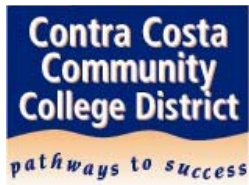


ADDENDUM #3



CONTRA COSTA COMMUNITY COLLEGE DISTRICT

REQUEST FOR QUALIFICATIONS (RFQ) PROJECT AND CONSTRUCTION MANAGEMENT SERVICES DISTRICTWIDE CAPITAL IMPROVEMENT PROGRAM

Date: 8/29/19

NOTICE TO ALL CONSULTANTS (A/E):

You are hereby notified of the following clarifications below. This Addendum shall supersede the original Request for Qualification (RFQ) Documents and wherein it contradicts the same, and shall take precedence over anything to the contrary therein. All other conditions remain unchanged.

This Addendum forms a part of the RFQ Documents and modifies the original RFQ Documents dated.

Acknowledgement of receipt of this addendum and previous addendum 1 & 2 is required in your proposal cover letter. Please clearly note the addendum date and number. Failure to acknowledge may subject proposer to disqualification.

REVISIONS & CLARIFICATIONS:

Part 1, 1.2 RFQ Schedule:

The proposal due date is being changed to: **September 6, 2019 before 2:00pm.** No extension to RFIs timeline.

Part 1, 1.3:

Diablo Valley College projects to include:

- Engineering Technology Renovation: project listed at the end of the bond program. Project delivery TBD. Total project budget: \$15M

Districtwide Projects to include:

- Photovoltaic installation at all sites

Part 3 Submission Requirements, 3.1C, Tab 3 –Organizational Chart: The organizational chart needs to also illustrate the relationships: (i) among the Respondent’s proposed Project Team; and (ii) between the proposed Project Team and the District.

Part 3 Submission Requirements, 3.1C, Tab 4 – Firm Experience:

Page limit: revised to max of 10 pages.

Years of experience: revised from five (5) to seven (7) years of experience.

Addition of small capital projects and identification of phase managed by Respondent. Clarification on construction value and inclusion of projects in progress.

Section revised to read and clarify:

Describe firm's *demonstrable* experience in managing complex construction projects for higher education institutions capital bond construction programs. Indicate the type, both the construction and total project value of at least five (5) large, complex projects, \$20M and over in construction value; and at least five (5) small capital projects at \$1,000,000 and over in construction value under DSA requirements. All project examples need to be within the past seven (7) years that your firm has managed ranging from planning, design, preconstruction, and construction to occupancy and DSA close-out. For each project, indicate which phase(s) your firm managed, articulate the depth of experience with various types and sizes of projects by providing succinct points of complexity, challenges your firm encountered, problem solving methods and solutions that were required and/or implemented to complete those projects. Identify delivery method utilized for each project and the role your firm played in completion of each project. If a project is in progress, indicate it as such. Preference will be given to completed projects.

Part 3 Submission Requirements, 3.1C, Tab 5 - 1:

In tab 5 section 1, include in the discussion of relevant project experience, the experience of the Respondent for the following: (i) conformity to schedule and budget requirements; (ii) California community college projects; (iii) projects subject to Division of State Architect ("DSA") review and approval, and (iv) implementation of general obligation bond program projects, including Project Labor Agreement requirements for such projects.

Part 3 Submission Requirements, 3.1C, Tab 6: Please keep each resume to a two page maximum. Tab 6 and Tab 7 overall do not have page counts as we want you to clearly articulate, in addition to resumes, how your team members experience and education fits within the requirements of District's bond program and this RFQ. Please include resumes for the following additional personnel proposed for the District's program:

- Assistant Construction Manager
- Senior Project Engineer

Although you may propose more than one person per role, especially for roles such as assistant construction manager and project engineers, please keep submittals and resumes to a reasonable number.

Part 3, Submission Requirements, Tab 7: Include a matrix of proposed personnel (identified in Tab 6) and their corresponding hourly rate. Please provide hourly rates for the following additional positions within your firm:

- Design/Project Manager
- Assistant Project Manager
- Senior Project Engineer
- Field Office/Administrative Support

Part 4, Selection Process/Evaluation Factors, 4.2:

References: The District will evaluate the prior experience and success of the Respondent and its proposed Project team to establish effective working relationships within the setting of higher education institutions, including the relationships with management, administrative, technical and end-user staff of prior clients, relationships with other project consultants and participants on prior projects.

RESPONSES TO REQUESTS FOR INFORMATION

QUESTION # 1:

With respects to the Tabs and the Order of the Proposal. You have your Number 1 Tab as a Table of Contents. Our pre-printed tabs start with a Table of Contents Tab, followed by number tabs. My question is can we use our "Table of Contents" or should we include our Table of Contents in Tab 1 as requested?

RESPONSE TO QUESTION #1:

Please follow the RFQ requested Tabs and the Order of the Proposal. If you wish to utilize your "Table of Contents" Tab and add a note on the tab itself that it's "Table of Contents – Tab 1" that is fine too.

QUESTION #2:

Our company is part of a group of companies that include different disciplines, including being a general contractor. The question is related to being able to provide both discipline services to the District. Can a company be a construction management on a project at one campus and can that company's sister company be providing general contractor services on a completely different project and campus, without any relation between the two campuses and projects.

RESPONSE TO QUESTION #2:

We have no objection at this time should a firm with multiple disciplines act in both capacities within parameters described in the submitted question. The district reserves the right to evaluate and make a decision on a project by project basis.

QUESTION #3:

Please note that on Page 9 of the RFQ, Tab 2, Item 3, it states that the District's Standard Services Agreement will be provided with the first addendum. It was not provided with Addendum No. 1. Will you be providing it with Addendum No. 2?

RESPONSE TO QUESTION #3:

District's Standard Professional Services Agreement is being provided in this addendum.

QUESTION #4:

On Page 9, Proposal Response Section, on Tab 4, there's a page limit of just 5 pages, however, you are asking for a lot of information in this Section. Would you consider extending the page limit to 10 pages for this section? We want to ensure that we can be responsive to all your questions and I fear the 5-page limit will not allow us to do so.

RESPONSE TO QUESTION 4:

The page limit has been extended to maximum of 10 pages.

QUESTION #5:

On Page 11 of 14, Confirming that Tab 6, "Proposed Team and Staffing Availability" and Tab 7, "Billing Rates" do not have page count limits.

RESPONSE TO QUESTION 5:

For Tab 6, each resume is limited to a two page maximum. Tab 6 and Tab 7 overall do not have page counts. See section "Revisions and Clarifications" of this addendum.

QUESTION #6:

On Page 9, it notes that Tab 2, Cover Letter, is limited to 1-page max. Due to the all the information requested in Item #2 and #3, is it possible to increase the maximum limit to two pages, or reference an appendix, if needed?

RESPONSE TO QUESTION 6:

Tab 2, Cover Letter is limited to 1-page max. For any substantial objections to District's Standard Professional Services Agreement, beyond the 1 page maximum cover letter, include an appendix.

QUESTION #7:

On Page 9, it notes under Tab 2 to provide information on at least 5 higher education projects in the last 5 years over \$20 million. Please confirm that this amount relates to the project value since the effort includes more than managing work during the construction phase. Also, since the PM/CM firm may manage small capital projects, and large projects as part of the services, and the evaluation factors mention evaluation on project types of various complexities, would the District like the firm to include a few smaller capital projects to demonstrate that experience as well in the last five years, and provide a combination of possibly 3 large projects over \$20 million with two smaller higher education capital projects of various complexities under DSA supervision to demonstrate the depth of experience with all types and sizes of projects within the 5 page max?

RESPONSE TO QUESTION 7:

See Revision section of this addendum for clarification to the entire section.

QUESTION #8:

On Page 11, it does not note under Tab 6 any page limitation. Does the District have any page limit for this tab?

RESPONSE TO QUESTION 8:

See Revisions/Clarification section of this addendum and answer to question #5.

QUESTION #9:

On Page 11, Tab 7, Billing Rates, it does not include a page limit. Should we assume this is one page?

RESPONSE TO QUESTION 9:

See Revisions/Clarification section of this addendum and answer to question # 5.

QUESTION #10:

On Page 11, Tab 7, Billing Rates, it requires the hourly rate to be "Fully Burdened". Can the District define what it expects to be included in the "Fully Burdened" rate? For example, does a fully burdened rate include travel expenses to and from a project site to the District Office; long distance phone calls, employee computers; copying expenses but for large document reproduction of bid documents or design phase milestones; etc.? In addition, does the fully burdened rate include overtime hours by the personnel if some personnel work beyond 160 hours in a typical 160-hour month?

RESPONSE TO QUESTION 10:

Fully burdened rate assumes all travel expenses required for completion of a project(s), all phone calls and/or cell phones, vehicle or other firm provided allowances, as well as employee computers/tablet machines required to perform their daily duties, printers/scanners and copying expenses. Specific details surrounding those expenses will be reviewed and might be negotiated during specific contract negotiations. Major project design or construction package documentation will be paid by the District. As far as overtime hours, generally the district does not pay for overtime hours. It is anticipated that contract(s) will be for a fixed price for project and/or construction management services.

QUESTION #11:

On Page 11, Tab 7, Billing Rates, does the District desire one hourly rate for each position, or can the PM/CM firm provide an hourly rate range for some of the positions? For example, based on the level of experience, the hourly rate range for Project Engineer could vary and save the District money. We could also include the name of the available personnel as part of this exhibit and include their hourly rate under the proposed position in this exhibit.

RESPONSE TO QUESTION 11:

In Tab 7, please include your firm's billing rates for the positions identified in the RFQ and this addendum (under Revisions/Clarifications addendum section). You may propose more than one person for each role and based on their experience include a corresponding billing rate. Please include a matrix of rates for each proposed team member, as identified in this addendum.

QUESTION #12:

Tab 5, Item 2d (page 11) states: “Describe your firm and proposed personnel experience in higher education sustainability projects.” Is the District requesting an overall discussion of sustainability experience in addition to the five (5) relevant projects requested per Tab 5, Item 1 (page 10)?

RESPONSE TO QUESTION 12:

Yes, it is an opportunity for each respondent to elaborate and articulate any additional pertinent information related to firms and personnel sustainability experience in higher education.

QUESTION #13:

When will the District release the sample agreement? I’d like to give our risk manager advanced notice of the expected date in order to expedite our review of the agreement when it’s released.

RESPONSE TO QUESTION 13:

District’s Standard Professional Services Agreement is being provided in this addendum.

QUESTION #14:

Does a single-sided 11”x17” page count as one page or two pages?

RESPONSE TO QUESTION 14:

Please see RFQ Part 3, 3.1A; it counts as one page.

QUESTION #15:

Will the PM/ CM firm have an opportunity to develop the actual Master Plan document, or is the expectation we will assist the District to manage the AE – District Master Plan process?

RESPONSE TO QUESTION 15:

The PM/CM firm may be asked to manage and support the District in the Master Planning process. It is not anticipated that the PM/CM firm will be developing the actual document.

QUESTION #16:

District extension personnel to consist of Project Engineers, Project Schedulers, Cost Estimators, and Software Controls, etc. Is the expectation the personnel to include design discipline professionals?

RESPONSE TO QUESTION 16:

No, we are not seeking designers at this time. If any of proposed team members have design or engineering experience, license, etc., you may include that information in your response.

QUESTION #17:

What is the Bond Program fiscal software controls currently being used or planned? (e.g.: PeopleSoft, PMWeb, etc.)

RESPONSE TO QUESTION 17:

The District uses BMET for fiscal controls at the program and project level.

QUESTION #18:

Does the District have a project scheduler software preference, to manage their projects? (e.g.: PMWeb, Primavera, Procore, etc.)

RESPONSE TO QUESTION 18:

Not at this time.

QUESTION #19:

Will each college campus have a shared governance building committee, or is it a singular CCCC Facilities Committee?

RESPONSE TO QUESTION 19:

Each campus has its own Steering Committee. Both District and College stakeholders are part of those committees and District and PM/CM teams provides the framework and facilitate those meetings.

QUESTION #20:

Will the selected PM/CM be asked to give routine regular updates to the District’s Facilities Committee?

RESPONSE TO QUESTION 20:

Yes, routine updates, team meetings and presentations related to the bond program are part of basic services.

QUESTION #21:

If the contract is issued with the addendum, and the RFQ process is as listed in the RFQ, will the proposer be allowed to ask questions about the contract?

RESPONSE TO QUESTION 21:

Please see RFQ Part 3, 3.1C -Cover Letter - for specific directions related to District’s contract item. Keep in mind that specific projects(s) and scopes of work contract negotiations will take place at a time of project(s) selection period (next step in the process).

QUESTION #22:

What is the specific difference between the Firm Experience in Tab 4.2 and Tab 5.1? Is the year experience request 5 years or 7 years?

RESPONSE TO QUESTION 22:

In general, Tab 4.2 is focused on firms’ demonstrable experience in higher education program, project and construction management areas from planning to close out. Tab 5.1 intent is to slice firms experience by focusing on project experience similar to the projects part of District’s bond program, as noted in the RFQ. Seven years for both tabs. See Revisions/Clarification section of this addendum.

=====

For Clarifications Contact:

Mr. Ben M. Cayabyab, Contracts Manager @: bcayabyab@4cd.edu

END OF ADDENDUM #3

Contra Costa Community College District
Request for Qualifications for Project and Construction Management Services
Districtwide Capital Improvement Program

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

CONTRA COSTA COMMUNITY COLLEGE DISTRICT

WITH

FOR

[NAME OF PROJECT]

_____ , 2019

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of [REDACTED], 2019, between the Contra Costa Community College District, a California public community college district ("District"), and [REDACTED] ("Construction Manager") (both collectively "Parties"), for the following project ("Project"):

The construction administration of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See **Exhibit "A"** for detailed Project scopes.

The Project may include multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Construction Manager shall invoice for each component separately and District shall compensate Construction Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE 1. Definitions

1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:

1.1.1 **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.

1.1.2 **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).

1.1.3 **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor on a Conforming Set.

1.1.4 **Board:** The District's Governing Board.

1.1.5 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that

incorporate all addenda, if any, issued during the Bidding Phase.

- 1.1.6 **Construction Budget**: The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.1.7 **Construction Change Documents (“CCD”)**: The documentation of changes to the DSA-approved construction documents.
- 1.1.8 **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted during and at the end of the design phase in accordance with this Agreement and the Agreement for Architectural Services. The Construction Cost Budget does not include the compensation of the Project Design Team, the Program Manager (if any), the Construction Manager and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of the District.
- 1.1.9 **Construction Manager**: The entity listed in the first paragraph of this Agreement.
- 1.1.10 **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.
- 1.1.11 **Contractor**: One or more licensed and registered contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.12 **Design Team**: The Architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR**: California Department of Industrial Relations.
- 1.1.14 **District**: The Contra Costa Community College District.
- 1.1.15 **District’s Representative**: The individual identified herein that is authorized to act on the District’s behalf with respect to the Project. The initial District’s Representative shall be **[Name], [Title]**. District may

change the District's Representative by notice as set forth herein.

- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Construction Manager's fee.
- 1.1.18 **Fee:** The Construction Manager's Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit "D."**
- 1.1.19 **Program Manager:** Any program manager hired to perform program management services for the District, including all consultant(s) to the Program Manager. If no Program Manager is hired by the District for the Project, then all references to "Program Manager" shall be read and interpreted as the District.
- 1.1.20 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.
- 1.1.21 **Record Drawings:** A final set of drawings prepared by the Architect incorporating all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.22 **Service(s):** All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

ARTICLE 2. Scope, Responsibilities And Services Of Construction Manager

- 2.1 **Scope:** Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project.
- 2.2 **Standard of Care:** Construction Manager, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom Construction Manager is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the

type, scope, and complexity of the Project. The District's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that Construction Manager has complied, nor in any way relieve the Construction Manager of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.

- 2.3 **Coordination:** In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Design Team, the Project Inspector, and the Program Manager, if any.
- 2.4 **Other Consultants:** If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 2.5 **Construction Manager's as District Representative:** Construction Manager will act as the District's agent to render the Services and furnish the work as described in **Exhibit "A,"** commencing with the receipt of a written Notice to Proceed signed by the District Representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.6 During the Project's Construction Phase, the District may require that the Contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 2.7 **Review of District's Facilities Master Plan:** Construction Manager will review the District's Facilities Master Plan for the District and other written materials the District makes available by the District to Construction Manager to understand fully the nature, extent and intent of the Facilities Plan and the Project.

ARTICLE 3. Construction Manager Staff

- 3.1 The District selected Construction Manager to perform the Services because of the Construction Manager's skills and expertise of key personnel.
- 3.2 The Construction Manager agrees that the following key personnel in Construction Manager's firm shall be associated with the Project and perform the Services in the following capacities:

Principal In Charge: _____

Project Director: _____

Construction Manager: _____

Project Manager: _____

Asst. Construction Manager: _____

Other: _____

Other: _____

Other: _____

3.3 The Construction Manager shall not change any of the key personnel listed above without the District's prior written approval, unless said personnel cease to be employed by Construction Manager. Regardless of the reason for the change in key personnel, District shall be allowed to interview and retains the right to approve replacement personnel.

3.4 If any designated lead or key person fails to perform to the satisfaction of the District, then upon the District's written notice, the Construction Manager will have seven (7) calendar days to remove that person from the Project and shall provide a replacement person acceptable to the District.

3.4.1 All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this Agreement.

3.5 Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement. Construction Manager agrees further that no person having any such interest shall be employed by Construction Manager.

ARTICLE 4. Schedule of Work

Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit "A"** so as to proceed with and complete the Services in compliance with 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. Delays beyond the Construction Manager's reasonable control will not be a material breach.

ARTICLE 5. Construction Cost Budget

5.1 The Construction Manager shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget with the Architect and the District throughout the design process and construction.

- 5.2 The Construction Cost Budget shall be the total cost to District of all Project elements the Design Team designs or specifies.
- 5.3 Construction Manager shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. Construction Manager shall notify the District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. Construction Manager, however, shall not perform or be responsible for any design or architectural services.
- 5.4 Evaluations of the District's Construction Budget, and Construction Manager's preliminary and detailed cost estimates, represent the Construction Manager's best judgment as a professional familiar with the construction industry.
- 5.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval of the plans and specifications, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.6 The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.7 occur:
 - 5.6.1 Give Construction Manager written approval of an agreed adjustment to the Construction Cost Budget.
 - 5.6.2 Authorize Construction Manager to re-negotiate, at no additional cost to the District, when appropriate, and/or re-bid the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time).
 - 5.6.3 Terminate this Agreement if the Project is abandoned by the District without further obligation by either party.
 - 5.6.4 Within three (3) months of receipt of bids, instruct Design Team to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding. Construction Manager will perform cost estimation, value engineering, constructability reviews, and/or bidding support at no additional cost to the District.

- 5.7 If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.6 above:
- 5.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or
 - 5.7.2 The combined total of base bid and all additive alternates equal or exceed ten percent (10%) of the Construction Cost Budget; or
 - 5.7.3 The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in Bay Area, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

ARTICLE 6. Fee and Method of Payment for Basic Services (to be negotiated for specific options for compensation)

- 6.1 District shall pay Construction Manager an amount not to exceed _____ Dollars (\$ _____) for all services contracted for under this Agreement and based on the Fee Schedule set forth in **Exhibit "D."**
- 6.2 District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.3 Construction Manager shall bill its work under this Agreement on a percent of completion basis in accordance with **Exhibit "D."**
- 6.4 No increase in fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error(s) or omission(s).
- 6.5 The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D,"** including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing or shipping of deliverables in the quantities set forth in **Exhibit "A."**

ARTICLE 7. Payment for Extra Services

- 7.1 Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** at the rates set forth in **Exhibit "D"** only upon certification of the District's prior written authorization of the

claimed Extra Services and the Extra Services have been satisfactorily completed.

- 7.2 Construction Manager shall submit to District a written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost. Construction Manager shall proceed with Extra Services only upon receiving the District's prior written authorization. Construction Manager will not be entitled to any compensation for Extra Services performed prior to receiving District's written authorization.
- 7.3 If Construction Manager performs any Extra Services without the District's authorized representative's prior written authorization, the District will not be obligated to pay for such Extra Services. The foregoing provision notwithstanding, Construction Manager will be paid by the District as described in **Exhibit "B"** for Extra Services the District's authorized representative verbally requests, provided Construction Manager confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives Construction Manager's written confirmation of the request.

ARTICLE 8. Ownership of Data

- 8.1 All of Construction Manager's work product prepared or generated in connection with this Agreement is the District's property.
- 8.2 Upon the District's request, the Construction Manager shall make available to the District all work product completed or in progress at the time of such a request.
- 8.3 After Project completion or, if the District exercises the right to terminate this Agreement pursuant to the Agreement terms, Construction Manager shall assemble and deliver to District within five (5) calendar days of the District's written request, all of Construction Manager's work product of the generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, all Construction Manager generated documents, copies of all documents Construction Manager exchanged with or copied to or from all other Project participants, and all closeout documents. Construction Manager shall be index and organize appropriately said Project records for easy use by District personnel.
- 8.4 All Project records are District property, whether or not those records are in the Construction Manager's possession. District retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Construction Manager or its Consultants prepare or cause to be prepared pursuant to this Agreement. Notwithstanding the preceding sentence, Construction

Manager and its Consultants shall be entitled to reuse work product generated under this Agreement.

ARTICLE 9. Termination of Contract

- 9.1 District's Request for Assurances: If District at any time reasonably believes Construction Manager is or may be in default under this Agreement, District may in its sole discretion notify Construction Manager of this fact and request written assurances from Construction Manager of performance of Services and a written plan from Construction Manager to remedy any potential default under the terms this Agreement that the District may advise Construction Manager of in writing. Construction Manager shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Construction Manager's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 9.2 District's Termination of Construction Manager for Cause: If Construction Manager fails to perform Construction Manager's duties to the District's satisfaction, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving Construction Manager written notice thereof. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions.
- 9.3 District's Termination of Construction Manager for Convenience: District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager if there is a termination for convenience.
- 9.4 Construction Manager's Termination of Agreement for Cause: Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from

Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.

- 9.5 Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.6 Ceasing Services upon Termination: If, at any time in the progress of the Project, the District determines that the Project should be terminated, the Construction Manager, upon the District's written notice of such termination, shall immediately cease work on the Project. The District shall pay Construction Manager only the fee associated with the Services provided and approved by District since the last paid invoice and up to the notice of termination.
- 9.7 Project Suspension: If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the Project after suspension Construction Manager shall make every effort to maintain the same Project personnel.

ARTICLE 10. Indemnity

- 10.1 To the furthest extent permitted by California law, Construction Manager shall indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager, its officers, employees, subcontractors, consultants, or agents, including without limitation, the payment of all consequential damages. Construction Manager shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Construction Manager's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.
- 10.2 Construction Manager shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Construction Manager's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to, legal fees and costs, expert

witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. Construction Manager's obligation to indemnify shall not be restricted to insurance proceeds.

- 10.3 District may withhold from amounts owing to Construction Manger any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager.

ARTICLE 11. Conduct on Project Site

- 11.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 11.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.

ARTICLE 12. Responsibilities of the District

- 12.1 The District 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.
- 12.2 The District shall provide to the Construction Manager as complete information as is available to District regarding the District's Project requirements.
- 12.3 The District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between the District and design professional(s).
- 12.4 Unless the contract documents require that Contractor provide any of the following, the District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the Design Team's duties to recommend or provide same.
- 12.5 The District, its representatives, and consultants shall communicate with the Contractor either directly or through the Construction Manager.
- 12.6 The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's Project representative shall be available

during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

ARTICLE 13. Liability of District

- 13.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation as 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.
- 13.2 Construction Manager shall pay to District any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of Construction Manager in its performance of its Services.
- 13.3 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.
- 13.4 Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Construction Manager's insurance company on the District's behalf.

ARTICLE 14. Insurance

- 14.1 Construction Manager shall procure, prior to commencement of Services, and will 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, their agents, representatives, employees and sub-consultant(s). Construction Manager's liabilities, including but not limited to, Construction Manager's indemnity or defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Construction Manager's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by the District, subject to its sole discretion, as a material breach of contract.

14.2 **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:

14.2.1 **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

14.2.2 **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.

14.2.3 **Workers' Compensation.** Statutory limits required by the State of California. For all of the Construction Manager's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Construction Manager shall keep in full force and effect, a Workers' Compensation policy. Construction Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

14.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease. For all of the Construction Manager's employees who are subject to this Agreement, Construction Manager shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of Two million dollars (\$2,000,000) per occurrence. Construction Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

14.2.5 **Professional Liability.** This insurance shall cover the Construction Manager and its sub-consultant(s), if any, for one million dollars (\$1,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

- 14.3 The District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 14.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Two Hundred Fifty Thousand Dollars (\$250,000) must be declared to and approved by the District. At the option of the District, either:
- 14.4.1 The District can accept the higher deductible;
 - 14.4.2 Construction Manger's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or
 - 14.4.3 Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 14.5 **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 14.5.1 All policies except for the worker's compensation, employer's liability and professional liability insurance policy shall be written on an occurrence form.
 - 14.5.2 The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the 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. All endorsements shall waive any right to subrogation against any of the Additional Insureds.
 - 14.5.3 Construction Manager shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Construction Manager fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due Architect under the Agreement.

- 14.5.4 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.
 - 14.5.5 The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 14.5.6 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
 - 14.5.7 Construction Manager's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Construction Manager's insurance and shall not contribute with it.
 - 14.5.8 Construction Manager shall require all subconsultants to maintain the level of insurance Construction Manager deems appropriate with respect to the subconsultant's scope of the Work unless otherwise indicated in the Agreement. Construction Manager shall cause the subconsultants to furnish proof thereof to District within ten (10) Days of District's request. Should Construction Manager not require subconsultants to provide the same level of insurance as is required of Architect, as provided in this Agreement, Construction Manager is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
 - 14.5.9 If Construction Manager normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Construction Manager hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 14.6 **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. Construction Manager shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, the District may either:
- 14.6.1 Accept the lower rating; or

- 14.6.2 Require Architect to procure insurance from another insurer.
- 14.7 **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, but no later than three (3) calendar after the Notice of Award, Construction Manager shall furnish the District with:
 - 14.7.1 Certificates of insurance showing maintenance of the required insurance coverage;
 - 14.7.2 Original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.
- 14.8 Copy of Insurance Policy(ies): Upon the District's request, Construction Manager will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

ARTICLE 15. Nondiscrimination

Construction Manager agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

ARTICLE 16. 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, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

ARTICLE 17. Entire Agreement/Modification

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 benefit other 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 into this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

ARTICLE 18. Non-Assignment of Agreement

This Agreement is intended to secure the Construction Manager's specialized services. Construction Manager may not assign, transfer, delegate or sublet any interest therein without the District's prior written consent. Any assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void.

ARTICLE 19. Law, Venue

- 19.1 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.
- 19.2 To the fullest extent permitted by California law, Contra Costa County 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.

ARTICLE 20. Alternative Dispute Resolution

- 20.1 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.
- 20.2 If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 20.3 Notwithstanding any disputes, claims or other disagreements between the Construction Manager and the District, Construction

Manager shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

ARTICLE 21. Tolling of Claims

Construction Manager agrees to toll all statutes of limitations for District's assertion of claims against Construction Manager that arise out of, pertain to, or relate to Contractors' or subcontractors' claims against District involving Construction Manager's work, until the Contractors' or subcontractors' claims are finally resolved.

ARTICLE 22. 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.

ARTICLE 23. Employment Status

- 23.1 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 it 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 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.
- 23.2 Construction Manager understands and agrees that Construction Manager's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.
- 23.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager or any employee of Construction Manager is an employee of District 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.
- 23.4 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 the 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 that liability).

- 23.5 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 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 Construction Manager was not an employee.
- 23.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

ARTICLE 24. Warranty of Construction Manager

- 24.1 Construction Manager warrants that Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide the Services that it has herein agreed to perform. Construction Manager further warrants that all of the work Construction Manager performs under this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. Construction Manager also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of Contra Costa County.
- 24.2 Construction Manager certifies that it is aware of the provisions of the California Labor Code of the State of California, requiring 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, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 24.3 Construction Manager certifies that it is aware of the provisions of California Labor Code and California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). To the extent that work is performed as part of an applicable "public works" or "maintenance" project, where the total compensation is \$1,000 or more, Construction Manager agrees to fully comply with and to require its

Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws.

ARTICLE 25. 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 Agreement is over five thousand dollars (\$5,000).

ARTICLE 26. Communications / Notice

Notices and communications between the Parties to this Agreement may be sent to the following addresses by registered or certified mail with postage prepaid, return receipt requested, by overnight delivery service, or by personal delivery:

District:	Construction Manager:
Contra Costa Community College _____	_____
District _____	_____
500 Court Street _____	_____
Martinez, CA 94533 _____	ATTN: _____
ATTN: _____	FAX: _____
FAX: _____	

If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for. If notice is given by overnight delivery service, it shall be considered delivered on the date stated in the proof of delivery.

The Construction Manager and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

ARTICLE 27. Disabled Veteran Business Enterprise Participation (only on state funded projects)

Pursuant to section 71028 of the Education Code and Public Contract Code section 10115, the District may have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the community college district for disabled veteran business enterprises ("DVBE"). In accordance therewith, Construction Manager must submit, upon request by the District, appropriate documentation to the District identifying the steps Construction Manager has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

ARTICLE 28. District's Right to Audit

28.1 District retains the right to review and audit, and the reasonable right of access to Construction Manager's and any Consultant's premises to review and audit the Construction Manager's compliance

with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of Construction Manager's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

- 28.2 The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Architect is in compliance with all requirements of this Agreement.
- 28.3 If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 28.4 Construction Manager shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Construction Manager shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, Construction Manager shall submit exact duplicates of originals of all requested records to the District.
- 28.5 Construction Manager shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 28.6 Construction Manager shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Construction Manager's Project-related records and information.

ARTICLE 29. Other Provisions

- 29.1 Construction Manager shall be responsible for the cost of construction change orders caused directly by Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared Construction Documents. These amounts shall be paid by Construction Manager to District or the District may

withhold those costs from amounts due or to become due to Construction Manager.

- 29.2 Neither the District's review, 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, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the Services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California public community college districts at or around the same time and in or around the same geographic area of the District.
- 29.3 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 the Agreement.
- 29.4 The individual executing this Agreement on behalf of Construction Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Construction Manager to all terms hereof.
- 29.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

ARTICLE 30. Exhibits.

Exhibits "A" through "X" attached hereto are hereby incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

CONTRA COSTA COMMUNITY COLLEGE DISTRICT

Date: _____, 2019

Date: _____, 2019

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

1.	BASIC SERVICES	A-1
2.	GENERAL PROJECT SERVICES	A-5
3.	PRECONSTRUCTION PHASE	A-5
4.	PRE-BID PHASE	A-7
5.	BIDDING PHASE	A-8
6.	CONSTRUCTION PHASE	A-9
7.	PROJECT COMPLETION	A-12
8.	FINAL DOCUMENTS	A-13
9.	WARRANTY	A-14

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager shall provide professional services necessary for completing the following:

1. BASIC SERVICES

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Monitor and advise the District as to all material developments in the Project. Maintain reporting systems for scope, sequencing, scheduling, budgets and communication for the Project using existing District software.
- 1.3. Be the focal point of all communication to and from construction Contractor(s).
- 1.4. Implement methods to budget and track all expenditures on the Project. Construction Manager shall generate monthly reports to the District reflecting this information, and shall maintain the District's financial reporting systems.
- 1.5. Prepare methods to track and report on schedule status for the Project. Construction Manager shall develop master schedules and milestone schedules for the Project, and shall report on same each month to the District.
- 1.6. The Construction Manager shall work cooperatively with District and Project Manager to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 1.7. Construction Manager shall work cooperatively with the Design Team, the Project Manager, and the District to:
 - 1.7.1. Define and schedule the Project.
 - 1.7.2. Provide Services that will result in the development of an overall Project strategy with regard to phases, construction schedules, timing, budget, prequalification, contractor procurement, construction materials, building systems, and equipment.
- 1.8. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, of materials, preliminary budgets, and possible economies.

- 1.9. Interface with the Contractor and all subcontractors all general and/or trade Contractors during construction to ensure that the District is provided with an acceptable Project and the best value for taxpayer dollars.
- 1.10. Advise the District and Project Manager as to the regulatory agencies that have jurisdiction over any portion or all of the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation DSA.
- 1.11. Contract for or employ, at Construction Manager's expense, sub-consultant(s) to the extent deemed necessary for Construction Manager's services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement.
- 1.12. Cooperate with the District, Board, and other professionals employed by the District for the design, coordination or management of other work related to the Project, including District staff and consultants, Project Manager, project manager(s), citizens' oversight committee, other District committees, and the community to facilitate the timely completion of the Project within Board-approved budgets and to District design standards.
- 1.13. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Project. Construction Manager shall invite the District and/or its representative and the Project Inspector to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings.
- 1.14. Develop for District approval a Project time schedule at the start of Project development that does the following:
 - 1.14.1. Provides sufficient time for prequalification, and if necessary the resolution of any appeals, bidding, and, if necessary, rebidding, or negotiating if applicable, the Project;
 - 1.14.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;
 - 1.14.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
 - 1.14.4. Takes into account the District's occupancy requirements (showing portions of the Project having occupancy priority and ongoing operational occupancy requirements).
- 1.15. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to

Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.

- 1.16. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.
- 1.17. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
- 1.18. Prepare a bidders list for each bid package for approval by the District.
- 1.19. Assist the District in pre-qualifying bidders if prequalification is permitted or required by the District. This service shall include the following:
 - 1.19.1. Preparation and distribution of prequalification questionnaires;
 - 1.19.2. Receiving and analyzing completed questionnaires;
 - 1.19.3. Interviewing possible bidders, references, bonding agents and financial institutions;
 - 1.19.4. Preparing recommendations for the District; and
 - 1.19.5. Assisting with resolution of any appeals.
- 1.20. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.21. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project.
- 1.22. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved contract documents from the design professional(s) and the Construction Manager shall arrange for printing, binding, wrapping, and delivery to the bidders. The Construction Manager shall maintain a list of bidders receiving contract documents.
- 1.23. For Lease Leaseback projects, coordinate Request for Qualifications/Proposal ("RFP") process and assist in negotiation of agreements, including Preliminary Services Agreement, Site Lease, and Facilities Lease with guaranteed maximum price.
- 1.24. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website, and as otherwise necessary, for public access to show Project status.

- 1.25. Ensure that Contractor, all subcontractor(s), Consultants, and sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 1.26. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency ("EPA"), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all Consultants, the Contractors and subcontractors, and all design professionals and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 1.27. Maintain accurate Project cost accounting records, using GAAP, on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. Construction Manager shall provide accounting records to the District on a monthly basis, or as reasonably requested by District. Construction Manager shall afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.
- 1.28. Assist Architect with the preparation of an estimate of costs for all addenda and coordinate with Architect to submit the estimate to the District for approval. Assist and coordinate with Architect as required to adjust the Construction Cost Budget and other Project costs as indicated in this Agreement and as required in the Agreement for Architectural Services.
- 1.29. Provide and maintain a management presence on the Project site(s).
- 1.30. Construction Manager is **NOT** responsible for:
 - 1.30.1. Ground contamination or hazardous material analysis.
 - 1.30.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 1.30.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Construction Manager agrees to coordinate its work with that of any CEQA consultants retained by the District, and the work of Contractor and the Design Team to provide current information for use in CEQA compliance documents and to identify and carry out mitigation measures.
 - 1.30.4. Historical significance report.

- 1.30.5. Soils investigation.
- 1.30.6. Geotechnical hazard report.
- 1.30.7. Topographic survey, including utility locating services.

2. GENERAL PROJECT SERVICES

- 2.1. **General:** Monitor and advise the District as to all material developments on the Project. Construction Manager shall implement with District approval reporting methods for schedules, cost and budget status. The Construction Manager shall be the focal point of all communication to and from construction Contractor and shall be copied on all communications between the District and its design professional(s).
- 2.2. **Scheduling:** Track and report on schedule status for Project using methods. The Construction Manager shall develop Project master schedules and milestone schedules, and review and approve Contractor project schedules and milestone schedules for the project per specifications, and shall report on same each month to the District.
- 2.3. **Cost Controls:** Implement methods to track construction expenditures on the Project using methods. The Construction Manager shall generate monthly reports to the District reflecting this information.
- 2.4. **Communications to Board:** The Construction Manager may be required to attend Board meetings, and to provide updates at each meeting.

3. PRECONSTRUCTION PHASE

- 3.1. Provide overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Design Team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction Contractor to the District and Design Team shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District or the Design Team to the construction Contractor.
- 3.2. Assist with the detailed definition of project scope, budget, and schedule, as needed. Review and reconcile cost estimates from the assigned architect and coordinate peer review estimates when requested by the District. Assist in organizing and, if relevant, segregating bid packages for maximum cost effectiveness for the District. Advise the District regarding owner-supplied equipment and other potential cost-saving measures.
- 3.3. Assist the District in the solicitation and retention of design and engineering consultants, and coordinate design consultants' activities and delivery schedules, as needed. Provide value engineering and life cycle cost analysis.

- 3.4. Provide design-phase services in conjunction with the architecture firms awarded the Project by the District. Work with the Architect to conform and refine designs to correlate designs to budget and Facilities Master Plan, if applicable. Review design documents for constructability, scheduling, consistency, and coordination during schematic and design development phases of work. Perform constructability reviews at appropriate stages of design. Assist with verification of site conditions. Expedite design reviews, including modifications. Keep accurate documentation of all discussions with users regarding scope and resolution.
- 3.5. Prepare and maintain a Construction Management schedule for the Project. Prepare a procurement plan, where required.
- 3.6. Monitor and report to the District on status of design and state approval in relation to the schedule for the Project. Attend meetings to coordinate design efforts for the Program. Assist in identifying and obtaining all necessary approvals.
- 3.7. Solicit proposals, evaluate, and recommend other professional consultants needed to complete the Project.
- 3.8. Implement District-approved implementation procedures, forms and reporting requirements for the Project that involve all members of the Project team, including the District, design professional(s), and construction Contractor(s).
- 3.9. Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Project.
- 3.10. Provide value engineering at the Schematic Design and/or 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the design documents and shall be coordinated with the District's design guidelines and design professional(s). The Construction Manager will prepare a value engineering report documenting the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
- 3.11. Perform or subcontract for constructability reviews of the Project at the Design Development Phase and at 90% of the Construction Documents Phase. The Project Manager shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The Construction Manager shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, and construction duration

- 3.12. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by the District, in coordination with design professional(s) and advise and consult with the District. Construction Manager shall review and approve construction Contractor's schedules, but shall not dictate any construction Contractor's means and/or methods of performance.
- 3.13. Establish schedules for any Consultant, and for any hazardous materials or other testing, and review costs, estimates, and invoices of each.
- 3.14. Implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress, and identifying and documenting problems and solutions for the Project. Prepare monthly progress reports for the District and Project Manager regarding the schedule for the Project.
- 3.15. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 3.16. Provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phases as directed by District or Project Manager; coordinate with design professional(s) and Project Manager and reconcile cost estimates with design professional(s)' estimates.
- 3.17. Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 3.18. Fully coordinate all changes requested by any utility company needed to complete the Project.
- 3.19. Review and tailor the District's front end documents for the Project. Recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of the liquidated damages.

4. PRE-BID PHASE

- 4.1. Develop master schedules and construction schedules for the Project. Develop budget(s) for the Project based on construction cost estimates.
- 4.2. In consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

- 4.3. Work with the design professional(s) to modify or add to standard, special, or general conditions for contract documents that might be needed for unique Project or contract conditions, for the District's approval, and/or assist in the development of documents necessary for the bidding phase.
- 4.4. Make recommendations for development and implementation of procedures to comply with applicable bidding or RFP requirements for the Project as applicable and for expediting completion of the bidding process for the Project. The scope of the foregoing includes without limitation, recommendations of Construction Manager with respect to: (a) pre-qualification of potential contractors; and (b) alternative construction delivery approaches for the Project, including consideration of a single general contractor and/or Lease Leaseback approach to construction for the Project.

5. BIDDING PHASE

- 5.1. Assist with pre-qualification process for the selection of prime and/or sub-contractors based on the detailed definition of Project scope, budget, schedule, and programming support. Develop a list of pre-qualified prime and sub-contractors, as required.
- 5.2. Develop bidders' interest in the Project. Coordinate all bid phase activities with District departments. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Conduct job walks and bidders' conferences, maintain and prepare minutes of job walks or bidder's conferences. Field questions from bidders, referring questions to design professional(s) and District as required. Coordinate with design professional(s) to respond to bidder questions by addenda.
- 5.3. Prepare public solicitation notices for District approval. Review, coordinate, and estimate cost of bid phase addenda.
- 5.4. Review bid proposals for responsiveness to bid requirements, evaluate bidder responsibility, and conduct reference checks. Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.
- 5.5. Conduct post-bid conferences as required. Assist and advise regarding bid protests.
- 5.6. If appropriate, coordinate contracting with Contractor awarded the contract, including evaluating bonds and insurance, and negotiate final terms of construction contractor's contract(s), if applicable.
- 5.7. Conduct pre-award conferences with successful bidders.

- 5.8. Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.
- 5.9. Assist with the preparation of agenda items for Board approval. Coordinate submittals required by governing agencies.

6. CONSTRUCTION PHASE

- 6.1. Administer the construction Contract.
- 6.2. Develop detailed construction schedules or review Contractor's submitted schedules, as needed. Administer and coordinate the work of Contractor on a daily basis. Enforce performance, scheduling, and notice requirements. Review Contractor's schedule submittals and make recommendations to the District.
- 6.3. Monitor schedule and cost information for Contractor. Document the progress and costs of the Project. Report and advise proactively on potential schedule and budget variances and impacts. Recommend potential solutions to schedule and cost problems. Work cooperatively with the District, Architect, and Contractor to ensure that Project is delivered on time and within budget. Review construction progress and prepare reports.
- 6.4. Verify permits, approvals, bonds, insurances, and schedules of values. Coordinate with DSA Project inspector, and ensure compliance with all DSA reporting and closeout requirements. Submit necessary reports to state and local authorities.
- 6.5. Monitor the construction Contractor to verify that tools, equipment, and labor are furnished and work performed and completed within the time required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. The Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.
- 6.6. Coordinate work of the construction Contractor and effectively manage the Project to achieve the District's objectives in relation to cost, time and quality.
- 6.7. Provide continuous on-site construction management personnel, as needed. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction Contractor, and design professional(s).
- 6.8. Establish and implement team communication procedures.

- 6.9. Ensure that construction Contractor provides construction schedules as required by the construction Contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The Construction Manager shall review construction Contractor's construction schedules for conformity with the requirements of the construction Contract and conformity with the overall schedule for the Project. Where construction Contractor's construction schedules do not so conform, the Construction Manager will take appropriate measures to secure compliance, subject to District approval.
- 6.10. Ensure construction Contractor's compliance with the requirements of the respective construction Contract for updating, revising, and other obligations relative to their respective construction schedules.
- 6.11. Cost Control. Construction Manager shall develop and monitor an effective system of construction cost control for the Project. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise District and design professional(s) whenever a Project cost exceeds budgets or estimates. Construction Manager shall manage the construction bids and contracts in accordance with the Construction Budget.
- 6.12. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when Contractor fails to fulfill contractual requirements.
- 6.13. The Construction Manager may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Construction Manager shall provide to the design professional(s) and the District copies of these authorizations.
- 6.14. Evaluate and process payment applications and verify progress.
- 6.15. Verify that safety programs are developed and submitted by the construction Contractor as required by the Contract. Neither Construction Manager, Project Manager, nor District shall be responsible for or have any liability for Contractor's failure to provide, comply with, or enforce said safety programs.
- 6.16. Implement quality control program, including As-Built Drawings accuracy. Coordinate and evaluate Contractor's recovery schedules.
- 6.17. Record the progress of the Project by a log.
- 6.18. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.

- 6.19. Negotiate Contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District.
- 6.20. Evaluate and process change order requests. Make recommendations to the District. Determine cost and schedule effects of change orders. Prepare change order reports and maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 6.21. Assist the District in coordinating the services of special consultants and testing laboratories on the Project.
- 6.22. In conjunction with the design professional(s), monitor work of the construction Contractor to determine that the work is being performed in accordance with the requirements of the respective construction documents for the Project, including but not limited to the plans, specifications, addenda, and all other contract documents, as well as all applicable laws, regulations and directives of agencies with jurisdiction over any of the Project. As appropriate, with assistance of design professional(s), make recommendations to the District and Project Manager regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents.
- 6.23. To guard District against defects in the work of the construction Contractor, the Construction Manager shall implement a quality control program to monitor the quality and workmanship of construction for conformity with:
 - 6.23.1. Accepted industry standards;
 - 6.23.2. Applicable laws, rules, or ordinances; and
 - 6.23.3. The design documents and contract documents.
- 6.24. Where the work of a construction Contractor does not conform as set forth above, the Construction Manager shall, with the input of design professional(s):
 - 6.24.1. Notify the District and Project Manager of any non-conforming work observed by the Construction Manager;
 - 6.24.2. Reject the non-conforming work; and
 - 6.24.3. Take any and all action(s) necessary to compel the construction Contractor to correct the work.
- 6.25. Evaluate, track, and maintain logs of requests for information ("RFI") from construction Contractor and responses, shop drawings, samples, and other submittals, based, in part, on information obtained from the design professional(s). Advise District and Project Manager as to status and criticality of RFIs.

- 6.26. Implement procedures, in collaboration with the District and design professional(s), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction Contractor to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.
- 6.27. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction Contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 6.28. Prepare and distribute monthly project status reports for the Project including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 6.29. Coordinate, assist, and support Architect during construction administration phase as required.
- 6.30. Construction Manager shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction Contractor. At the completion of the Project, deliver all such records to District. Construction Contractor and design professional(s) share responsibility to prepare Record Drawings and As-Built Drawings.
- 6.31. Coordinate the move into the Project.
- 6.32. Work with District team to develop lists of incomplete or unsatisfactory work ("punch lists").
- 6.33. Fully document and prepare deductive change orders for extra services of consultants that are the responsibility of a Contractor or another consultant. Present such a change order for signature by the Contractor or consultant.
- 6.34. Determine final completion and payment. Determine completion dates, final payments, and release of retention. Coordinate procurement and installation of Furniture, Fixtures, and Equipment ("FF&E").

7. PROJECT COMPLETION

- 7.1. The Construction Manager shall observe the construction Contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the construction Contractor and shall ensure the District of compliance with applicable provisions of the Contract, that all work has been performed and accepted, and that all systems are complete and operative.
- 7.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager, in consultation with the Architect, shall ensure the

preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction Contractor. The Construction Manager shall coordinate construction Contractor's performance and completion of punch list work. The Construction Manager shall review, with the Architect and District, the completed punch list work. The Construction Manager shall ensure, with input of the Architect, that the completed punch list work complies with applicable provisions of the construction Contract.

- 7.3. The Construction Manager shall determine, with the Architect and District, when the Project or designated portions thereof are complete.
- 7.4. The Construction Manager shall conduct, with the Architect and District, final inspections of the Project or designated portions thereof. The Construction Manager shall notify the District of final completion.
- 7.5. The Construction Manager shall consult with the Architect and District and shall determine when the Project and the construction Contractor's work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the Contractor.
- 7.6. The Construction Manager shall coordinate close-out procedures, including personnel training. Advise District staff on systems operations, training and close-out of Projects.
- 7.7. The Construction Manager shall coordinate and expedite Contractor close-out requirements, including guarantees/warranties, certificates, keys, manuals, As-Built Drawings, Record Drawings, specifications, daily logs, and verified reports. Ensure that all other project participants submit necessary close-out documentation.
- 7.8. The Construction Manager shall coordinate operational safety reviews with District post occupancy and manage corrective work as necessary.
- 7.9. The Construction Manager shall ensure that all building commissioning requirements have been fulfilled in a timely manner through District commissioning agents.
- 7.10. The Construction Manager shall obtain occupancy permits (where required), coordinate final testing, documentation, and regulatory inspections. Prepare occupancy plan report.
- 7.11. The Construction Manager shall prepare final accounting reports.

8. FINAL DOCUMENTS

The Construction Manager shall review and monitor all As-Built Drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall

secure and transmit to the District and Project Manager those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.

9. WARRANTY

The Construction Manager shall assist Project Manager as necessary to implement a Warranty Inspection and Warranty Work procedure for the Project that Contractor must follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

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EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District or Project Manager:

1. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, or the District's schedule.
2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
3. Providing services made necessary by the default of Contractor, or by major defects or deficiencies in the work of the Contractor, or by failure of performance of the District's consultants.
4. Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District.
5. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is a party thereto, except for a Contractor's hearing necessitated by a bid protest or by a Contractor's request to substitute a subcontractor, or by handling of any stop payment notices.
6. Performing technical inspection and testing.
7. Providing other services not otherwise included in this Agreement and not customarily furnished in accordance with the generally accepted scope of construction management practice.

Format and Content of Invoices

Construction Manager acknowledges that the District requires Construction Manager's invoices to include detailed explanations of the Services performed. For example, a six hour charge for "RFIs and CORs" is unacceptable and will not be payable. A more detailed explanation, with specificity, is required. This includes a separate entry for each RFI, PCO, CCD and change order. For example, the following descriptions, in addition to complying with all other terms of this Agreement, would be payable. The times indicated below are just placeholders:

Review RFI 23; review plans and specifications for response to same; prepare responses to same and forward to contractor, district, Project manager, and project inspector.	.8 hours
Review COR 11; review scope of same and plans and specifications for appropriateness of same; prepare rejection of COR 11 for review by district, PM, IOR.	1.2 hours

Hourly Rates for Extra Services To be inserted from CM's Proposal, if rates are acceptable to District.

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. Construction Manager shall bill in quarter-hour increments for all Extra Services.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal in Charge	\$____.____
Project Director	\$____.____
Project Engineer(s)	\$____.____
Project Controls Manager	\$____.____
Project Admin-Financial	\$____.____
Project Admin-Office	\$____.____
Estimator	\$____.____
Constructability Reviewer	\$____.____
Construction Manager (s):	\$____.____
Assistant Construction Manager (s):	\$____.____

2. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed five percent (5%).

EXHIBIT "C"

SCHEDULE OF WORK

EXHIBIT "D"

FEE SCHEDULE

Compensation

1. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location (travel reimbursements must be approved by District prior to travel), offices, per diem expenses, office supplies, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**
2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses. No compensation will be paid or due, without advance written approval of the District.

Method of Payment of Basic Services

1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.
2. Construction Manager shall submit these invoices in duplicate to the District via the District's authorized representative.
3. Construction Manager shall submit to District on a monthly basis documentation showing proof the payments were made to Construction Manager's Consultants, sub-consultants, and/or subcontractors.
4. Upon receipt and approval of Construction Manager's invoices, except as provided in subdivision 4.g. herein, the District agrees to make payments of undisputed amounts within sixty (60) days of receipt of the invoice as follows: .

4.1 Pre-Design Development Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Pre-Design Development Phase by the District.

4.2 For Schematic Design Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Schematic Design Phase by the District.

4.3 For Design Development Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Design Development Phase by the District.

4.4 For Construction Documents Phase:

Monthly payments for percentage of all Services complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon acceptance and approval of the Construction Documents Phase by the District.

4.5 For Bidding Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District's award of the bid.

4.6 For Construction Administration Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the phase; one hundred percent (100%) payment upon the District's notice of completion.

4.7 For Close Out:

Lump sum payment no sooner than thirty-five (35) days and no later than forty-five (45) days after completion of all items in this phase.

5. If Construction Manager fails to timely and completely perform its obligations under this Agreement, the District may withhold or deduct the amounts that would be due therefor from amounts otherwise due Construction Manager hereunder with the amounts withheld or deducted being released after Construction Manager has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.

END OF DOCUMENT

**AGREEMENT FOR
PROJECT MANAGEMENT SERVICES
CONTRA COSTA COMMUNITY COLLEGE DISTRICT
AND**

[DATE]

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AGREEMENT FOR PROJECT MANAGEMENT SERVICES

This Agreement for Project Management Services ("Agreement") is made effective _____, 2019, between the Contra Costa Community College District, a California public community college district ("District") and _____ ("Project Manager") (collectively "Parties," individually "Party"), for the District's Measure "A and E" Bond Program ("Program"):

Render the services and furnish the work as described herein, including acting as the District's agent for the Program, commencing upon execution of the Agreement and provision of the required certificates and endorsements. Services under this Agreement will be provided through [DATE]; however, it is not anticipated that all work for the Program will be completed by this time. The District reserves its right to extend this Agreement until all work for the Program is complete but is not obligated to do so. Oversight and administration is delineated in **Exhibits "A" and "F"**. The Program scope is generally defined in **Exhibit "E"** and shall not exceed total proceeds received by the District from Measure "___" of \$_____ plus interest.

The Program includes multiple Projects, each with multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Projects or the Program, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Project Manager shall invoice for each component separately, specifically Program Management (for entire Program), Budget and Expenditure Tracking (for entire Program), and Project Management (per project), and District shall compensate Project Manager for each component separately.

That for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
 - 1.1.3. **Construction Cost Estimate:** The total cost to District of all elements of each Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Estimate does not include the compensation of the Project Manager, the Architect and the Architect's consultants, any Construction Manager(s), the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
 - 1.1.4. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Project Manager.

- 1.1.5. **Design Team:** The Architect(s) that the District designates as being the Design Professional in General Responsible Charge for all or a portion of a Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Program either directly or as a subconsultant or subcontractor.
- 1.1.6. **DSA:** The Division of the State Architect.
- 1.1.7. **Extra Services:** Extra Services are defined in Article 7 and **Exhibit "B."**
- 1.1.8. **Fee:** The Project Manager's Fee is defined in Article 6, payable as set forth in Article 6 and in **Exhibit "D."**
- 1.1.9. **Program Budget:** The total amount available for all costs related to the Program including, but not limited to, Program design, Program administration, Program financing, the services pursuant to this Agreement, and the construction of the Program. The Program Budget is the sum of all the Project Budgets and Program Budget costs. The Program Budget is derived from the funds designated by the District for the Program; thus the Project Manager shall ensure that no additional funds are necessary for assigned Project part of the Program. The District may, at its sole discretion, determine to expand assigned Project budget and the Board may, at its sole discretion, determine to expand the Program Budget based on receipt of additional funding.
- 1.1.10. **Project Manager:** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Project Manager.
- 1.1.11. **Project(s):** The projects identified in the Bond Project List - **Exhibit "F,"** unless removed under the terms of this Agreement.
- 1.1.12. **Project Budget:** The total amount indicated by the District for each Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.1.13. **Project Team:** District representatives, Project Manager, Design Team, Developer/Builder, and all of their respective subcontractors and consultants for a Project.
- 1.1.14. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Project Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of each Project and the Program in general.

Article 2. Scope, Responsibilities and Services of Project Manager

- 2.1. **Scope:** Project Manager shall provide the Services described herein and under **Exhibit "A"** for the Program. The Parties agree that the Project Manager's Services described herein are based on a traditional design-bid-build project delivery method on each Project. The District reserves the right to change this project delivery method on any or all Projects.
- 2.2. **Review of Facilities Master Plan:** Manager shall review the Facilities Master Plan for the District and other written materials made available by the District

to fully understand the nature, extent and intent of the Facilities Plan and the Projects.

- 2.3. Review of Measure “___”: Project Manager shall review with District staff Measure ___ funding sources, limitations, restrictions and eligibility requirements, as well as and other written materials made available by the District to Project Manager that relate to Measure ___ to fully understand the extent of funding available, including other facility funding, the anticipated schedule for issuance of Bonds under Measure ___ relative to the anticipated design, bidding and construction of projects.
- 2.4. Project Manager as District Representative: Project Manager will act as the District’s agent to render the Services as described in **Exhibit “A.”**
- 2.5. Standard of Care: Project Manager, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom Project Manager is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. The District’s review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that Project Manager has complied, nor in any way relieve the Project Manager of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.

Article 3. Project Manager Staff

- 3.1. The District selected Project Manager to perform the Services herein because of the skills and expertise of key personnel.
- 3.2. The Project Manager agrees that the following key personnel in Project Manager’s firm shall be associated with the Project in the following capacities:
Firm Principal/Project Executive:
Senior Project Manager:
Add additional on a project by project basis
- 3.3. Project Manager shall not change any of the key personnel listed above without prior the District’s written approval, unless said personnel cease to be employed by Project Manager. In either case, District shall be allowed to interview and retains the right to approve replacement personnel.
- 3.4. If any designated lead or key person fails to perform to the District’s satisfaction, then upon the District’s written notice, Project Manager will have fifteen (15 calendar days remove that person from the Project and shall provide a replacement person acceptable to the District.
- 3.5. All lead or key personnel for any sub-consultant to the Project Manager must also be designated by the sub-consultant and are subject to all conditions previously stated in this Agreement.
- 3.6. Project Manager represents that the Project 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. Project Manager agrees further that no person having any such interest shall be employed by Project Manager.

Article 4. Schedule of Work

The Project Manager shall commence work upon execution of this Agreement, including provision of insurance certificates and endorsements, and shall prosecute the work diligently as described in **Exhibit "A."** Time is of the essence in the performance of this Agreement.

Article 5. Fee and Method of Payment

- 5.1. The District shall pay Project Manager an amount not-to-exceed _____ and NO/100 dollars (\$_____.00) for performance of the Services as set forth in **Exhibit "A"** ("Fee").
- 5.2. Payment will be made according to **Exhibit "D."**
- 5.3. The Project Manager's Fee set forth in this Agreement shall be full compensation for all of Project Manager's Services incurred in the performance hereof as indicated in **Exhibit "D"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, per diem expenses, vehicle and other allowances, office equipment including computer machines, printing, providing, or shipping of deliverables

Article 6. Payment for Extra Services

- 6.1. Any charges for Extra Services as described in **Exhibit "B"** shall be paid by the District only upon the District's prior written authorization and certification by the District that the claimed Extra Services have been satisfactorily completed.
- 6.2. Project Manager shall submit to the District a written proposal describing the proposed scope of requested Extra Services and listing the personnel, labor duration, rates, and cost. Project Manager shall proceed with Extra Services only upon receiving the District's prior written authorization. Project Manager will not be entitled to any compensation for Extra Services performed prior to receiving District's written authorization.

Article 7. Ownership of Data

After completion of the Program and/or each Project or after termination of this Agreement, Project Manager shall deliver to District a complete set of Project records, including without limitation all documents generated by Project Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Said records shall be indexed and appropriately organized for easy use by District personnel and may be provided by digital media in a document format designated by the District. All Project records are property of the District, whether or not those records are in the Project Manager's possession.

Article 8. Termination of Contract

- 8.1. District's Termination of Project Manager for Cause: If Project Manager fails to perform Project Manager's duties to the satisfaction of the District, or if Project Manager fails to fulfill in a timely and professional manner Project Manager's material obligations under this Agreement, or if Project Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Project Manager. In the event of a termination pursuant to this subdivision, Project Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts

equal to the District's costs because of Project Manager's actions, errors, or omissions that caused the District to terminate the Project Manager.

- 8.2. District's Request for Assurances: If District at any time reasonably believes Project Manager is or may be in default under this Agreement, District may in its sole discretion notify Project Manager of this fact and request written assurances from Project Manager of performance of Services and a written plan from Project Manager to remedy any potential default under the terms this Agreement that the District may advise Project Manager of in writing. Project Manager shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Project Manager's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 8.3. District's Termination of Project Manager for Convenience: District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Project Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Project Manager's if there is a termination for convenience.
- 8.4. Project Manager's Termination of Agreement for Cause: Project Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Project Manager. Such termination shall be effective after receipt of written notice from Project Manager to the District.
- 8.5. Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 8.6. Ceasing Services upon Termination: If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, Project Manager, upon the District's written notice of such termination, shall immediately cease work on the Project. The District shall pay the Project Manager only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.

Article 9. Indemnity

- 9.1. To the furthest extent permitted by California law, Project Manager shall indemnify and hold harmless the District, its agents, representative, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, directly or indirectly arising out of, connected with, or resulting from the performance of the Services or this Agreement unless a Claim is caused by the sole active negligence or sole willful misconduct of the indemnified parties. Project Manager shall also, to

the furthest extent permitted by California law, defend the Indemnified Parties at Project Manager's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

- 9.2. Project Manager shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Project Manager shall also reimburse District for the cost of any settlement paid by District arising out of any Claim. Project Manager shall reimburse the indemnified parties for any and all legal expenses and costs, including attorneys' fees, expert witness fees and consultant fees, incurred by each of them in connection therewith or to enforce the indemnity herein provided. Project Manager's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties.

Article 10. Sites Standards

- 10.1. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 10.2. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

Article 11. Responsibilities of the District

- 11.1. The District shall examine the documents submitted by the Project Manager and shall render decisions so as to avoid unreasonable delay in the process of the Project Manager's Services.
- 11.2. The District shall provide to the Project Manager complete information regarding the District's requirements for the Project.
- 11.3. The District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between the District and design professional(s).
- 11.4. The District shall, in a timely manner, and with Project Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Project Manager's and/or the Design Team's duties to recommend or provide same.
- 11.5. The District, its representatives, and consultants shall communicate with the contractors either directly or through the Project Manager.
- 11.6. During the Construction Phase of a Project, the District may require that the contractors submit all notices and communication relating to the Project directly to the Project Manager.
- 11.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the 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.
- 11.8. District will provide office space for _____ personnel.

Article 12. Liability of District

- 12.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation as 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.
- 12.2. Project Manager shall pay to District any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent acts or omissions of Project Manager in its performance of its Services.
- 12.3. 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 Project Manager, or by its employees, even though such equipment be furnished or loaned to Project Manager by District.
- 12.4. Project Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Project Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Project Manager's insurance company on the District's behalf.

Article 13. Insurance

- 13.1. Project Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Project Manager, their agents, representatives, employees and sub-consultant(s). Project Manager's liabilities including, but not limited to, Project Manager's indemnity or defense obligations under this Agreement shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Project Manager's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by the District, subject to its sole discretion, as a material breach of contract.
- 13.2. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
 - 13.2.1. **Commercial General Liability.** Two million dollars **(\$2,000,000)** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 13.2.2. **Commercial Automobile Liability, Any Auto.** Two million dollars **(\$2,000,000)** per accident for bodily injury and property damage.
 - 13.2.3. **Workers' Compensation.** Statutory limits required by the State of California for all of the Project Manager's employees who are subject to this Agreement and to the extent required by the applicable state or

federal law. Project Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

13.2.4. **Employer's Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury or disease all of the Project Manager's employees who are subject to this Agreement. Project Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

13.2.5. **Professional Liability.** This insurance shall cover the Project Manager and its sub-consultant(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

13.3. **Modification of Limits.** The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

13.4. **Deductibles and Self-Insured Retention:** Project Manager shall provide written notice to the District if any deductibles or self-insured retention exceeds \$250000. At the option of the District, either:

13.4.1. Project Manager's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or

13.4.2. Project Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses; or

13.4.3. District can accept the higher deductible.

13.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

13.5.1. All policies except for the professional liability insurance policy shall be written on an occurrence form.

13.5.2. The District, the Architect, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Project Manager; Instruments of Service and completed operations of the Project Manager; premises owned, occupied or used by the Project Manager; or automobiles owned, leased, hired or borrowed by the Project Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

- 13.5.3. For any claims related to this Program, the Project Manager's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Project Manager's insurance and shall not contribute with it.
- 13.5.4. Project Manager shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Project Manager fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due Project Manager under the Agreement.
- 13.5.5. 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.
- 13.5.6. Project Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 13.5.7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 13.5.8. Project Manager shall require all subconsultants to maintain the level of insurance Project Manager deems appropriate with respect to the subconsultant's scope of Services unless otherwise indicated in the Agreement. Project Manager shall cause the subconsultants to furnish proof thereof to District within ten (10) calendar days of District's request. Should Project Manager not require subconsultants to provide the same level of insurance as is required of Project Manager, as provided in this Agreement, Project Manager is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
- 13.5.9. If Project Manager normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Project Manager hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 13.5.10. Acceptability of Insurers: Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. Project Manager shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, the District may either:
 - 13.5.10.1. Accept the lower rating; or
 - 13.5.10.2. Require Architect to procure insurance from another insurer.

13.5.11. Verification of Coverage: Prior to commencing with its provision of Services under this Agreement, Project Manager shall furnish the District with:

13.5.11.1. Certificates of insurance showing maintenance of the required insurance coverage;

13.5.11.2. Original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

13.5.12. Copy of Insurance Policy(ies): Upon the District's request, Project Manager will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

Article 14. Nondiscrimination

Project Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical disability, sex, or sexual orientation of such person. Project Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 15. Covenant Against Contingent Fees

Project Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Project 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 Project 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, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 16. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Project Manager shall be entitled to no benefits other than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Project Manager specifically acknowledges that in entering this Agreement, Project Manager relies solely upon the provisions contained in this Agreement and no others.

Article 17. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized services of Project Manager, Project Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District. 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 Project Manager and any such assignment, transfer, delegation or sublease without Project Manager's prior written consent shall be considered null and void.

Article 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 administration 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.

Article 19. Alternative Dispute Resolution

- 19.1. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other Party, but in no case longer than ninety (90) days after initial written notice.
- 19.2. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Project Manager shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Project Manager's right to bring an action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Project Manager submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 19.3. Notwithstanding any disputes, claims or other disagreements between Manager and the District, Manager shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

Article 20. 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.

Article 21. Employment Status

- 21.1. Project 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 Project Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Project Manager shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 21.2. Project Manager understands and agrees that the Project 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.

- 21.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Project 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 Project Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 21.4. Should a relevant taxing authority determine a liability for past services performed by Project Manager for District, upon notification of such fact by District, Project Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Project Manager under this Agreement (again, offsetting any amounts already paid by Project Manager which can be applied as a credit against such liability).
- 21.5. 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, Project Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Project Manager is an employee for any other purpose, then Project 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 Project Manager was not an employee.
- 21.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 22. Warranty of Project Manager

- 22.1. Project Manager warrants that the Project Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 22.2. Project Manager certifies that it is aware of the provisions of the California Labor Code, requiring 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.
- 22.3. Project Manager certifies that it is aware of the provisions of the California Labor Code and the California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects ("Prevailing Wage Laws"). Project Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable registration and prevailing wage requirements of the California Labor Code.

Article 23. Cost Disclosure - Documents And Written Reports

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

Article 24. Communications

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

<p>District: Contra Costa Community College District 500 Court Street Martinez, CA 94533 ATTN: _____ Email: _____</p>	<p>Project Manager: [Name] _____ _____ ATTN: _____ Email: _____</p>
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Any notice personally given or sent by electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Article 25. District’s Right to Audit

- 25.1. District retains the right to review and audit, and the reasonable right of access to Project Manager’s and any Consultant’s premises to review and audit the Project Manager’s compliance with the provisions of this Agreement (“District’s Right”). The District’s Right includes the right to inspect, photocopy, and to retain copies, outside of Project Manager’s premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 25.2. The District’s Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Project Manager is in compliance with all requirements of this Agreement.
- 25.3. If there is a claim for additional compensation or for Extra Services, the District’s Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 25.4. Project Manager shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Project Manager shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District’s request, Project Manager shall submit exact duplicates of originals of all requested records to the District.
- 25.5. Project Manager shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.

- 25.6. Project Manager shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Project Manager's Project-related records and information.

Article 26. Other Provisions

- 26.1. Project Manager shall be responsible for the cost of construction change orders caused directly by Project Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Project Manager's liability for indirect or consequential cost impacts, the direct costs for which the Project Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared Construction Documents. These amounts shall be paid by Construction Manager to District or the District may withhold those costs from amounts due or to become due to Project Manager.
- 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, and Project Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Project Manager's failure to perform any of the Services furnished under this Agreement to the standard of care of the Project Manager for its Services, which shall be, at a minimum, the standard of care of Project Managers performing similar services for California community college districts at or around the same time and in or around the same geographic area of the District.
- 26.3. **Exhibits "A" through "F"** attached hereto are hereby incorporated by this reference and made a part of this Agreement.
- 26.4. 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 the Agreement.
- 26.5. The individual executing this Agreement on behalf of Project Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Construction Manager to all terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

**Contra Costa Community College
District**

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF PROJECT MANAGER

1. PROJECT MANAGEMENT GENERAL SERVICES A-1
2. ASSIGNED PROJECT MANAGEMENT SERVICES A-3
3. MISCELLANEOUS SERVICES A-9

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF PROJECT MANAGER

Project Manager shall provide professional services necessary for completing the following:

1. PROJECT MANAGEMENT GENERAL SERVICES

- 1.1. **General:** Monitor and advise the District as to all material developments in each Project and the Program. Implement with District approval reporting methods for schedules, cost and budget status, and projections for each Project in the District's Program. Serve as the focal point of all communication to and from construction contractor(s). Provide Services that shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. **Strategic Planning:** Advise and assist the District on all matters related to strategic planning, including prioritization of work, project planning within the total program, financial issues, and other advice, as needed.
 - 1.2.1. For new projects in planning stages, organize an initial planning workshop to create baseline parameters for the Program, overall building requirements, Project(s) strategy, conceptual budget and schedule. Develop an implementation plan that will include a detailed strategy, budget and schedule as well as identification of critical events and milestone activities.
 - 1.2.2. Advise the District as to the regulatory agencies that have jurisdiction over any portion or all of the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation Division of the State Architect. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
 - 1.2.3. Determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies.
- 1.3. **Project Budget Tracking, Control Reporting System:** Actively utilize District's budget tracking system for all budgeted, committed, and actual expenditures in the project or projects (as assigned) within the program. Provide recommendations to ensure that the District's project is completed within the Program Budget.
 - 1.3.1. **Project and Master Program Budget:** Maintain, monitor and advise District on the Project Budget within the overall Master Program Budget and its components. Maintain, monitor and advise District on a budget and expenditure tracking system for the overall project including all costs that are proposed to be funded by Measure ___ and any other approved facility funding.
 - 1.3.2. **Accounting Interface:** Meet and confer with the District to ensure consistency between the budget and expenditure tracking system (i.e. accounting codes) and the District fund accounting system.

- 1.3.3. **Invoice Due Diligence and Processing:** Assist the District as needed in processing capital outlay project vendor invoices for payment, and performing due diligence on selected categories of invoices, achieving District turnaround of vendor payments within 30 days, as required by California law and within the cut-off timelines at the end of each fiscal year.
- 1.3.4. **Reports:** Provide regular budget/expenditure reports on the overall Program to the District, with adequate lead times for District staff approvals prior to presentation to Governing Board and Bond Oversight Committee by the District.
- 1.3.5. **Audits:** Assist District in preparing and providing documentation requested for District auditor.
- 1.4. **Project Budget Modifications and Program Budget Changes:** Recommend project budget modifications initiation and modification of specific fund accounting budgets to correspond with ongoing budget and commitment information generated within the capital outlay program on a regular basis.
- 1.5. **Cash Flow Requirements:** Prepare predictions of a project (s) within the overall program as cash flow requirements for use by the District's fiscal bond program management team.
- 1.6. **Scheduling:**
 - 1.6.1. Develop methods to track and report on schedule status for each Project and for the overall Program. Project Manager shall develop master schedules and milestone schedules for the Program and each Project, sequence and schedule Project(s) for each Site, consult with Design Team, consultants, District staff, and each Site to refine and confirm Project scope and schedule, and shall report on schedule compliance and changes each month to the District. The Program schedule shall provide realistic time frames for the Program and for each Project.
 - 1.6.2. Prepare methods to track and report on schedule status for each Project and for the overall Program. Project Manager shall develop master schedules and milestone schedules for each Project and shall report on same each month to the District.
- 1.7. **College and District Meetings:** Assist the District in scheduling various project related meetings with the Project Team, Facility Committee, Citizen's Oversight Committee and others. Chair, conduct and take minutes of periodic meetings, site visits or discussions held in conjunction with the work of the Project(s). These shall be furnished to the District and/or its representative for inclusion in the overall Program documentation.
- 1.8. **Communications to Board and District Community:** The Project Manager may be required to provide updates to District personnel in preparation of Board meetings, Citizen Bond Oversight Committee meetings, or other Program-related meetings within the community. If requested, Project Manager shall assist the District in facilitating information session(s) to keep the community informed.
- 1.9. **Coordination:** In the performance of Project Manager's services under this Agreement, Project Manager agrees that it will maintain such coordination

with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the Project Team. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.

- 1.10. **Communications with Trade Contractors:** Interface with all trade contractors to ensure that the District is provided with an acceptable Program and the best value for taxpayer dollars.
 - 1.10.1. Assist in pre-qualifying contractors, if prequalification is desired required by the District and/or required by statute.
 - 1.10.2. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified developers for lease-leaseback projects or bidders, as applicable.
 - 1.10.3. Assist the District in preparing and placing notices and advertisements to solicit proposals or bids for Projects.

2. ASSIGNED PROJECT MANAGEMENT SERVICES

- 2.1. **General:** Monitor and advise the District as to all material developments in the Project(s). Provide Services that shall comply with professional standards and applicable requirements of federal, state, and local law.
 - 2.1.1. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. Comply with, and ensure that the Project Team comply with, any environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District
- 2.2. **Project Budgets; Construction Cost Estimates:**
 - 2.2.1. Develop and/or review new or established Project Budget and its components including all Project Costs, including soft and hard costs. The Project Manager shall review and reconcile each Project Construction Cost Estimate made by the Architect, Developer/Builder and other members of the Project Team, as determined by the Project Manager, throughout the design process and construction. Project Manager shall develop and present for Board Approval the Project Budget and each component thereof. Project Manager shall revise these until the Board accepts a final Project Budget and all the components thereof.
 - 2.2.2. Project Manager accepts and acknowledges that it is primarily responsible for developing each component of the Project Budget, including contingencies. Project Manager shall specify all pre-design and pre-construction investigations and analyses necessary to prevent cost overruns, differing site conditions claims, other construction claims, design omissions, and budget overruns, including allowances, contingences and other reserves deemed appropriate for a Lease-Leaseback projects, or any other type of project delivery method used.

- 2.2.3. Project Manager shall work cooperatively with the Project Team so that the construction cost of the work designed by the Design Team will not exceed the Construction Cost Estimate, as may be adjusted subsequently with the District's written approval. The Project Manager shall notify the District immediately if it believes the construction cost of a Project will exceed the Construction Cost Estimate for that Project.
- 2.2.4. Evaluations of the District's Project Budget, and review and reconciliation of the preliminary and detailed cost estimates prepared by the Architect, represent the Project Manager's best judgment as a professional familiar with the construction industry in the geographic area of the District.
- 2.2.5. Project Manager specifically acknowledges that the District is relying on Project Manager to monitor, review, and verify each Project Construction Cost Estimate by the Architect, Developer/Builder or other member of the Project Team, at multiple instances throughout the Program and to cause the Construction Cost Estimate to be within the established Project Budget prior to approval by the Governing Board of the Guaranteed Maximum Price or Contract Price, whichever is applicable.

2.3. **Preconstruction Phase:**

- 2.3.1. Provide overall coordination of the Projects; serve as the focal point of communication, transmitting information to the District and design team on general aspects of the Projects, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the developer/builder and project Design Team shall be through the Project Manager. The Project Manager shall receive simultaneous copies of all written communications from the Project Team.
- 2.3.2. For work which need not be bid, the Project Manager shall solicit requests for proposals, evaluate all proposals received, and make recommendations to the District regarding consultants to be selected for such work. Project Manager shall assist the District in the selection by assisting in conducting interviews, evaluating candidates, and making recommendations as to final selection.
- 2.3.3. Project Manager shall review and comment on all professional services agreements as to professional and technical conditions. Project Manager shall, at direction of District legal counsel, assist in the negotiation of such professional services agreements.
- 2.3.4. Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Projects that involve all members of the Project teams.
- 2.3.5. Work with the Project Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria.
- 2.3.6. Develop master award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with Project Team and advise and consult

with District. Project Manager shall review and approve contractor(s)' schedules, but shall not dictate any contractor(s)' means and/or methods of performance.

- 2.3.7. Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 2.3.8. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule, and development of design phase procedures. Pursuant to understandings reached at these meetings, Project Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 2.3.9. The Project Manager shall monitor the Design Team professionals compliance with their Agreement, the Design Schedule, Project Management Plan and Design Phase Procedures and the Project Manager shall coordinate and expedite the flow of information between the District, Design Team professional and other consultants.
- 2.3.10. Attend pertinent planning, programming and master site planning meetings relating to the assigned project.
- 2.3.11. Advise District regarding "green building" technology and lifecycle costing, including design review.

2.4. Pre-Proposal Phase:

- 2.4.1. Unless previously provided, develop a master schedule and a construction milestone schedule for each Project.
- 2.4.2. Project Manager, in consultation with District and according to District approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Program and each Project, shall make recommendations for development and implementation of procedures to comply with applicable bidding requirements or request for qualifications and proposals for each Project and for expediting completion of the same for each Project. The scope of the foregoing includes without limitation, recommendations of Project Manager with respect to (a) pre-qualification of potential contractors and subcontractors, if applicable; (b) combination of two or more of the Projects for design, bidding and/or construction purposes; and (c) alternative construction delivery approaches for each of the Projects, including consideration of a single general contractor approach to construction for each Project. Establish, accordingly, a communications procedure for the Program and each Project that allows for decision making at appropriate levels of responsibility and accountability.
- 2.4.3. Work with the Project Team to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.

- 2.5. **Proposal/Bidding Phase:**
- 2.5.1. Conduct conferences prior to submission of proposals or bids, whichever is applicable, to familiarize potential developer/builders with the process for awarding contracts for a Project, and any special systems, materials or methods and with Project procedures. Field questions from potential developer/builders, referring questions to Design Team and District as required. Coordinate with Design Team' to respond to bidder questions by addenda.
 - 2.5.2. Prepare proposal analyses and advise District on compliance of potential developer/builders with District requirements and proposal requirements. Report and recommend to District after review and evaluation. Make recommendations to District for award of contracts or rejection of proposals and/or bids.
 - 2.5.3. Conduct pre-award conferences with successful developer/builder.
 - 2.5.4. For Lease-Leaseback Project, oversee the bidding of trades and subcontracts by the Lease-Leaseback contractor to ensure compliance with law and regulations.
 - 2.5.5. Work with the developer/builder.
 - 2.5.6. Schedule and conduct preconstruction meetings; maintain, prepare, and distribute minutes.
- 2.6. **Construction Phase:** The Project Manager shall work with the District and the Project Team by and through the following services:
- 2.6.1. Administer the contracts for construction services.
 - 2.6.2. Determine the need for, coordination of, procurement of and management of, relocating students, staff, furniture, equipment, technology equipment and supplies for phased projects and other project schedules that require temporary and permanent relocation.
 - 2.6.3. Coordinate, schedule, procure, install, implement and remove temporary relocatable classrooms and other facilities.
 - 2.6.4. Monitor the construction contractor(s) to verify that the work is performed and completed within the time as required or indicated by the plans and specifications, to the satisfaction of the District. Project Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
 - 2.6.5. Review the work of the developer/builder(s) to verify the District's objectives in relation to cost, time and quality. Project Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
 - 2.6.6. Facilitate construction meetings for the Project to assist in the resolution of matters related to progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. When required by field or other conditions, construction progress, or the quality of workmanship, attend special construction meetings.

- 2.6.7. Ensure that Project Inspector provides all required forms to DSA and that Project Inspector use the required Box, other technology and procedures required by DSA.
- 2.6.8. Monitor and confirm that construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.
- 2.6.9. Assist in the development, implementation, and coordination of the procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts and make recommendations on applications for payment.
- 2.6.10. Confirm that safety programs are developed and submitted by each of the contractor(s) as required by the contract. Neither Project Manager nor District shall be responsible for or have any liability for contractor(s) failure to provide, comply with, or enforce said safety programs.
- 2.6.11. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Project Manager. Track and monitor all budgets and expenditures for the Project.
- 2.6.12. Be primary contact and control point for and review of contractors' proposals and review change orders prepared by Design Team, with Design Team input as needed, for approval by the District's governing board and make recommendations on approval, denial, or amendment including, but not limited to, appropriateness of cost and determination if the claim is based on the original scope of work or not.
- 2.6.13. Maintain change order log(s) for the Project and assist in implementing procedures to expedite processing of change orders.
- 2.6.14. Maintain contingency and allowance tracker/log and report on it to District during construction and as a communication report to the Bond Oversight Committee.
- 2.6.15. Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 2.6.16. Assist District in selecting and retaining special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, surveyors, and testing laboratories, and coordinate their services.
- 2.6.17. Confirm that the progress of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the respective Construction Documents.
- 2.6.18. Assist the District with and establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:

- 2.6.18.1. Accepted industry standards;
 - 2.6.18.2. Applicable laws, rules, or ordinances; and
 - 2.6.18.3. The design documents and Contract Documents;
 - 2.6.18.4. Where the work of a Construction contractor does not conform as set forth above, Project Manager shall, with the input of Design Team:
 - 2.6.18.4.1 Notify the District of any non-conforming work observed by the Project Manager;
 - 2.6.18.4.2 Reject the non-conforming work; and
 - 2.6.18.4.3 Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
 - 2.6.19. Maintain logs of requests for information ("RFI") from construction contractor(s).
 - 2.6.20. Assist in the implementation of procedures for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract.
 - 2.6.21. Maintain the record of the progress of work at the Project(s). Prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
 - 2.6.22. Prepare and distribute a detailed monthly Program status schedule with detailed timelines, deadlines dates, and costs associated with the timelines,
 - 2.6.23. Prepare Project status reports for each active Project, including updates on Project activities, progress of work, outstanding issues, potential problems, schedule, status of RFIs, change orders, and submittals.
- 2.7. Project Completion:**
- 2.7.1. Confirm developer/builder's check-outs of utilities, operational systems and equipment, and start-up and testing.
 - 2.7.2. Review all prepared punch lists for thoroughness and for conformance to the requirements of the contract documents ("punch list work"). Review the completed punch list work and confirm that the completed punch list work complies with applicable provisions of the Construction contract(s).
 - 2.7.3. Project Manager shall determine, with the Architect(s) and District, when the Project or designated portions thereof are complete.
 - 2.7.4. Project Manager shall conduct, with the Architect(s) and District, final inspections of the Project or designated portions thereof.
 - 2.7.5. Project Manager shall provide to the District a written recommendation regarding payment to the contractors.
 - 2.7.6. Project Manager shall prepare and provide the proper forms for DSA certification.

- 2.8. **Final Documents:** The Project Manager shall ensure all required documents meeting contract requirements are provided, and shall, with the Architect(s), secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Project Manager shall ensure receipt of all documents and plans for the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the project. Program Manager shall confirm that all forms required for DSA close-out are provided prior to recommending final payment to Architect by District.
- 2.9. **Warranty:** The Project Manager shall implement a Warranty Inspection and Warranty Work procedure that all contractors are to follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection, coordinated with the Project Architect at least thirty (30) to sixty (60) days prior to the end of the Warranty period to inspect the Project and identify any outstanding warranty work.

3. MISCELLANEOUS SERVICES

- 3.1. Maintain accurate cost accounting records maintained with generally accepted accounting principles (GAAP) on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. Provide accounting records to the District on a monthly basis, or as reasonably requested by District. Afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.
- 3.2. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 3.3. Provide annual reports to the District on or before July 15 of each year, stating the amount paid to Project Manager, the amount remaining under the Agreement, and a description of the Services performed by Project Manager for the previous fiscal year (i.e. July 1 through June 30).
- 3.4. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Project Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Project Manager. Project Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 3.5. Project Manager is NOT responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when required and Project Manager shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:
 - 3.5.1. Ground contamination or hazardous material analysis.
 - 3.5.2. Any asbestos testing, design or abatement.
 - 3.5.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Project Manager shall provide current information for use in CEQA compliance documents.

- 3.5.4. Historical significance report.
- 3.5.5. Soils investigation.
- 3.5.6. Geotechnical hazard report.
- 3.5.7. Topographic survey, including utility locating services.
- 3.5.8. Other items specifically designated as the District's responsibilities under this Agreement.
- 3.5.9. As-built documentation from previous construction projects.
- 3.5.10. Preparation of Storm Water PPP.
- 3.5.11. Archaeology Services.
- 3.5.12. Building Envelope Consulting.
- 3.5.13. Project Inspector Services.
- 3.5.14. Other specialty testing and inspection services.

[END OF EXHIBIT "A"]

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

1. The following Extra Services to this Agreement shall be performed by Project Manager if needed and requested by District as indicated in the Agreement:
 - 1.1. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
 - 1.2. Providing services related to investigation, appraisal or evaluation of existing conditions, facilities or equipment or determination of the accuracy of existing drawings or other information furnished by the District.
 - 1.3. Providing services related to building site investigations and analyses.
 - 1.4. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
 - 1.5. The procurement, storage, maintenance and installation of District-furnished materials, supplies, furnishings, or equipment.
 - 1.6. Preparation of financial, accounting or MIS reports not provided under Services in Exhibit A.
 - 1.7. Providing services made necessary by the default of contractor(s), or by major defects or deficiencies in the work of the contractor, or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the project involved.
 - 1.8. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Project Manager or where the Project Manager is party thereto, except for a contractor's hearing necessitated by its request to substitute a subcontractor.

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2. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. Project Manager shall bill in quarter-hour increments for all Services.

<u>Job Title</u>	<u>Hourly Rate</u>
Firm Principal:	\$__.00
Senior Project Manager:	\$__.00
Project Manager:	\$__.00
Project Manager:	\$__.00
Value Engineering:	\$__.00
Cost Estimating:	\$__.00
Constructability Review:	\$__.00
Scheduler:	\$__.00

The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed five percent (5%).

3. Format and Content of Invoices for Extra Services Billed on an Hourly Basis:

Project Manager acknowledges that the District requires Project Manager's invoices to include detailed explanations of the Services performed.

[END OF EXHIBIT "B"]

EXHIBIT "C"

[RESERVED]

EXHIBIT "D"

FEE SCHEDULE

Compensation

1. The Project Manager's fee set forth in this Agreement shall be full compensation for all of Project Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, per diem expenses, printing, providing, or shipping of deliverables.
2. The amount of compensation shall be the amount set forth in the Agreement. The agreed amount of compensation shall include all billed expenses.

Method of Payment

1. Project Manager shall submit monthly invoices for the portion of the overall fee reflecting the services performed and costs incurred for each respective month.

In no event shall the total payments exceed the Project Manger's fee set forth in Article 6 this Agreement except as authorized under **Exhibit "B."**
2. Project Manager shall submit these invoices in duplicate to the District via the District's authorized representative.
3. Project Manager shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.
4. Upon receipt and approval of Project Manager's invoices, the District agrees to make payments on all undisputed amounts after the funds are available to the District and approved by the County Office of Education but no later than thirty (30) days from receipt of the invoice.
5. The District may withhold or deduct from amounts otherwise due Program Manager hereunder if Program Manager fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Program Manager has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.

[END OF EXHIBIT "D"]

EXHIBIT "E"

**Contra Costa Community College District
Anticipated Bond Issuances and Proposed Project List
Estimated Total Project Costs**

[TO BE INSERTED]

EXHIBIT "F"

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code Sections 2202-2208)

(If District has an RFP, this Certification should be submitted with the Proposal instead of with the executed contract documents.)

PROJECT/CONTRACT NO.: _____ between the Contra Costa Community College District ("District") and _____ ("Bidder/Proposer") ("Contract").

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more, the bidder/proposer must submit this certification pursuant to Public Contract Code section 2204.

The bidder/proposer must complete **ONLY ONE** of the following two options. To complete OPTION 1, check the corresponding box **and** complete the certification below. To complete OPTION 2, check the corresponding box, complete the certification below, and attach documentation demonstrating the exemption approval.

- OPTION 1.** Bidder/Proposer is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

- OPTION 2.** Bidder/Proposer has received a written exemption from the certification requirement pursuant to Public Contract Code sections 2203(c) and (d). *A copy of the written documentation demonstrating the exemption approval is included with our bid/proposal.*

CERTIFICATION:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder/proposer to the OPTION selected above. This certification is made under the laws of the State of California.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

[END OF EXHIBIT "F"]