7.1.5 Cost Estimating and budget analysis.

## **2.8 Relations to District Project Personnel**

In performing its contracted responsibilities, Construction Manager shall report to and receive instructions from District. Construction Manager shall keep District's responsible Program and Project personnel, as designated from time to time, advised and informed on Project status and issues. Construction Manager shall immediately report to District Director, Facilities Planning and Construction, or designee any conflicting instructions received from District representatives.

## **3. Intentionally Omitted**

## **4. Intentionally Omitted**

## **5. Predesign Phase Services on Individual Projects**

### **5.1 Review**

For each Project, Construction Manager shall review Project files; become familiar with Project background and status; read and comment on the current scope of the Program; review any Project contracts and agreements; become familiar with site conditions and geotechnical data; review the current Project

schedules; review all documents and funding alternatives; and assemble copies of agreements provided by District and applicable codes and regulations which establish the framework for the Project.

## **5.2 Construction Management Program**

Construction Manager will prepare a Construction Management Program for the Project which will establish the general basis for the sequence of contracting for construction of the Project and the attendant design effort required. In preparation for this Construction Management Program, Construction Manager will evaluate the local construction market, District's resources, and District's schedule and budget goals of the Project, develop various alternative approaches, and make recommendations to District. Upon approval by District of the Construction Management Program, Construction Manager will prepare the Construction Management Program in final form. This document will indicate the Project rationale and recommend the strategy for purchasing construction, the various bid packages and construction delivery method for the Project and Master Project Schedule.

## **5.3 Project Budget**

To assist the Project architect during the design phase, Construction Manager will provide a plan and budget for all items that will be required for the Project. In addition to design and construction costs, these will include things such as cost of reproduction of the drawings and specifications for bidding, administrative costs, and the cost for required services at the site. Construction Manager will make a report of the budget to District indicating (1) shortfalls or surpluses in the budget, and (2) recommendations for cost reductions, value engineering, or revisions to the requirements of the Program.

## **5.4 Selection and Engagement of Project A/Es, etc.**

If required for a Project, Construction Manager shall participate in the process of selecting all required Project A/Es and any other required specialty design or other consultants from the District's pools of prequalified and approved consultants.

## **5.5 Initial Meeting of Project Team**

Construction Manager shall meet with designated Project participants to define the roles, relationships, goals and objectives of all parties on the Project and to determine the completeness and appropriateness of existing District procedures and practices.

## **5.6 Intentionally Omitted**

## **5.7 Master Project Schedule**

Construction Manager shall prepare, update and maintain for each Project a Master Project Schedule tied to specific tasks and deliverables for all participants. The Master Project Schedule shall meet the standards set in Section 3.6 above.

## **5.8 Management of Environmental Services - CEQA Compliance**

The Construction Manager shall meet with environmental consultants, if any, to review their scope for the purpose of coordinating technical input needed from Project A/E and financial consultants, and to review work to date.

The Construction Manager shall participate in the management of the environmental process by:

- 5.8.1 Meeting with the environmental consultant to review their Scope of Work, if any, principal items at issue and the respective roles of all consultants providing support services.
- 5.8.2 Developing an environmental timetable and schedule of deliverables for incorporation into the Master Project Schedule.
- 5.8.3 Assisting in the scheduling, notification and conducting of public meetings and coordinating the delivery of architectural and site designs.
- 5.8.4 Assisting the environmental consultant and legal counsel in obtaining necessary technical reports, cost estimates, potential construction phase impacts and identification of issues of special concern from the Project consultants, and reviewing any and all draft and final environmental reports (EIR, negative declaration and the like) for content and making comments thereon.
- 5.8.5 Meeting with A/Es to review environmental issues and mitigation measures for incorporation, to the extent feasible, into design solutions and construction special conditions.

## **5.9 Community Relations**

Construction Manager shall assist and coordinate with District personnel, District Public and Governmental Affairs and each campus' Public Information Office to develop and implement a community relations program to inform the community, establish appropriate communication, and solicit support for each Project. This includes, but is not limited to, identification of all City Boards, commissions and community groups who should be included in the process and development (if necessary) of a general mailing list for businesses, neighborhood organizations, media, public agency officials, residents close to the construction area, and District personnel who might be affected. Orientation and training for Project personnel shall be provided to ensure consistency in carrying out the program.

During construction, Construction Manager shall have primary responsibility for day-to-day execution and carrying out the agreed community relations program, but shall coordinate such efforts with the District's Public and Governmental Affairs and each campus' Public Information Office.

#### **5.10 Securing of Necessary Permits**

Construction Manager shall assist District in obtaining building permits and special permits for permanent improvements whenever such permits are not required to be obtained directly by the various consultants and contractors. Construction Manager shall verify that District has paid applicable fees and assessments. Construction Manager shall assist District, A/E, and other consultants in connection with District's responsibility for filing documents required for approvals of government authorities having jurisdiction, and shall timely report to District in writing of any problems, delays or failures to secure required approvals.

#### **5.11 Surveyors, Consultants and Testing Laboratories**

Construction Manager shall assist District in retaining and coordinating the services of surveyors, DSA Inspector(s) of Record, special consultants and testing laboratories from the pool of District approved consultants required for the Project.

#### **5.12 Coordination with Division of State Architect**

Construction Manager shall contact Division of State Architect and determine "bin time" or anticipated review time for plans and specifications and incorporate that time for review and approval into the Master Schedule for each Project and incorporate it into the required schedule for delivery of professional services with all consultants, architects, engineers and the like, with whom District negotiates for contracts. Construction Manager shall secure this information prior to negotiation and contracting so that it becomes part of original scope and not claimed as a change order.

### **6. Design Phase - Individual Projects**

#### **6.1 Schematic Design Phase**

The Schematic Design Phase for each Project shall follow selection of a Project A/E and any necessary consultants and shall begin when District, in consultation with Construction Manager, authorizes the Project A/E to proceed with the Schematic Design Phase of architectural services. It concludes when District approves the Schematic Design Documents prepared by the Project A/E.

During Schematic Design Phase Construction Manager shall continue to provide the General Services described in Section 2. In addition, Construction Manager shall:



- 6.1.1 Conduct regular meetings with the Project A/E and ensure that minutes of these meetings are prepared and distributed to all parties. The Construction Manager will participate in these meetings and will prepare Monthly Design Status reports, including monthly update of a Project A/E's schedule; process Project A/E and other direct consultant invoices and progress payments; review designs for program and functional requirements; identify and assist in resolving programmatic and other conflicts; and monitor compliance with assigned tasks.
- 6.1.2 Perform cost estimate reviews to assess the accuracy of the costs prepared by the Project A/E or other cost estimating consultants. The cost estimating procedure shall include cost estimating sufficient to assess the accuracy of the Project A/E's estimates or third party estimates, including meetings with the A/E to develop consensus if differences are found, and making a written report. The Construction Manager will review these estimates. If any such cost estimates indicate that a Project is exceeding the approved budget for the Project or Program, the Construction Manager shall notify the District in writing and provide recommendations to bring the Project within budget constraints approved by the District.
- 6.1.3 Work with the Project A/E to schedule design review workshops throughout the design phases of the Project. Coordinate formal design presentations as indicated in the approved Master Schedule to the Board of Trustees, District staff, and any interested community groups or agencies with jurisdiction.
- 6.1.4 Advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery.
- 6.1.5 Upon submission of Schematic Design documents by the Project A/E, Construction Manager shall review the Schematic Design documents for completeness and perform an additional QA/QC general review of documents for completeness and responsiveness to the Project A/E's scope of work and the Project's Program.
- 6.1.6 Claims Control: To reduce possibilities of construction contractor claims, the Construction Manager will establish a QA/QC program and review the Project A/E's design and construction documents at various stages of completion and provide specific comments and recommendations regarding constructability, allowed time for construction, liquidated damages, measurement and payment interface with other work, traffic control and clarity. The Construction Manager will provide this QA/QC process and consolidate information into the monthly Design Status reports.

## **6.2 Design Development Phase**

- 6.2.1 The Design Development Phase shall begin when District, in consultation with Construction Manager, approves the Project A/E's Schematic Design Documents and authorizes the Project A/E to proceed with the Design

Development Phase of architectural services. It concludes when District, in consultation with Construction Manager, approves the Project A/E's Design Development Documents and authorizes the A/E to commence the Construction Document Phase.

- 6.2.2 Construction Manager shall continue to provide the General Services described in Section 2.
- 6.2.3 Construction Manager shall prepare recommendations on the feasibility of using separate, phased construction or procurement contracts to accelerate the design and construction schedule and to reduce costs without jeopardizing the quality of design and construction. Evaluate the requirements for the early procurement of long lead items and outline for District any increased District administrative costs.
- 6.2.4 Life Cycle and Alternates Workshop: The Construction Manager shall conduct Life Cycle and Alternates Workshop sessions during the design of the Project as specified in the Agreement for professional Services with A/E's for the purpose of ensuring that essential functions are procured at the lowest total life cycle cost and that costs are consistent with needed performance quality, reliability, aesthetics, safety and operational standards. These sessions shall include District user groups as appropriate, each campus' maintenance personnel and others as recommended by District. The Construction Manager shall involve the Project A/E, its Subconsultants, and others as required. The Construction Manager shall document all recommendations, rank these in concert with the Project A/E, and provide for discussions which will lead to conclusions and actions on the priority recommendations.
- 6.2.5 Perform cost estimate reviews of the Project sufficient to assess the accuracy of the cost prepared by the Project A/E or other cost estimating consultants. The cost estimating procedure shall include cost estimating sufficient to assess the accuracy of the Project A/E's or third party estimates, including meetings with the A/E to develop consensus if differences are found, and making a written report. The Construction Manager will review these estimates. If any such cost estimates indicate that a Project is exceeding the approved budget for the Project or the Program, the Construction Manager shall notify the District in writing and provide recommendations to bring the Project within budget constraints approved by the District.
- 6.2.6 Construction Manager shall review the Project A/E's energy conservation report for completeness, including strategies, alternatives, and life cycle costs of systems. Construction Manager shall follow through as necessary to apply for District all available energy rebates or any similar financial incentives and notify the District Director, Facilities, Planning and Construction, of any such applications.

- 6.2.7 Construction Manager shall schedule and attend the regular progress meeting of the Project A/E and prepare minutes of these meetings. The Construction Manager shall include a monthly update of A/E's schedule in required monthly report; process A/E's and other direct client consultant invoices and progress payments; review designs for program compliance; identify and assist in resolving functional, programmatic and other conflicts; and monitor compliance with responsibility assignments.
- 6.2.8 Construction Manager shall work with the Project A/E to schedule design review workshops throughout the Phase.
- 6.2.9 Construction Manager shall coordinate with the Project A/E to make formal design presentations per the approved Master Schedule as designated by District.
- 6.2.10 Construction Manager shall review the documents for inclusion of mitigation measures developed in an EIR, if applicable.
- 6.2.11 Constructability and Program-wide Coordination Reviews: Construction Manager shall review preliminary design documents prepared by the A/E and prepare a written report on whether the design will (1) be biddable, constructible and provide a facility with the lowest reasonable construction costs and (2) minimize the maintenance and operational costs on a Project and Program-wide basis, each consistent with District requirements set forth in the predesign program and in written communications. Construction Manager shall provide specific documentation, identify any specific design details that adversely affect constructability, cost or schedules, and provide recommendations to substantiate and help correct such findings. Construction Manager shall provide comments on sequencing of construction (phases), means and methods, duration of construction of various building methods. Also, the Construction Manager shall provide evaluations, advice and recommendations on construction materials and systems under consideration by the Project A/E or recommended by other sources. Where necessary, Construction Manager will prepare a value engineering report with recommendations and analysis of alternative methods, systems, materials, equipment or designs feasible to provide a facility with the lowest reasonable construction costs while achieving District's program objectives. The Construction Manager will prepare and provide QA/QC oversight of the constructability review, coordination review, and value engineering report.

### **6.3 Construction Documents**

- 6.3.1 The Construction Documents Phase shall begin after District, in consultation with Construction Manager, has approved the Project A/E's Design Development Documents and Construction Manager has authorized the Project A/E to proceed with the construction Documents Phase of architectural services.

- 6.3.2 Construction Manager shall continue to provide the General Services described in Section 2.
- 6.3.3 Construction Manager shall coordinate and conduct QA/QC review of the A/E's energy conservation deliverables for completeness, including strategies, alternatives and life cycle costs of systems.
- 6.3.4 Construction Manager shall attend the regular progress meeting of the Project A/E and prepare minutes of these meetings. The Construction Manager will prepare Monthly Status reports, including monthly update of A/Es' schedule; process A/Es' and other direct client consultant invoices and progress payments; review designs for program compliance; identify and assist in resolving functional, programmatic and other conflicts; compile and expedite District comments; and monitor compliance with responsibility assignments.
- 6.3.5 In association with the Project A/E, Construction Manager shall coordinate requirements of the Project with those of local utilities to ensure continuation of service during relocation and/or installation of new systems.
- 6.3.6 Construction Manager shall review Master Project Schedule to reflect latest progress and achievable goals. Report on progress of design and advise on approach to recovering time, as the situation requires.
- 6.3.7 Establish procedures for cost estimating firms to perform cost estimate reviews of the Project sufficient to assess the accuracy of the cost prepared by the Project A/E. The cost estimating procedure shall include complete cost estimate reviews of the Project and, if necessary, cost estimating sufficient to assess the accuracy of the Project A/E's estimates, including meetings with the A/E to develop consensus if differences are found, and making a written report and revising the anticipated construction cost estimate. This entire process is hereafter referred to as an "Independent Cost Estimate". The Construction Manager will review these estimates and utilize this information to update the Project budget cost trends. If any such cost estimates indicate that a Project is exceeding the approved budget for the Project or Program, the Construction Manager shall notify the District in writing and provide recommendations to bring the Project within budget constraints approved by the District.
- 6.3.8 Construction Manager shall review construction documents for consistency, and adequacy for bidding and construction purposes. Assist in obtaining statutory approvals or local approvals, i.e., city, fire marshal, etc. Construction Manager will review A/E's 50% and 90% contract documents and provide written comments on the coordination of the various disciplines, including civil, structural, architectural, mechanical, electrical, HVAC, plumbing, and landscape.
- 6.3.9 Constructability and Program-wide Coordination Reviews: Construction Manager shall review construction documents prepared by the A/E and

update its prior written report on whether the design will (1) be biddable, constructible and provide a facility with the lowest reasonable construction costs and (2) minimize the maintenance and operational costs on a Project and Program-wide basis, each consistent with District requirements set forth in the predesign program and in written communications. Construction Manager shall update its prior report and provide specific documentation, identify any specific design details that adversely affect constructability, cost or schedules, and provide recommendations to substantiate and help correct such findings. Construction Manager shall consolidate comments on sequencing of construction (phases), means and methods, duration of construction of various building methods. Also, when requested by District, the Construction Manager shall provide evaluations, advice and recommendations on construction materials and systems under consideration by the Project A/E or recommended by other sources. Where necessary, Construction Manager shall coordinate updates of prior value engineering report with recommendations and analysis of alternative methods, systems, materials, equipment or designs feasible to provide a facility with the lowest reasonable construction costs while achieving District's program objectives. The Construction Manager will prepare and provide QA/QC oversight of the constructability review, coordination review, and value engineering report.

- 6.3.10 Construction Manager shall make recommendations for temporary construction requirements as necessary to be included in the construction contracts.
- 6.3.11 Construction Manager shall work with the District and Project A/E to develop and use the District's master construction documents to prepare bidding packages and contract packages following the manual prepared by District.
- 6.3.12 Construction Manager shall review, propose modifications, and modify, if approved by District, District forms to be used during the Bidding and Construction, as necessary for particular Projects.
- 6.3.13 For District provided equipment for installation by the Contractor, Construction Manager shall prepare procurement requisitions for District and recommend when the District Director of Purchasing begin actual procurement. Act as liaison with suppliers until this responsibility is shifted to the Contractor. During the interim, arrange for delivery and storage, protection and security for District purchased materials, systems, and equipment which are a part of the Project, until such time as responsibility for the items is shifted to the Contractor.
- 6.3.14 To promote competitive pricing, Construction Manager shall provide an analysis of the type and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Make recommendations for actions designed to minimize adverse effects of labor shortages, if any.

- 6.3.15 In concert with the Project A/E, Construction Manager shall confirm that the District has applied for any applicable utility permits and has paid any applicable fees and assessments. Construction Manager shall assist in obtaining approvals from authorities having jurisdiction over the Project and coordinate the activities of utility companies, materials and soils testing engineering and regulatory agencies.
- 6.3.16 Construction Manager shall review, recommend, and formulate, with District and A/E assistance, special conditions in the construction document governing Contractor activities to minimize construction impact on the public and implement all necessary mitigation measures.
- 6.3.17 As an Additional Service item, and on the District's authorization, Construction Manager shall prepare an additional Independent Cost Estimate as and when requested by District.
- 6.3.18 Construction Manager shall maintain regular monitoring and status review of Master Project Schedule. Prepare pre bid schedules with recommended milestones for each separate construction contract, if any. Provide reports to District as required by Project circumstances, on time sensitive situations in all areas and recommend corrective action to allow for completion of task(s) in accordance with the schedule.
- 6.3.19 If applicable, Construction Manager shall assist the District in implementing an Owner Controlled Insurance Program ("OCIP") on any Project(s) designated by the District. Construction Manager shall work with the OCIP administrator and Project A/E to ensure all applicable OCIP requirements and documents are incorporated into the applicable contract documents for the Project(s) and evaluating whether contractors and subcontractors are eligible for coverage under OCIP.

## **7. Bidding Phase**

### **7.1 Period of Service**

The Bidding Phase shall begin formally after District, in consultation with Construction Manager, has approved the Construction Documents, DSA has approved the Construction Documents and the District has authorized advertisement for bids. It concludes when a Notice to Proceed has been issued.

### **7.2 Scope of Services**

Construction Manager shall continue to provide the General Services described in Section 2.

### **7.3 Bidding Services**

Construction Manager shall oversee bidding or other construction delivery methods according to the terms, conditions and procedures outlined in District's

Master form of Project Manual and the additional Bidding Services set forth below.

- 7.3.1 Prequalify bidders within established District limitations, subject to District approval.
- 7.3.2 Prepare list of potential bidders and advertise as appropriate.
- 7.3.3 Coordinate and expedite the preparation and delivery of bid documents, contract documents and addenda to the bidders which may include:
  - 7.3.3.1 Preparing summaries of work and/or bid packages;
  - 7.3.3.2 Uploading bid documents from A/E(s) to ARC Planwell;
  - 7.3.3.3 Arranging access by all bidders to download bid documents from ARC Planwell;
  - 7.3.3.4 Arranging for delivery; and
  - 7.3.3.5 Follow-up calls to bidders.
- 7.3.4 Coordinate with the Purchasing Director to prepare and place bid advertisements, place notices and generate bidder interest in the Project.
- 7.3.5 Conduct prebid conference(s). These conferences will be a forum for District, Construction Manager and A/E to present the Project requirements to the bidders, including pre-qualification requirements as appropriate.
- 7.3.6 Coordinate receipt of responses to contractor's questions and manage the preparation of addenda by the Project A/E; obtain District approval prior to issuing addenda.
- 7.3.7 Coordinate with the Purchasing Director to conduct bid openings; tabulate and compare bids; evaluate bids for completeness, full responsiveness and price, including alternate prices and unit prices; advise District on acceptability of bids; make award recommendation to District; prepare award documents.
- 7.3.8 Review contractor performance bonds and insurance certificates for compliance with contract requirements.
- 7.3.9 Conduct the preconstruction conference, with District in attendance.
- 7.3.10 Coordinate with the Purchasing Director in the issuance of the Notice to Proceed.
- 7.3.11 If the District elects to use various construction delivery methods, the Construction Manager shall provide services to the District similar to the requirements above applicable for the particular delivery method.

## **8. Construction Phase**

### **8.1 Period of Service**

The Construction Phase shall begin when District, in consultation with Construction Manager, issues "Notice to Proceed" to the Contractor and concludes 60 days after the recording of the Notice of Completion for a Project.

### **8.2 General Scope of Construction Management Services**

Construction Manager shall perform construction management services specified herein necessary to complete each Project on time and within budget and within each construction contract's specified levels of quality and workmanship, and shall coordinate and administer all construction contracts on behalf of District, and shall enforce all construction contract requirements including, but not limited to, warranties, scheduling, claims submission, change order pricing, and contract close out requirements, and shall do so consistent with the latest approved estimate of construction cost and the Master Schedule. These obligations include, but are not limited to, the following:

- 8.2.1 Administer all contracts on behalf of District and participate in weekly Project meetings during construction attended by representatives of District, Construction Manager, general contractor, and applicable subcontractors, Project A/E and consultants.
- 8.2.2 Construction Manager shall supervise the issuance of certificates of substantial completion and recordation of the Notices of Completion at the appropriate times. The Construction Manager will establish procedures and assist in the timely issuance of operation and maintenance manuals, instructions to the owner's maintenance representatives, and receipt and recording of required warranties.
- 8.2.3 Prepare procedures and provide overall management control and coordination of all the parties involved in the construction phase: all contractors, direct material suppliers or equipment suppliers, inspection and testing companies, the State and local authorities, the Project A/E, and all pertinent District departments.
- 8.2.4 Coordinate the delivery dates of all the separately purchased equipment and other long lead items purchased by District to ensure delivery on site in accordance with the Contractor's construction schedule.
- 8.2.5 Set up job file, working folders, and record-keeping systems to be used on the Project.
- 8.2.6 Prepare and process letters, paperwork and other related elements for the administration of the Project. Maintain construction files to properly organize and keep all necessary documents.



- 8.2.7 Coordinate with contractor access to the work by District inspection personnel for random job site visits. Document preconstruction conditions of the site and adjacent improvements through photographs and advise if other measures are reasonably necessary.
- 8.2.8 Ensure that as-built documents are being recorded by the prime contractor as construction progresses and take delivery of these documents when construction is complete. Construction Manager will ensure that the documents are organized, indexed and complete.
- 8.2.9 Assist District in preparing and processing District disruption notices and notify affected campuses of closures, partial closures and shutdowns.
- 8.2.10 Establish a procedure to verify that the A/E, A/E's consultants, Project Inspector, Laboratory of Record and Contractor are performing services in compliance with the "Construction Oversight Process Procedure" required by the California Code of Regulations, Title 24 and as further described in DSA's PR 13-01, PR 13-02 and any other related documents and subsequent updates to such documents. As part of the procedure established under this Section, Construction Manager shall verify that all verified reports are being submitted to the DSA by the responsible parties in a timely manner. As part of the monthly reporting process, Construction Manager shall notify the District when the A/E, A/E's consultants, Project Inspector, Laboratory of Record or Contractor have failed to comply with the Construction Oversight Process Procedure and must inform the District of the impact such failure will have upon the Project and the Project Schedule.
- 8.2.11 Review the DSA approved Statement of Structural Tests and Special Inspections (Form DSA 103) for the Project prior to the commencement of any work on the Project in order to become familiar with all testing and inspections that are required for the completion of the Project.
- 8.2.12 Meet with the A/E, Project Inspector, District, Contractor, Laboratory of Record and Special Inspectors as needed throughout the construction and completion of the Project to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents.
- 8.2.13 Coordinate with the Contractor to ensure timely requests for inspections are made and that the requirements related to the DSA's Inspection Card Process and Form DSA 152 are being met for the Project. The Construction Manager shall notify the District, in writing, when delays or impacts to the Project Schedule are being caused by a party not complying with DSA's Inspection Card requirements and Form DSA 152.
- 8.2.14 Coordinate with the Project Inspector, A/E, A/E's consultants, Special Inspector(s), Laboratory of Record and any other engineers on the Project to verify that all verified reports are timely submitted to the DSA and the

District throughout the completion of the Project and prior to the Project Inspector's approval and sign off of any of the following sections on all the Project Inspection Cards (Form DSA 152) required for the construction of the Project: (1) Initial Site Work; (2) Foundation; (3) Vertical Framing; (4) Horizontal Framing; (5) Appurtenances; (6) Non-Building Site Structures; (7) Finish Site Work; (8) Other Work; or (9) Final.

### **8.3 Meetings and Conferences**

- 8.3.1 Conduct the pre-construction conference and regular job site meetings with construction contractors, the Project A/E and representatives of District to discuss procedures, progress, problems, scheduling and other appropriate matters; prepare agendas for each meeting; take minutes of each meeting, indicating action items and responsible parties, transcribe, and distribute copies to all participants.
- 8.3.2 Conduct negotiations with the Contractor on changes and other issues.
- 8.3.3 Participate in meetings and conferences with District affiliated groups, government agencies, and private groups as required by the approved construction schedule and provide action minutes from these sessions. Participate in these meetings as deemed necessary by the District.
- 8.3.4 All Construction Manager personnel assigned to this Project shall have pagers or cellular telephones sufficient to permit 24 hour a day access for response to emergency situations that may arise.

### **8.4 Shop Drawings and Submittals**

- 8.4.1 Prepare procedures and provide QA/QC oversight to confirm that the Project A/E coordinate the submittal review process required in the construction contract. Issue procedures to facilitate timely submission and review, and maintain records of required submittals, dates and actions taken. Notify any party in writing who is delaying any submittal in process.

### **8.5 Cost Control and Records**

- 8.5.1 Implement and manage an appropriate cost control system with periodic status reports as required by this Agreement.
- 8.5.2 Maintain financial records and budgetary information of the construction Project, listing in spreadsheet fashion all potential expenditures, pre validated sums for change requests or other services, and final cost of all changes to show a complete budget status on the Project.
- 8.5.3 Maintain at the Project site for District, one record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, and in addition, approved shop drawings, product data, samples and similar required submittals. Construction Manager shall establish a process to

close-out and centrally archive these documents at the completion of defined Project phases.

## **8.6 Schedule Control**

- 8.6.1 Receive and review the Contractor's CPM schedule submittal, review with the A/E, and recommend to District acceptance or rejection. Negotiate an acceptable schedule with the contractor or contractors as required. Receive and review the Contractor's schedule updates which are required to be submitted with each request for payment and recommend appropriate action
- 8.6.2 Review and evaluate the Contractor's schedule to determine if the Project is on schedule, and recommend adjustments and actions to be taken by District in case of changed conditions, and unexpected interferences.
- 8.6.3 Construction Manager shall develop and provide to District written monthly schedule reporting. It shall provide a clear comparison between original major milestones and the activities in the contractor's currently approved CPM schedule, and the actual date of accomplishment. A narrative shall address revisions and projected schedule slippage, with recommendations on actions to be taken to regain the original schedule or to minimize projected slippage. The most current and updated schedule(s) shall be posted in full size in a location as directed by the District.

## **8.7 Payments**

- 8.7.1 In consultation with the Project A/E, Project Inspector and District, review and process all requests for payment submitted by the construction contractor for progress and final payments.
- 8.7.2 Prepare progress payment reports, and recommend to District amount to be paid by verifying, in consultation with the Project A/E, and Project Inspector, the value of work in place and/or stored materials. See that the construction schedule is currently updated and that the percentage completion for each category of work is correct in order to correspond with payment reports. The Construction Manager's recommendation for payment and approval of such shall constitute a representation to District that, to the best of Construction Manager's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents.
- 8.7.3 Review and process all requests for progress and final payment submitted by the Project A/E and other consultants.
- 8.7.4 Monitor certified payroll records are being transmitted to the Labor Commissioner as required.

## **8.8 Change Requests and Modifications**

- 8.8.1 Transmit to the Architect (and to the District when it so requests), as appropriate, requests for interpretations of the meaning and intent of the drawings and specifications, RFI's, other contractor communications, and assist in the resolution of questions that may arise.
- 8.8.2 In consultation with the Project A/E, recommend the issuance of change requests for construction contract modification whenever it appears necessary. Determine that the Project A/E has prepared the scope of work, justifications and estimate of the cost for such modification. Participate in negotiations and provide District with written recommendations on acceptance, rejection, price, time, and any other appropriate decision and/or action, with full supporting documentation including, where appropriate, schedule analysis, calculations, takeoffs, etc. Advise District in writing whenever change order negotiation or pricing does not follow contract requirements. Maintain log of Proposal Requests, RFI's and Change Orders. Upon receipt of a change suggested by a construction contractor, in consultation with the Project A/E, review its merit and either recommend rejection or forward it to District with recommendations for approval within the required timelines set forth in the general conditions for the Project.
- 8.8.3 For a change order on which agreement has not been reached as to amounts of equitable adjustment prior to commencing work, detailed records of time and material shall be submitted to Construction Manager by the Contractor verified by the Project Inspector. All time and material documents must be signed/ countersigned as required by the District or the contract documents.
- 8.8.4 Construction Manager shall strictly enforce District's contractual change order specification for all types of extra work and shall strictly enforce District's contractual contractor claims procedure, including maintaining proper records of costs, negotiations, and notice and documentation of claims as they arise on Projects along with recommendations for resolution or other appropriate disposition.

## **8.9 Inspection and Deficiencies**

- 8.9.1 Perform all Project management and administrative duties relating to construction administration, inspection and testing services necessary to determine contractor compliance with all requirements of its construction contract.
- 8.9.2 Schedule and coordinate inspection and/or testing of materials and workmanship to verify contract compliance.
- 8.9.3 Maintain list of observed defects and omissions and provide a copy of the list to the Project A/E, District and the Contractor monthly or more often as needed.

- 8.9.4 Keep copies of daily inspection reports, daily logs and other documentation of inspections.
- 8.9.5 Promptly report to the Project A/E and District, in writing, observed problems, ambiguities, or discrepancies in the construction contract requirements.
- 8.9.6 Advise the Project A/E and District if the Contractor fails to promptly remove, correct or replace nonconforming construction work.
- 8.9.7 Provide a photographic record of progress on the Project, problem areas, work involved in disputes, changed or nonconforming work, and other work items or areas of work which need an enhanced or visual means of recording to provide a full and complete record of them. Photos will be submitted monthly to the District and Construction Manager.
- 8.9.8 Prepare documents for final inspections and acceptance procedures and testing, and procedures for administering Project completion.

#### **8.10 Public Information**

During construction, the public relations program assumes a proactive style in the affected area, disseminating information, preventing and resolving complaints; and providing staff response as needed. In addition, Construction Manager shall in coordination with the District personnel and District's Public Information Office:

- 8.10.1 Provide construction information bulletins to affected parties.
- 8.10.2 Fill requests for speaking engagements.
- 8.10.3 Set up informational displays in appropriate District and community areas.
- 8.10.4 Update and provide information on overall construction Projects and necessary.
- 8.10.5 Organize ceremonial and press events around construction milestones.
- 8.10.6 Respond to complaints and pursue appropriate actions in concert with the District.

#### **8.11 Claims**

Review, in consultation with District, District Counsel, Project A/E, Consultant and Contractor claims and recommend to District in writing a course of action including acceptance, rejection, price, time, or other appropriate decision or response, with full supporting documentation including schedule analysis, calculations, take offs, etc.

## **8.12 Operation Manuals and Warranties**

Obtain all required operation manuals and warranties from the contractor as required in the contract documents and transmit to District. Construction Manager will coordinate delivery of all keys, manuals, records drawings and maintenance stocks to District.

## **8.13 Start Up Assistance and Training**

Schedule and coordinate all required construction contract start up, testing and training activities.

## **8.14 Project Closeout**

Provide closeout services through the conclusion of each Project, including:

- 8.14.1 Monitor the completion of omission and defect items identified on the final inspection punchlist. In consultation with the Project A/E, recommend acceptance of completed work or rejection of unsatisfactory work and coordinate walkthroughs by District personnel. Assist the Architect in conducting inspections to determine substantial and final completion. Strictly enforce all construction contract closeout requirements. At the conclusion of all corrective action of all punchlist items, make a final comprehensive review of the Project, make a report to District which will indicate whether the Project A/E finds the work performed acceptable under the Contract Documents and the relevant Project data, and make recommendations as to final payment and the Notice of Completion to the contractor.
- 8.14.2 Continue other post construction functions such as warranty problem resolution and start up assistance.
- 8.14.3 Close out the files maintained during the construction phase in accordance with District's records archiving and disposal protocols, and transmit to District.
- 8.14.4 Construction Manager will assist District in obtaining the Occupancy Permit, final DSA approval, and final record documents. This task may encompass accompanying government officials (the city, fire marshal, DSA, Health Department, etc.) during inspections of the Project, assisting and preparing and submitting proper documentation to the appropriate approving agencies, assisting in final testing and other necessary and reasonable activities.
- 8.14.5 Project close out services shall be deemed as part of General Services regardless of when performed.

- 8.14.6 Construction Manager shall coordinate with the A/E, Project Inspector and others to confirm all documents have been completed and submitted to DSA to assure each Project obtains DSA close-out certification.

## **9. Equipment Procurement Phase (If Requested by the District)**

### **9.1 Period of Service**

The Equipment Procurement Phase shall begin when District, in consultation with Construction Manager, issues a “Notice to Proceed” to the Construction Manager and concludes 90 days after completion of all installation (including initial warranty returns), testing, and training (if any).

### **9.2 General Scope of Equipment Procurement Services**

As an additional service, Construction Manager shall perform all regular and customary services necessary to manage the equipment procurement process by overseeing the development of appropriate procurement specifications, complete each procurement Project on time and within budget and within each procurement contract’s specified levels of quality and workmanship, and shall coordinate and administer all procurement contracts on behalf of District, and shall enforce all procurement contract requirements including, but not limited to, warranties, scheduling, claims submission, change order pricing, testing, training (if any) and close out requirements, and shall do so consistent with the latest approved estimate of procurement cost and the Master Schedule. These services shall include, without limitation the following:

- 9.2.1 Manage the development of appropriate specifications, including alternates where applicable, and manage and coordinate District staff and other District constituencies in a shared governance environment in developing the specifications.
- 9.2.2 Investigate, prequalify and qualify potential suppliers.
- 9.2.3 Manage and coordinate procurement contract development, bidding, negotiation (if applicable) and award of each procurement contract.
- 9.2.4 Manage and coordinate delivery, installation, testing, maintenance and warranty claims and work, removal and disposition (including sale if applicable) of old equipment, and moving of affected District personnel, files and other equipment, with District and applicable District end-users.

## **10. District Responsibilities**

### **10.1 Services and Data**

To the extent available, District shall provide the following services and data to Construction Manager. If any services or data are necessary or required for a Project but not available, the Construction Manager shall assist the District in

obtaining such services or data. However, District shall be responsible for all related costs.

- 10.1.1 Furnish survey of the Project site, including grades and lines of streets, pavements, and adjoining properties; right of ways, restrictions, easements, boundaries, planting and topography of the building site; locations, dimensions and floor elevations of existing buildings, other improvements; and information as to available service and utility lines, both public and private, where available to the extent that such documents and information are available to the District and required for the Project and Program.
- 10.1.2 Furnish available soil and foundation data as such data are deemed necessary by the Project A/E and Construction Manager, including test logs, soil classifications, soil bearing values, and other data necessary to define subsoil conditions to the extent required for completed design of footings, foundations and retaining walls.
- 10.1.3 Provide the necessary forms of contracts, bonds, general conditions of the contract, and public advertisements for bids. Construction Manager may submit for District's approval modifications of such documents to assure that they are appropriate for specific Projects and to include the role of Construction Manager's services.

## **10.2 Payments**

Issue job progress payments to Project A/E, Environmental Consultant, other consultants and contractors within 30 days after recommendation for payment by Construction Manager.

## **10.3 Site Access**

Provide site access to Construction Manager, Project A/E, and others as requested through Construction Manager.

## **10.4 Contract and Procurement Documents**

District shall furnish Construction Manager with the terms and conditions of all contracts with the Project A/E, consultants, suppliers and others contracted with District and will consult with Construction Manager prior to issuing modifications to these agreements. Construction Manager shall notify District if any such independent action will in any way compromise Construction Manager's ability to meet Construction Manager's responsibilities under this Agreement.

## **10.5 Designated Representative**

District designates the District Director, Facilities, Planning and Construction, to act on District's behalf with respect to the Program and/or Project. District, or such authorized representative, shall examine documents submitted by



Construction Manager and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of Construction Manager's services.

**10.6 Legal, Accounting and Insurance Services**

District shall furnish legal, accounting and insurance counseling services necessary to protect District's interest in the Project, including such auditing services as may be required to verify any costs or payments related to the Program or Projects. District shall supply such services to protect solely its interests.

**10.7 District Work**

District reserves the right to perform work related to the Project with District's own forces, and to award contracts in connection with the Project which are not part of Construction Manager's responsibilities under this Agreement. Construction Manager shall notify District if any such independent action will in any way compromise Construction Manager's ability to meet Construction Manager's responsibilities under this Agreement.

**10.8 Intentionally Omitted**

**10.9 Office Space, Furniture, Equipment, and Supplies**

District shall, in addition to its compensation for services, provide Construction Manager with office space, parking for office space, and telephone and internet connectivity in furtherance of performance of its obligations under this Agreement. These items will be provided only to the extent that such needs are generated in connection with the operations of, and incurred at the location of the District, onsite.

## APPENDIX “1”

[*INSERT LIST OF PROJECTS*]

## APPENDIX “2”

*[INSERT ORGANIZATION CHART]*

**EXHIBIT “B”**  
**COMPENSATION TO CONSTRUCTION MANAGER, ADDITIONAL SERVICES**  
**AND REIMBURSABLE EXPENSES**

[*INSERT FEE SUMMARY*]

**EXHIBIT “C”  
MILESTONE SCHEDULE**

[*INSERT SCHEDULE*]

**EXHIBIT “D”**  
**LIST OF REQUIRED DELIVERABLES**

*[INSERT LIST OF DELIVERABLES]*

## **EXHIBIT “E”**

### **INSURANCE**

This Exhibit “E” is attached to, and made a part of and incorporated by reference to the Agreement made and entered on \_\_\_\_\_, 2020 By and between San Mateo Union High School District (“District”) and [\_\_\_\_\_ *insert name of Construction Management firm*] (“Construction Manager”).

Construction Manager shall procure 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 work hereunder by the Construction Manager, its agents, representatives, employees and sub-consultants.

#### **1. Construction Manager’s Duty to Show Proof of Insurance.**

Within ten (10) days of execution of this agreement, Construction Manager shall furnish to district certificates of insurance showing satisfactory proof that Construction Manager, carries the following insurance, in a form consistent with its standard insurance portfolio, contingent upon approval by the district. All (commercial general liability and excess liability) insurance carriers must be admitted or authorized surplus line carriers in the state of California.

##### **1.1 Commercial General Liability Insurance**

Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for all damages because of bodily and personal injury, death, and property damage resulting from operations, products liability, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, blanket broad form contractual liability, products and completed operations, personal and advertising liability, with per project limits of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate.

##### **1.2 Automobile Liability Insurance**

One million dollars (\$1,000,000) per accident for bodily injury and property damage.

##### **1.3 Workers’ Compensation Insurance**

Workers’ Compensation Employers’ Liability in accordance with statutory limits and requirements, but not less than \$1,000,000 per accident for bodily injury or disease. Construction Manager’s Worker’s Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Construction Manager is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

#### **2. Insurance terms and conditions:**

##### **2.1 Status of District as Additional Insured.**

On Construction Manager's Commercial General Liability policy, the San Mateo Union High School District, and its Trustees, officers, officials, representatives, employees, Architects, and agents, shall be named as additional insureds with respect to any liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds and shall be evidenced by endorsements approved by the District.

**2.2 Waiver of Subrogation.**

Insurance policies shall be primary and no other insurance or self-insured retention carried or held by District shall be called upon to contribute to a loss covered by Construction Manager's insurance. Insurance policies shall contain provisions requiring the insurance carriers to waive their rights of subrogation against District, all additional insureds, and other insurance carriers for the Work. These waivers of subrogation rights shall extend to the officers, directors, employees licensors, and agents of the party. Construction Manager shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds.

- 2.3 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
- 2.4 Certificates of Insurance shall include the following statement: "Written notice of cancellation, non-renewal or of any material change in policy shall be mailed to District thirty (30) days in advance of the effective date thereof."
- 2.5 Construction Manager's insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than that amount Construction Manager shall be called upon to contribute to a loss covered by insurance for the named insured.
- 2.6 Nothing herein contained shall be construed as limiting in any way the extent to which Construction Manager or any of its employees or consultants may be held responsible for payment of damages resulting from their operations.
- 2.7 If Construction Manager fails to maintain any required insurance, District may obtain such insurance, and deduct and retain amount of premium from any sums due Construction Manager under this Agreement.
- 2.8 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the additional insureds.