

**REQUEST FOR QUALIFICATIONS (RFQ # 19-08)  
CONSTRUCTION MANAGEMENT SERVICES**

**NOTICE IS HEREBY GIVEN** that the Fremont Union High School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide comprehensive construction management services for the District, including but not limited to construction management services in connection with the District's Measure CC bond program ("Program") and projects thereunder.

Respondents to the RFQ should mail or deliver five (5) bound copies and one (1) electronic copy in PDF on a thumbdrive or flashdrive of their Statement of Qualifications ("SOQ" or "Submittal") to:

**Christine Mallery  
FREMONT UNION HIGH SCHOOL DISTRICT  
589 W. Fremont Avenue  
Sunnyvale, CA 94087**

**ALL RESPONSES ARE DUE BY 2:00 P.M., ON FRIDAY, APRIL 24, 2020.** Any Submittal received after that date and time will not be accepted and will be returned unopened.

Each Submittal must conform and be responsive to the requirements set forth in the RFQ.

The District reserves the right to waive any informalities or irregularities in received submittals. Further, the District reserves the right to reject any and all submittals and to negotiate contract terms with one or more respondent firms for one or more of the work items. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive, responsible, and qualified.

A complete copy of the RFQ is available on the District's website (<https://www.fuhd.org/departments/business-services>).

Questions regarding this RFQ may be directed to Christine Mallery at [christine\\_mallery@fuhd.org](mailto:christine_mallery@fuhd.org) and must be submitted before **4:00 p.m. on Friday, April 3, 2020**. Answers will be provided via an addendum by 4:00 p.m. on Friday, April 17, 2020, and will be available on the District's website (<https://www.fuhd.org/departments/business-services>). It is the responsibility of prospective bidders to review any addenda posted.

**REQUEST FOR QUALIFICATIONS (RFQ #19-08)  
CONSTRUCTION MANAGEMENT SERVICES**

**I. BACKGROUND**

The District serves students across five comprehensive high schools—Cupertino, Fremont, Homestead, Lynbrook and Monta Vista. The District is seeking SOQs from experienced entities to provide construction management services on an as-needed basis for District projects, including but not limited to those projects under the District’s Measure CC bond program (“Program”).

Information regarding the District’s Program can be found at:

<https://www.fuhisd.org/departments/bond-program/measure-cc>

Program projects include, but are not limited to, the following:

**FREMONT UNION HIGH SCHOOL DISTRICT  
MEASURE CC - BOND PROGRAM**

**CUPERTINO HIGH SCHOOL**

- Replace Baseball Field Grass to Synthetic Turf (2) & New Entry
- Replace Main Canopy Roof System
- Cupertino Science Building Roof Replacement
- Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech, FF&E )
  - Bldg 500 (11 Rooms)
  - Bldg 300 (14 Rooms)
  - Bldg 100 (14 Rooms)
  - Bldg 400 (14 Rooms)
  - Bldg 800 (4 Rooms)

**FREMONT HIGH SCHOOL**

- New Field House
- Replace Softball Field Grass to Synthetic Turf
- Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech)
  - Original Building (26 Rooms)
  - Bldg 70 (6 Rooms)
  - Bldg 80 (8 Rooms)
  - Bldg 150 (6 Rooms)

**HOMESTEAD HIGH SCHOOL**

- Seismic Upgrades
- Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech, FF&E )
  - Bldg A 2nd Floor (12 Rooms)
  - Bldg B (25 Rooms)

Bldg C (23 Rooms)  
Bldg L (14 Rooms)  
Bldg S (9 Rooms)

**LYNBROOK HIGH SCHOOL**

Replace Baseball and Softball Grass to Synthetic  
Old GSS Building Conversion  
Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech, FF&E )  
    Bldg 70 (5 Rooms)  
    Bldg 100 (14 Rooms)  
    Bldg 200 (14 Rooms)  
    Bldg 300 (14 Rooms)  
    Bldg 400 (10 Rooms)  
    Bldg 500 (12 Rooms)  
    Bldg 600 (12 Rooms)  
Auditorium Modernization

**MONTA VISTA HIGH SCHOOL**

Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech, FF&E )  
    Bldg B 2nd Floor (13 Rooms)  
    Bldg A & C 2nd Floors (25 Rooms)  
    Bldg D (22 Rooms)  
    Bldg F (17 Rooms)

**DISTRICT SITE**

Adult Education Modernization/Future Facility  
The District reserves the right to assign additional projects at its discretion including temporary housing for Measure CC projects, or the District may choose one firm for one project and another firm on the list for a separate task.

**II. SCOPE OF SERVICES**

Any firm selected based on this RFQ process must be capable of providing full construction management services through the preconstruction, construction, and closeout phases of any and all selected projects. The desired Scope of Services is set forth at **Exhibit "A"** to the District's form Agreement for Construction Management Services ("Agreement"), which is distributed with this RFQ as **Attachment A** and incorporated herein by this reference.

### **III. POOL OF QUALIFIED APPLICANTS AND RECERTIFICATION**

The District intends to maintain a pool of qualified construction management services firms. Requests for recertification may be sent every two (2) years. Firms who do not reply to the request for recertification may be deleted from the pool of prequalified firms, at the sole discretion of the District. Additional firms may be added to the pool, at the District's sole discretion.

### **IV. LIMITATIONS**

The award of a contract, if at all, is at the sole discretion of the District. The District reserves the right to contract with any entity responding to this RFQ. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing a response to this RFQ. The awarding of contract(s), if at all, is at the sole discretion of the District.

The SOQs and any other supporting materials submitted to the District in response to this RFQ, will not be returned and will become the property of the District unless portions of the material are designated as proprietary at the time of submittal and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, SOQs shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful respondent have completed negotiations and entered into an agreement, or (2) the District has rejected all SOQs. Furthermore, the District will have no liability to the respondent or other party as a result of any public disclosure of any SOQ.

### **V. FULL OPPORTUNITY**

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

### **VI. RESTRICTIONS ON LOBBYING AND CONTACTS**

From the period beginning on the date of the issuance of this RFQ and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ, the evaluation/selection process, or the award of the contract with any member of the District, Board of Trustees, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for disqualification.

## **VII. FORMAT REQUIREMENTS**

Firms responding to this RFQ must comply with the following format requirements. Material must be in 8-1/2 x 11 inch format. Submittals shall include divider tabs labeled with boldface headers below; e.g. the first tab would be entitled "Cover Letter", the second tab would be entitled "Business Information", etc. Submittals shall not exceed twenty (20) single-sided pages, or ten (10) double-sided pages.

Provide five (5) bound copies and one (1) electronic copy in PDF on a thumbdrive or flashdrive of the Submittal.

## **VIII. CONTENT REQUIREMENTS**

### **1. COVER LETTER** (maximum of 2 pages)

- Provide a letter of introduction signed by an authorized officer of the company. If the company is a joint venture, duplicate the signature block and have a principal or officer also sign on behalf of each party to the joint venture.
- Clearly identify the individual(s) who are authorized to speak for the firm during the evaluation process.
- Respondent must include one (1) of the follow statements:

*"[INSERT FIRM NAME] received a copy of the District's form of Agreement for Construction Management Services ("Agreement") attached as Attachment A to the RFQ. [INSERT FIRM NAME] has reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT FIRM NAME] has no objections to the use of the Agreement."*

OR

*"[INSERT FIRM NAME] received a copy of the District's form of Agreement for Construction Management Services ("Agreement") attached as Attachment A to the RFQ. [INSERT FIRM NAME] has reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given the opportunity to contract with the District, [INSERT FIRM NAME] has objections to the use of the Agreement, listed as follows or as contained in the appendix to this Submittal."*

A copy of District's form of Agreement is attached to this RFQ as **Attachment A**. To the extent respondent has **any** objections to the form agreement, respondent **must** state the objection, and **must** provide a reasonable description of its requested change in response to the objection. Unidentified objections, or vaguely described objections will not be entertained by the District during any contract negotiation. Objections may be attached as an Appendix to respondent's response and shall not count toward the page limit.

- Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

- Respondent shall certify that no official or employee of the firm has ever been convicted of an ethics violation.
- Respondent shall sign and add the following language: *“By virtue of this submission, [INSERT FIRM NAME] declares that all information provided is true and correct.”*

## **2. BUSINESS INFORMATION**

- Company name, address, telephone, fax, website.
- Name and email of main contact.
- Federal Tax I.D. Number.
- License or Registration Number.
- Type of organization (i.e. corporation, partnership, etc.). If a joint venture, describe the division of responsibilities between participating companies, offices (location) that would be the primary participants, and percentage interest of each firm.
- A brief description and history of the firm, including number of years the firm has been in business and date firm was established under its given name.
- Location of office where the bulk of services solicited will be performed.
- State of California certification for your firm of Small Business or Disabled Veteran Business Enterprise status, if any.
- Provide Iran Contracting Act Certification. (See **Attachment B.**)

## **3. RELEVANT QUALIFICATIONS AND EXPERIENCE**

- Describe the firm’s technical capabilities for scheduling, budgeting, cost estimating review and reconciliation, document control, and public information websites. Provide recent examples for each category.
- Describe the firm’s experience as a construction manager with state and other agencies involved in the planning, design, and construction process for K-12 and other school projects.
- Describe the firm’s quality control systems, including ability to monitor sub-consultants, if any.
- Demonstrate your firm’s flexibility in adapting to the changing needs and priorities of a K-12 district.
- Firms shall have at least five (5) years of experience working with California Division of the State Architect (DSA). Describe your experience working with the DSA.
- Describe your firm’s experience with meeting aggressive schedules.
- Describe your firm’s experience with alternate delivery methods.

- Provide information about prior construction management services by your firm in the last ten (10) years on a minimum of three (3) K-12 and/or community college educational projects. List the following for each project:
  - Reference(s): District name and name of contact person, title, telephone number, and email address to be contacted for a reference.
  - Project name and location.
  - Beginning and end dates of project (i.e., Notice of Completion and DSA final certification).
  - Original budget, bid amount & final amount at close-out.
  - Briefly state relevance of projects included for consideration in this RFQ.
  - Specify role of firm or individual if work was not exclusively by the firm (i.e., joint venture, association).
  - Key individuals of the firm involved and their roles in the project.
  - Any sub-consultants that worked with the firm.

#### **4. TEAM SUMMARY**

- Identify proposed key team members, including sub-consultants, and state their qualifications relevant to construction management services.
- Each Submittal must include evidence that the construction management services company is legally permitted and properly licensed for the scope of work and to conduct business in the State of California.
- If a proposed team member must leave, the District reserves the right to approve that team member's replacement.

#### **5. LITIGATION HISTORY**

Provide a comprehensive five (5)-year summary of the firm's claims, litigation, arbitration and negotiated/settled history with previous clients ("Claims"). This includes current/ongoing Claims. For each lawsuit, state the issues in the lawsuit, the status of the lawsuit, names of parties, and outcome. A Submittal failing to provide the requested information on past and present Claims, including lawsuits, and responses which assert attorney-client privilege and fail to provide the information requested, will be considered non-responsive, disqualified from the selection process, and will not be evaluated.

#### **6. HOURLY RATES**

In a sealed envelope accompanying your SOQ and labeled as "[FIRM NAME] Hourly Rates for RFQ # 19-08," provide the hourly billing rates by position (proposed); staffing plan (proposed); and reimbursable schedule (proposed) for the project(s).

A form of the Agreement has been distributed with this RFQ as **Attachment A**. The final form of the Agreement will incorporate the project-specific scope of work, which shall be negotiated with the successful respondent. **As noted above, any proposed changes to the form of Agreement must be identified in**

**respondent's Submittal; undisclosed change requests will not be entertained.**

**7. REQUIRED CERTIFICATIONS AND FORMS**

Your SOQ must include all required certifications and forms, including:

- Iran Contracting Act Certification; and
- Non-Collusion Declaration; and
- Any other certifications or forms required.

**8. APPENDIX (if used)**

- Firm brochure/history/background, reprints, etc.
- Key team member resumes
- Objections to District's form of agreement, reasonably described and including proposed change(s).

**IX. SELECTION PROCESS AND CRITERIA**

A selection committee will evaluate all submissions. Based upon the information presented in the submissions, the District's selection committee *may* request the most highly qualified firms to participate in an interview process.

If a firm is requested to come for an interview, the key proposed staff will be expected to attend the interview. The interview will be an opportunity for the District's selection committee to review the firm's Submittal and other matters the committee deems relevant to its evaluation. **Any comments or objections to the District's form of Agreement attached to this RFQ as Attachment A may be the subject of inquiry at the interview.**

Following the interviews, if any, it is expected that the selection committee will make recommendations to District staff regarding selected firms to be part of the District's pool. As services are needed for specific projects, District staff may assign one or more projects to one or more firms from the pool and/or may request that firms from the pool submit a more detailed fee and services proposal, at which time they will develop a detailed scope of services, proposed fee and schedule.

The criteria for evaluating submissions may include, without limitation, the following:

- Experience and performance history of the firm with similar services;
- Experience and results of proposed personnel;
- References from clients contacted by the District;
- Technical capabilities and track record of use;
- Value of services under proposed fees; and
- Overall responsiveness of the Submittal.

**X. DISTRICT INVESTIGATIONS**



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

**XI. FINAL DETERMINATION AND AWARD**

The District reserves the right to contract with any entity responding to this RFQ for all or any portion of the work described herein and/or in an Agreement offered to the entity, to reject any Submittal as non-responsive, and/or not to contract with any construction management services company for the services described herein. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District reserves the right to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any Submittal in response to this RFQ, including any supporting materials.

The awarding of a contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contract(s) only for portions of the scope of work identified herein. In such case, the successful firm(s) will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other firm responding to this RFQ.

**XII. RFQ RESPONSE SCHEDULE SUMMARY**

The District reserves the right to change the dates on the schedule without prior notice.

| <b>DATE</b>           | <b>EVENT</b>  | <b>TIME DEADLINE</b> |
|-----------------------|---|----------------------|
| 3/20/2020             | Release and advertisement of RFQ.   |                      |
| 4/3/2020              | Deadline for submission of written questions to District concerning RFQ.              | 4:00 p.m.            |
| 4/17/2020             | District to issue Addenda to answer questions or provide clarifications, if necessary | 4:00 p.m.            |
| <b>4/24/2020</b>      | <b>Deadline for all submissions in response to RFQ.</b>                               | <b>2:00 p.m.</b>     |
| Week of:<br>4/27/2020 | Review of submissions by selection committee.   |                      |
| Week of:<br>5/4/2020  | Interviews (If used).   |                      |
| 5/19/2020             | Notification to selected Firm(s).   |                      |

**WE THANK YOU FOR YOUR INTEREST IN THIS EXCITING PROJECT!**

**ATTACHMENT A**

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**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

**FREMONT UNION HIGH SCHOOL DISTRICT**

**WITH**

\_\_\_\_\_

**FOR**

**[NAME OF PROJECT]**

\_\_\_\_\_, 20\_\_

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## **AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

This Agreement for Construction Management Services ("Agreement") is made as of \_\_\_\_\_, 20\_\_, between the Fremont Union High School District, a California public school district ("District"), and \_\_\_\_\_ ("Construction Manager") (both collectively "Parties"), for the following project ("Project"):

The construction administration of \_\_\_\_\_ Project.

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

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-Built's"):** 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.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.15 **Extra Services:** District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in Construction Manager's fee.
- 1.1.16 **Fee:** The Construction Manager's Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit "D."**

- 1.1.17 **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 Christine Mallery. District may change the District's Representative by notice as set forth herein.
- 1.1.18 **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.
- 1.1.19 **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.
- 1.1.20 **Record Drawings:** A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.21 **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. The Parties agree that the Construction Manager's Services described herein are based on a construction manager/general contractor structure on this Project. The District reserves the right to change this construction delivery method, including, without limitation, utilizing a construction manager/multi-prime structure, lease leaseback structure, or other delivery methods.
- 2.2 **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. 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.

- 2.3 **Construction Manager's Services:** Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.4 During the Construction Phase of the Project, the District may require that the Contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 2.5 **Review of General Obligation Bond Program Report and District's Facilities Master Plan:** Construction Manager shall review the District's Facilities Master Plan for the District and other written materials made available by the District to Construction Manager to understand fully the nature, extent and intent of the Facilities Plan and the Project.
- 2.6 **Expansion of Work based on Additional Funds:** Should the Board decide to expand the scope of the Project and/or supplement the Construction Budget based upon availability of additional funds, Construction Manager agrees to perform the additional scope of work under the fee and cost terms of this Agreement.

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**ARTICLE 3. Construction Manager Staff**

3.1 The Construction Manager has been selected to perform the work herein because of the Construction Manager’s skills and expertise.

3.2 The Construction Manager agrees that the following key people in Construction Manager’s firm shall be associated with the Project in the following capacities:

Principal in Charge: \_\_\_\_\_

Project Director: \_\_\_\_\_

Construction Manager: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Sr. Project Manager: \_\_\_\_\_

Estimator: \_\_\_\_\_

Assistant Construction Manager: \_\_\_\_\_

Assistant Project Manager: \_\_\_\_\_

Scheduler: \_\_\_\_\_

Other: \_\_\_\_\_

Other: \_\_\_\_\_

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

3.4 If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice by the District, the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Within seven (7) days of such removal, Construction Manager shall provide a permanent replacement person acceptable to the District. 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, which could conflict in any manner or degree with the performance of services required under this Agreement and that no

person having any such interest shall be employed by Construction Manager.

**ARTICLE 4. Schedule Of Work**

The 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"** in accordance 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.

**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 elements of the Project designed or specified by the Project design professional(s), as defined in Article 1.
- 5.3 Construction Manager shall work cooperatively with the Project Design Team throughout the Project, during the Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Construction Manager shall notify the District if it believes the construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost of the Project will exceed the Construction Cost Budget for the Project. The 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 preliminary and detailed cost estimates prepared by the Construction Manager, 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, 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, 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) at no additional cost to the District.
- 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 with Construction Manager performing 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 If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or
  - 5.7.3 If the Construction Cost Budget increases in phases subsequent to the Design Development Phase due to reasonably foreseeable changes in the condition of the construction market in Santa Clara County, 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**

- 6.1 District shall pay Construction Manager an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) for all services under this Agreement.
- 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.

- 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 reimbursable costs including but not limited to costs for personnel, travel, 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 that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 7.2 A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Services.

**ARTICLE 8. Ownership Of Data**

- 8.1 All of the work product of the Construction Manager, prepared or generated, in connection with this Agreement is the property of the District.
- 8.2 Upon request of the District, 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 completion of the Project or, if the District exercises the right to terminate this Agreement pursuant to the terms hereof, after termination of this Agreement, Construction Manager shall assemble and deliver to District all of the work product of the Construction Manager generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Said Project records shall be indexed and appropriately organized for easy use by District personnel.
- 8.4 All Project records are property of the District, 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, but Construction Manager and its

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

## **ARTICLE 9. Termination Of Contract**

- 9.1 If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, 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 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 Construction Manager. 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.
- 9.2 District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, 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.
- 9.3 The 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.
- 9.4 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.
- 9.5 If, at any time in the progress of the Project, the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the 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.
- 9.6 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.
- 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) and to enforce the indemnity herein. Construction Manager's obligation to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties. The District's acceptance shall not be unreasonably withheld.
- 10.3 District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager from amounts owing to Construction Manager.

## **ARTICLE 11. Conduct on Project Site and Fingerprinting**

- 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.

- 11.3 Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of the scope of work in this Agreement that Construction Manager and its subcontractors and employees will have only limited contact with pupils, the Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Construction Manager shall not permit any employee to have any contact with District pupils until such time as the Construction Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit "E"**) shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting contact with any student.

## **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 requirements for the Project.
- 12.3 The District shall retain design professional(s) whose services, duties and responsibilities shall 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 professional(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 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.

**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 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 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 hereunder, shall be paid to District by Construction Manager as provided for herein and/or under California law.
- 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 The 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 behalf of the District.

**ARTICLE 14. Insurance**

- 14.1 Construction 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 Construction Manager, their agents, representatives, employees and sub-consultant(s).



- 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.** Five million dollars (\$5,000,000) 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.** Five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and ten million dollars (\$10,000,000) general aggregate for bodily injury and property damage.
  - 14.2.3 **Workers' Compensation.** Statutory limits required by the State of California.
  - 14.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease.
  - 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 more than five thousand dollars (\$5,000) 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.
- 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 five thousand dollars (\$5,000) must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the 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 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.
- 14.5.3 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.
- 14.5.4 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.
- 14.5.5 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.
- 14.5.6 Construction Manager's insurance coverage shall be primary 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.
- 14.6 **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.
- 14.7 **Verification of Coverage:** 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.

**ARTICLE 15. Nondiscrimination**

Construction Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the fact or perception of that person's race, color, national origin, ancestry, religion, age, physical or mental disability, sex, sexual orientation or perceived sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status of such person. Construction Manager shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

**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 other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Construction Manager specifically acknowledges that in entering into this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

**ARTICLE 18. Non-Assignment Of Agreement**

In as much as this Agreement is intended to secure the specialized services of the Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any 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 Santa Clara 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 Notwithstanding any disputes, claims or other disagreements between the Construction Manager and the District, the Construction Manager shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

20.2 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. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

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

23.2 Construction Manager understands and agrees that the 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 that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 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 the Construction 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. Construction Manager further warrants that all of the work performed under this Agreement by the Construction Manager shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. The

Construction Manager also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of Santa Clara County.

- 24.2 Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that, 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 that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Construction Manager is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code. Since this Project is subject to labor compliance and enforcement by the DIR, Construction Manager specifically acknowledges and understands that it shall perform the Services while complying with all applicable provisions of Division 2, Part 7, Chapter 1 of the Labor Code and Title 8 of the California Code of Regulations.

**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).

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**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:**

Fremont Union High School District  
589 W. Fremont Avenue  
Sunnyvale, CA 94087

ATTN: Superintendent

**With a copy to:**

DANNIS WOLIVER KELLEY  
275 Battery Street, Suite 1150  
San Francisco, CA 94117  
ATTN: Lauren M. Charneski

**Construction Manager:**

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

ATTN: \_\_\_\_\_

**With a copy to:**

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

ATTN: \_\_\_\_\_

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**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, Construction Manager, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount(s) intended to be paid to DVBEs in conjunction with the contract, and/or documentation demonstrating Construction Manager's good faith efforts to meet these goals.

**ARTICLE 28. Other Provisions**

28.1 The Construction Manager shall be responsible for the cost of construction change orders caused directly by the 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 the 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.

- 28.2 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 school districts at or around the same time and in or around the same geographic area of the District.
- 28.3 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.
- 28.4 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.

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

**FREMONT UNION HIGH SCHOOL DISTRICT**

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Date: \_\_\_\_\_, 20\_\_

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

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

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

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

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

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



**EXHIBIT "A"**

**RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

|           |                                 |             |
|-----------|---------------------------------|-------------|
| <b>1.</b> | <b>BASIC SERVICES</b>           | <b>A-1</b>  |
| <b>2.</b> | <b>GENERAL PROJECT SERVICES</b> | <b>A-5</b>  |
| <b>3.</b> | <b>PRECONSTRUCTION PHASE</b>    | <b>A-5</b>  |
| <b>4.</b> | <b>PRE-BID PHASE</b>            | <b>A-6</b>  |
| <b>5.</b> | <b>BIDDING PHASE</b>            | <b>A-6</b>  |
| <b>6.</b> | <b>CONSTRUCTION PHASE</b>       | <b>A-7</b>  |
| <b>7.</b> | <b>PROJECT COMPLETION</b>       | <b>A-11</b> |
| <b>8.</b> | <b>FINAL DOCUMENTS</b>          | <b>A-12</b> |
| <b>9.</b> | <b>WARRANTY</b>                 | <b>A-12</b> |

## 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 professional services which comply with professional industry standards and applicable requirements of federal, state, and local law, including applicable provisions of the Civil, Labor, Educational and Public Contract Codes governing Public School Construction.
- 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 in Colbi Docs.
- 1.3. Be the focal point of all communication to and from construction Contractor(s) and Architect(s) in coordination with the District and program team.
- 1.4. Implement methods to track construction contract, project budget, potential and approved changes to the Project. Construction Manager shall generate monthly reports to the District reflecting this information.
- 1.5. Prepare methods to track and report on schedule status for the Project in Microsoft Project. Construction Manager shall develop master schedules and milestone schedules for the Project, including close out and occupancy, and shall report on same each month to the District and program team.
- 1.6. The Construction Manager may be requested to assist with preparation of items requiring Board approval and routine reporting.
- 1.7. Construction Manager shall work cooperatively with the Design Team, the Program Manager, and the District to:
  - 1.7.1. 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. Assist in final review of the bid set and preparation of special conditions indicating project specific requirements, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, materials, preliminary budgets, and possible economies.
- 1.9. Interface with 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 Program 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, Program 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 weekly project 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 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. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
  - 1.14.3. 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 constructability reviews, studies, reports, projections, 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. To the extent requested by the District or Program Manager, 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. To the extent requested by the District or Program Manager, 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. Cooperate and implement District's reporting to and interface with the Labor Commissioner's Office, including but not limited to:
  - 1.25.1. Registering public works project with the Department of Industrial Relations (DIR) within thirty (30) days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work;
  - 1.25.2. Notifying potential contractors that they must register with the Department of Industrial Relations (DIR) and that the project is subject to enforcement by DIR;

- 1.25.3. Requiring proof of public works contractor registration before accepting a bid or awarding a contract;
  - 1.25.4. Posting jobsite notices, if applicable; and
  - 1.25.5. Reporting any suspected public works violations to the Labor Commissioner.
- 1.26. Help ensure Contractor compliance with any storm water management and C# drainage requirements that is approved by the District and applicable to the Project, at no additional cost to the District.
  - 1.27. 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.
  - 1.28. 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.
  - 1.29. 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.
  - 1.30. To the extent requested by District or Program Manager, 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.
  - 1.31. Provide and maintain a management presence on the Project site(s).
  - 1.32. Construction Manager is **NOT** responsible for:
    - 1.32.1. Ground contamination or hazardous material analysis.

- 1.32.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
- 1.32.3. 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.
- 1.32.4. Historical significance report.
- 1.32.5. Soils investigation.
- 1.32.6. Geotechnical hazard report.
- 1.32.7. Topographic survey, including utility locating services.

## 2. GENERAL PROJECT SERVICES

- 2.1. **General:** Monitor and advise the District and Program Manager as to all material developments on the Project. Construction Manager shall implement with District approval reporting methods developed by Program Manager 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 developed by Program Manager. 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 and Program Manager.
- 2.3. **Cost Controls:** Implement methods to track construction expenditures on the Project using methods developed by Program Manager. The Construction Manager shall generate monthly reports to the District and Program Manager reflecting this information.
- 2.4. **Communications to Board:** The Construction Manager may be required to attend Board meetings on occasion and to provide updates.

## 3. PRECONSTRUCTION PHASE

- 3.1. To the extent requested by District or Program Manager, assist with providing 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. To the extent requested by District or Program Manager, 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. To the extent requested by District or Program Manager, 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 and move in occupancy planning, where required.
- 3.6. To the extent requested by District or Program Manager, assist with monitoring and reporting 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 Bond Program. Assist in identifying and obtaining all necessary approvals.
- 3.7. To the extent requested by District or Program Manager, assist with: soliciting proposals, evaluating, and recommending 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. To the extent requested by District or Program Manager, 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 Program Manager regarding the schedule for the Project.
- 3.15. To the extent requested by District or Program Manager, 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. To the extent requested by District or Program Manager, provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phases as directed by District or Program Manager; coordinate with design professional(s) and Program Manager and reconcile cost estimates with design professional(s)' estimates.



- 3.17. To the extent requested by District or Program Manager, advise 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. Assist the program team in final review and in tailoring 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 updates for the Project.
- 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 Program Manager and Design Team 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. To the extent requested by District or Program Manager, 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. To the extent requested by District or Program Manager, 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 confer and 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, Program 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 Program 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 Program 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 Program 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 and Program Manager 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 Project.
- 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 Program 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 Program 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.

**10. PROJECT CLOSEOUT**

To the extent requested by District or Program Manager, the Construction Manager shall assist District, Architect, and Program Manager as necessary to ensure all information and documentation necessary for Project closeout with the DSA is complete and the Project is timely closed out with DSA. This includes but is not limited to reports from independent consultants, inspectors, testing laboratories, and corresponding or required DSA forms.

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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 Program Manager:

1. 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.
2. 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.
3. Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District.
4. 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.
5. Performing technical inspection and testing.
6. Providing other services not otherwise included in this Agreement and not customarily furnished in accordance with the generally accepted scope of construction management practice.

The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services.

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**EXHIBIT "C"**

**SCHEDULE OF WORK**

[TO BE INSERTED]

**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 to or from the Project location (any requested travel reimbursements must be approved by District prior to travel), and reimbursables.
2. The amount of compensation shall be the amount set forth in the Agreement not to exceed the total for the Project, and not to exceed the Project amount. No compensation will be paid or due, without advance written approval of the District.

**Method of Payment of Basic Services**

1. If Construction Manager works on multiple sites, Construction Manager shall track costs and submit invoices separately for each Project site.
2. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.
3. Construction Manager shall submit these invoices in triplicate to the District via the District's authorized representative.
4. 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.
5. Upon receipt and approval of Construction Manager's invoices, except as provided for in section 6, below, the District agrees to make payments of undisputed amounts within sixty (60) days of receipt of the invoice.

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a. **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.

b. **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.

c. **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.

d. **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, program manager, and project inspector. | .8 hours  |
| Review COR 8; review scope of same and plans and specifications for appropriateness of same; prepare draft change order and language for same.                              | .7 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 |

6. 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.

**Hourly Rates for Extra Services**

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 – 20</u> | <u>Hourly Rate – 20</u> |
|--------------------------------|-------------------------|-------------------------|
| Principal In Charge:           | \$                      | \$                      |
| Project Director:              | \$                      | \$                      |
| Construction Manager:          | \$                      | \$                      |
| Project Manager:               | \$                      | \$                      |
| Asst. Construction<br>Manager: | \$                      | \$                      |
| Asst. Project Manager          | \$                      | \$                      |
| Other:                         | \$                      | \$                      |
| Other:                         | \$                      | \$                      |

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 "E"**

**CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between the Fremont Union High School District ("District") and \_\_\_\_\_ ("Construction Manager" or "Bidder") for the provision of construction management services for \_\_\_\_\_ ("Contract" or "Project").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Construction Manager currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Construction Manager.

Construction Manager certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that applies):

\_\_\_\_\_ The Construction Manager has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Construction Manager's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Construction Manager's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Construction Manager has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Construction Manager's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Construction Manager certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Construction Manager who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Construction Manager's employees and its subcontractors' employees is

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

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

\_\_\_\_\_ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Construction Manager's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with

District pupils regardless of whether they are designated as employees or acting as independent contractors of the Construction Manager.

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

Proper Name  
of Construction Manager : \_\_\_\_\_

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**ATTACHMENT B**

**IRAN CONTRACTING ACT CERTIFICATION**  
**(Public Contract Code sections 2200-2208)**

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 DOCUMENT

**ATTACHMENT C**  
**NON-COLLUSION DECLARATION**  
**(Public Contract Code Section 7106)**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing  
[Title] [Name of Firm]  
bid/proposal ("bid").

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_,  
[Date]  
at \_\_\_\_\_, \_\_\_\_\_.  
[City] [State]

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

Proper Name of Bidder: \_\_\_\_\_

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

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

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

END OF DOCUMENT