



ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

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ADDENDUM 2 FOR RFQ/P No. 2122-CM01

Construction Management Services for Construction Projects

Pursuant to the terms of RFQ/P No. 2122-CM01 (Construction Management Services for Construction Projects) you are hereby notified that the following dates on the deadline schedule have changed:

- Interviews of Short-Listed Firms will take place Monday, April 4, 2022
- Notification to Selected Firms will take place Tuesday, April 11, 2022
- Recommendation to the Board will take place Thursday, April 14, 2022

All other terms, conditions and deadlines as set forth in the RFP remain in place and unmodified.

Listed below is the "Tentative Timeline" which outlines pertinent dates of which firms responding to this solicitation should make themselves aware.

RFQ/P RESPONSE SCHEDULE SUMMARY:

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

DATE	EVENT	TIME DEADLINE
March 2, 2022	Release and advertisement of RFQ/P #2122-CM01.	
March 8, 2022	Pre-Proposal Meeting	11:00:00 a.m.
March 10, 2022		10:00:00 a.m.
March 14, 2022	Deadline for submission of written questions to District concerning RFQ/P #2122-CM01.	2:00:00 p.m.
March 23, 2022	Deadline for all submissions in response to RFQ/P #2122-CM01.	2:00:00 p.m.
March 25, 2022	Release of short-listed firms selected to respond to Request for Qualifications ("RFQ/P").	2:00:00 p.m.
Week of March 28, 2018	Interviews of short-listed firms.	9:00:00 am – 5:00:00pm
April 4, 2022		
April 1, 2022	Notification to selected Firms	
April 11, 2022		
April 14, 2022	Recommendation to the Board	5:30:00 p.m.

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Andrés Quintero, President · Minh Pham, Vice-President
Corina Herrera-Loera, Clerk · Ernesto Bejarano, Member · Linda Chavez, Member

Below are responses to questions presented by the designated deadline of March 14, 2022.

Q & A

- Q. Tab 4 asks for relevant K–12 project experience. Would the District accept relevant K-14 experience as well?
- A. *Yes, that will be acceptable.***
- Q. Has the shade structure for Sheppard Middle School been submitted to DSA. If not, will an architect be responsible for this, or will the shade structure vendor be responsible?
- A. *Shade structures have been submitted to DSA.***
- Q. Will the District submit the monument signs to DSA for approval? If so, is there an architect involved?
- A. *Monument signs are not under the DSA requirement for approval per the IR A22 Bulletin from DSA. All signs will be under 8'.***
- Q. Has an IOR been selected?
- A. *IOR has not been selected but will be prior to the start of the project.***
- Q. Tab 6 states to provide your firm's flat fee (if proposed) for the Project. Without a detailed a schedule, it's difficult to determine the level of effort required. We plan to submit hourly billing rates only. Please advise if acceptable.
- A. *This is acceptable.***
- Q. Exhibit A: Is the intent for the Construction Manager is to complete these projects this summer?
- A. *The intent is to complete these projects this summer.***
- Q. RFP Section III. Statement of Qualifications, C. SOQ Content Requirements, 1. – Cover Letter, bullet 5 must include the following statement - Along with the included Statement, will the district allow markups to the Agreement language for consideration by the district?
- A. *No markups will be allowed to the Agreement language.***
- Q. Question: When is the Construction Management Services Agreement expected to be available for review? Our legal department will need enough time to review the agreement prior to the RFQ/P submission date of March 23, 2022.
- A. *Sample agreement is included in the Addendum.***
- Q. B., "SOQs may not exceed twenty (20) pages, excluding table of contents, tabs, and appendices". - Question: Does the 20-page limit mean "20 single sided or 10 double sided pages", or does it mean "20 double sided pages"?
- A. *20 single sided pages.***

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- Q. C., "SOG Content Requirements, 4. Tab 4 Narrative of Relevant K-12 Project Experience and References, asks for a minimum of five K-12 educational projects completed by the firm within the last 10 years".
- i. Would the District consider construction management/project experience by key team members, prior to joining the firm, to be utilized instead of only firm projects?
- A. Experience will be considered by key team members.**
- Q. ii. Would the District consider subconsultant firm construction management/project experience be accepted as a part of the five required projects?
- A. Subconsultant experience will be considered for work subconsultant will be performing.**
- Q. iii. Please confirm if item i. and ii. above Are acceptable, that section "IV. Selection Criteria, A. Evaluation" will allow equally scoring for the key team members/subconsultant projects?
- A. Yes.**
- Q. Exhibit A, Alum Rock USD Project Descriptions. - Will the District issue all the listed projects to one Construction Management firm?
- A. More than one firm will be utilized for summer work.**
- Q. How many Construction Management firms will be selected for future projects?
- A. All qualified teams will be placed in pool for future work.**

Changes to EXHIBIT A of the proposal are attached for your review.

Documents titled Professional Services Agreement with Exhibit A are attached per Appendix "A" of the proposal:

*Appendix "A" - is a copy of the District's Professional Services Agreement for Construction Management Services and exhibits thereto ("Agreement"), describing the Project scope in greater detail as well as detailing legal terms. **Note:** The successful respondent will be expected to execute the Agreement. Any requested changes to the Agreement must be submitted with the Statement of Qualifications and may be a material term in selection of the successful respondent. Appendix "A" to be provided TBD.*

The Evaluation Selection Criteria is also attached to this Addendum for your review.

Please submit a signed copy of this addendum with your RFQ/P response.

Company Name: _____

Signature: _____

Print Name: _____

Date: _____

Hilaria Bauer, Ph.D., Superintendent

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EXHIBIT A
Pages 14 & 15 of
the Proposal
RGQ/P No. 2122-
CM01

EXHIBIT A

ALUM ROCK UNION SCHOOL DISTRICT PROJECT DESCRIPTIONS

Adelante Dual Language Academy – Adelante I – Replace monument sign, repair/replace asphalt paving, restripe, repair/replace play surface, ~~provide and install~~ **oversee and coordinate installation of** shade structure.

Construction Budget: \$285,000

Adelante II TK-8 School – Replace monument sign and install new fencing.

Construction Budget: \$89,000

George Middle School – Replace monument sign, repair/replace asphalt paving, restripe, provide, ~~provide and install~~ **oversee and coordinate installation of** shade structure.

Construction Budget: \$199,000

Renaissance at Fischer – Replace monument sign, repair/replace asphalt paving, ~~provide and install~~ **oversee and coordinate installation of** shade structure.

Construction Budget: \$110,000

Renaissance at Mathson – Replace monument sign, repair/replace asphalt paving, restripe, ~~provide and install~~ **oversee and coordinate installation of** shade structure.

Construction Budget: \$493,000

McCollam Elementary – Replace monument sign.

Construction Budget: \$19,000

Sheppard Middle School – Replace monument sign, repair/replace asphalt paving, restripe, ~~provide and install~~ **oversee and coordinate installation of** shade structure.

Construction Budget: \$234,000

Ocala STEAM Academy – Replace monument sign.

Construction Budget: \$9,000

Russo McEntee Academy – Replace monument sign and repair/replace asphalt paving.

Construction Budget: \$77,000

Aptitud Community Academy at Goss – Replace monument sign, ~~install new fencing, provide and install~~ **oversee and coordinate installation of** shade structure.

Construction Budget: \$212,000

Cassell Elementary – Install new fencing

Construction Budget: \$72,000

San Antonio Elementary – Repair/ replace play surface, ~~provide and install~~ **remove and replace asphalt at shade structure, oversee and coordinate installation of shade structure.**

Construction Budget: \$101,000

Construction Budget: \$1,900,000

Construction Budgets do not include Change Order Contingency.

**AGREEMENT FOR
CONSTRUCTION
MANAGEMENT SERVICES**

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

ALUM ROCK UNION SCHOOL DISTRICT

WITH

FOR

_____ **PROJECT**

_____, **2022**

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of _____, 202_, between the Alum Rock Union School District, a California public school district ("District"), and _____ ("CM") (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, as indicated herein, without changing in any way the remaining component(s) or this Agreement. The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). CM shall invoice for each component separately and District shall compensate CM 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 District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
 - 1.1.3 **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by District's construction Contractor on a Conforming Set.
 - 1.1.4 **Board:** 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 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 a 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, CM and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of 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 CM.
- 1.1.11 **Contractor:** One or more licensed and registered contractors under contract with District for construction of all or a portion of the Project.
- 1.1.12 **Design Team:** The Architect(s) that 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 District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** The Alum Rock Union School District.
- 1.1.15 **District's Representative:** The individual identified herein that is authorized to act on District's behalf with respect to the Project. The initial District's Representative shall be **Kolvira Chheng, Assistant Superintendent of Business Services**. District may change District's Representative by notice as set forth herein.
- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursables not included in CM's fee.
- 1.1.18 **Fee:** CM's Fee is defined in Article 7 and payable as set forth in **Exhibit D**.
- 1.1.19 **Program:** The District's Measures J and I Bonds Program.

- 1.1.20 **Project(s):** The projects identified in the District's Bond Measure I Program.
- 1.1.21 **Program Manager:** Any program manager hired to perform program management services for District, including all Consultant(s) to the Program Manager.
- 1.1.22 **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.
- 1.1.23 **Record Drawings:** A final set of drawings prepared by the Architect incorporating all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.24 **Service(s):** All labor, materials, supervision, services, tasks, and work that CM 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. Term

- 2.1 **Term:** This Agreement shall become effective on _____, 20____, and, except as otherwise provided herein, will continue in effect until _____, 20____.

ARTICLE 3. Scope, Responsibilities and Services of CM

- 3.1 **Scope:** CM shall provide the Services described herein and under **Exhibit A** for the Project.
- 3.2 **Standard of Care:** CM, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom CM is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. District's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that CM has complied, nor in any way relieve CM of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.
- 3.3 **Coordination:** In the performance of CM's services under this Agreement, CM 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

District's Design Team, the Project Inspector, and the Program Manager.

- 3.4 **Other Consultants:** If CM employs sub-consultant(s), CM shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 3.5 **CM's as District Representative:** CM will act as District's agent to render the Services and furnish the work as described in **Exhibit A**, commencing with the receipt of a written Notice to Proceed signed by District Representative. CM's services will be completed in accordance with the schedule attached as **Exhibit C**. During the Project's Construction Phase, District may require that the Contractors submit all notices and communication relating to the Project directly to CM.
- 3.6 **Review of District's Facilities Master Plan:** CM will review District's Facilities Master Plan for District and other written materials District makes available by District to CM to understand fully the nature, extent and intent of the Facilities Plan and the Project.
- 3.7 **Review of Measures J and I:** CM will review Measures J and I and other written materials made available by District to CM that relate to Measures J and I to fully understand the extent of funding available to implement District's Master Facilities Plan for District, the anticipated schedule for issuance of Bonds under Measures J and I relative to the anticipated design, bidding and construction of projects.
- 3.8 **Expansion of Work based on Additional Funds:** Should the Board decide to expand the scope of the Program and/or supplement the Construction Budget based upon availability of additional funds, CM agrees to perform the additional scope of work under the fee and cost terms of this Agreement.
- 3.9 **Conflicts of Interest Prohibited:**
 - 3.9.1 CM understands that District officials and employees are prohibited from involvement in decisions in which they may have a financial interest pursuant to Government Code sections 1090 and 87100 et seq., and certifies that it does not know of any facts indicating that any District official or employee has an ownership or other financial interest, direct or indirect, in this Agreement. Further, CM hereby certifies that no current District official or employee of District, and no one who has been a District official or employee of District within the past two years has participated in bidding, selling or promoting this Agreement. CM understands that in addition to the remedies available at law, that any failure to provide an accurate certification or any violation of this provision shall make the Agreement voidable by District.
 - 3.9.2 CM shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by District in connection with any project covered by this Agreement: Design Professional, IORs or Test/Inspection.

If CM identifies potential Design Professionals, Project Inspectors or Test/Inspection services in connection with a project, CM shall affirmatively and unequivocally represent and warrant to District that neither CM nor any person who holds equity interest in CM's organization is a former or current holder of any equity interest in the firm identified or has any financial interest in the firm identified. District reserves the sole discretion to waive this subsection's requirements on a case-by-case basis.

ARTICLE 4. CM Staff

4.1 District selected CM to perform the Services because of CM's skills and expertise of key personnel.

4.2 CM agrees that the following key personnel in CM's firm shall be associated with the Project and perform the Services in the following capacities:

Principal In Charge: _____

Project Director: _____

Construction Manager: _____

Project Manager: _____

Sr. Project Manager: _____

Estimator: _____

Assistant Construction Manager: _____

Assistant Project Manager: _____

Scheduler: _____

Other: _____

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

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

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

4.5 CM represents that CM has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or

degree with the performance of Services required under this Agreement. CM agrees further that no person having any such interest shall be employed by CM.

ARTICLE 5. Schedule of Work

CM shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit A** so as to proceed with and complete the Services in compliance with the schedule attached as **Exhibit C**. Time is of the essence and failure of CM to perform work on time as specified in this Agreement is a material breach of this Agreement.

ARTICLE 6. Construction Cost Budget

- 6.1 CM shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget per Project with the Architect and District throughout the design process and construction.
- 6.2 The Construction Cost Budget shall be the total cost to District of all Project elements the Design Team designs or specifies.
- 6.3 CM shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit A**, so that the Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with District's written approval. CM shall notify District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. CM, however, shall not perform or be responsible for any design or architectural services.
- 6.4 Evaluations of District's Construction Budget, and CM's preliminary and detailed cost estimates, represent CM's best judgment as a professional familiar with the construction industry.
- 6.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval of the plans and specifications, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to District and the date on which proposals are sought.
- 6.6 District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 6.7 occur:
 - 6.6.1 Instruct Design Team to revise the drawings and specifications (in scope and quality as approved by District) to bring the Project within the Construction Cost Budget for re-bidding. CM will perform cost estimation,

value engineering, constructability reviews, and/or bidding support at no additional cost to District.

- 6.6.2 Authorize CM to re-negotiate and/or re-bid the Project, when appropriate, within three (3) months' time of receipt of bids, at no additional cost to District (exclusive of District and other agencies' review time).
 - 6.6.3 Give CM written approval of an agreed adjustment to the Construction Cost Budget.
 - 6.6.4 Terminate this Agreement if the Project is abandoned by District without further obligation by either party.
- 6.7 If any of the following events occur, District may exercise any one, or any combination, of the actions set forth in Article 6.6 above:
- 6.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or
 - 6.7.2 The combined total of base bid and all additive alternates equal or exceed ten percent (10%) of the Construction Cost Budget; or
 - 6.7.3 The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in Bay Area, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

ARTICLE 7. Fee and Method of Payment for Basic Services

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

ARTICLE 8. Payment for Extra Services

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

ARTICLE 9. Ownership of Data

- 9.1 All of CM's work product prepared or generated in connection with this Agreement is District's property.
- 9.2 Upon District's request, CM shall make available to District all work product completed or in progress at the time of such a request.
- 9.3 After Project completion or, if District exercises the right to terminate this Agreement pursuant to the Agreement terms, CM shall assemble and deliver to District within five (5) calendar days of District's written request, all of CM's work product of the generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, all CM generated documents, copies of all documents CM exchanged with or copied to or from all other Project participants, and all closeout documents. CM shall be index and organize appropriately said Project records for easy use by District personnel.
- 9.4 All Project records are District property, whether or not those records are in CM'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 CM or its Consultants prepare or cause to be prepared pursuant to this Agreement. Notwithstanding the preceding sentence, CM and its Consultants shall be entitled to reuse work product generated under this Agreement.

ARTICLE 10. Termination of Contract

- 10.1 District's Request for Assurances: If District at any time reasonably believes CM is or may be in default under this Agreement, District may in its sole discretion notify CM of this fact and request written assurances from CM of performance of Services and a written plan from CM to remedy any potential default under the terms this Agreement that District may advise CM of in writing. CM shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets District's requirements in its request for assurances. CM's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 10.2 District's Termination of CM for Cause: If CM fails to perform CM's duties to District's satisfaction, or if CM fails to fulfill in a timely and professional manner CM's material obligations under this Agreement, or if CM violates any of the material terms or provisions of this Agreement, District shall have the right to terminate this Agreement effective immediately upon District giving CM written notice thereof. In the event of a termination pursuant to this subdivision, CM 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 District's costs because of CM's actions, errors, or omissions.
- 10.3 District's Termination of CM for Convenience: District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, CM 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 CM if there is a termination for convenience.
- 10.4 CM's Termination of Agreement for Cause: CM has the right to terminate this Agreement if 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 CM. Such termination shall be effective after receipt of written notice from CM to District.
- 10.5 Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 10.6 Ceasing Services upon Termination: If, at any time in the progress of performing Services under this Agreement, District determines that CM's Services should be terminated, CM, upon District's written notice of such termination, shall immediately cease providing Services, except to transfer files as directed by District. District shall pay CM

only the fee associated with the Services provided and approved by District since the last paid invoice and up to the notice of termination.

- 10.7 Project Suspension: If the Project is suspended by District for more than one hundred and eighty (180) consecutive days, CM shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and CM's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of CM's Services. CM shall make every effort to maintain the same Project personnel after suspension.

ARTICLE 11. Indemnity

- 11.1 To the furthest extent permitted by California law, CM shall indemnify and hold free and harmless 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 CM, its officers, employees, subcontractors, consultants, or agents, including without limitation, the payment of all consequential damages. CM shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at CM's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.
- 11.2 CM shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. CM's obligation pursuant to Article 11.1 includes reimbursing District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to, legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. CM's obligation to indemnify shall not be restricted to insurance proceeds.
- 11.3 District may withhold from amounts owing to CM any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CM.

ARTICLE 12. Conduct on Project Site and Fingerprinting

- 12.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 12.2 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.

12.3 Pursuant to Education Code section 45125.1, the Fingerprinting/Criminal Background Investigation Certification (**Exhibit F**) must be completed and attached to this Agreement prior to CM's performing of any portion of the Services. CM expressly acknowledges that the following conditions shall apply to any work performed by CM and/or CM's employees on a school site:

12.3.1 All site visits shall be arranged through District;

12.3.2 CM and CM's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;

12.3.3 CM and/or CM's employees shall check in with the school office each day immediately upon arriving at the school site;

12.3.4 Once at such location, CM and CM's employees shall not change locations without contacting District;

12.3.5 CM and CM's employees shall not use student restroom facilities; and

12.3.6 If CM and CM's employees find themselves alone with a student, CM and CM's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

12.4 For all workers on District property, CM shall comply with all applicable federal, state and local laws regarding COVID-19. Further, except to the extent the Order provides otherwise, CM and CM's personnel shall continue to comply with all other applicable terms in the CDPH's State Public Health Officer Orders.

12.5 **COVID-19 Vaccination / Testing Requirements.**

Vaccination Requirements

CM shall fill out, sign, date and submit to District the COVID-19 Vaccination Certification Form (**Exhibit G**).

According to the August 11, 2021, California Department of Public Health ("CDPH") State Public Health Officer Order ("Order"), a person is "fully vaccinated" for COVID-19 if two weeks or more have passed since they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more have passed since they received a single-dose vaccine (Johnson and Johnson[J&J]/Janssen).

Pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards, PM/CM shall only accept the following as proof of vaccination:

(a) COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card which includes name of person vaccinated, type of vaccine

provided and date last dose administered);

(b) a photo of a Vaccination Record Card as a separate document;

(c) a photo of a Vaccination Record Card stored on a phone or electronic device;

(d) documentation of COVID-19 vaccination from a health care provider;

(e) digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader name, date of birth, vaccine dates and vaccine type; or

(f) documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.

In the absence of knowledge to the contrary, CM may accept the documentation presented in (a) through (f) above as valid.

CM shall have a plan in place for tracking verified CM personnel vaccination status. Records of vaccination verification must be made available, upon request, to the local health jurisdiction for purposes of case investigation.

CM personnel, including any and all tiers of consultant, subcontractor, supplier, and any other personnel entering the Project site(s), who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

Weekly Testing Requirements

CM shall ensure that CM personnel, including any and all tiers of consultant, subcontractor, supplier, and any other worker entering the Project site(s), who are unvaccinated or who are not fully vaccinated are required to undergo diagnostic screening testing, as specified below:

(a) CM personnel may be tested with either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

(b) Unvaccinated or not fully vaccinated CM personnel must also observe all other infection control requirements, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, do not waive this requirement for testing.

CM shall have a plan in place for tracking test results and conducting workplace contact tracing, and must report results to local public health departments, if applicable.

ARTICLE 13. Responsibilities of District

- 13.1 District shall examine the documents submitted by CM and shall render decisions so as to avoid unreasonable delay in the process of CM's Services.
- 13.2 District shall provide to CM as complete information as is available to District regarding District's Project requirements.
- 13.3 District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between District and design professional(s).
- 13.4 Unless the contract documents require that Contractor provide any of the following, District shall, in a timely manner, and with CM'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 CM's and/or the Design Team's duties to recommend or provide same.
- 13.5 District, its representatives, and consultants shall communicate with the Contractor either directly or through CM.
- 13.6 District shall designate an officer, employee and/or other authorized representatives to act on District's behalf with respect to the Project. District's Project representative shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

ARTICLE 14. Liability of District

- 14.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 14.2 CM shall pay to District any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of CM in its performance of its Services.
- 14.3 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 CM, or by its employees, even though such equipment be furnished or loaned to CM by District.
- 14.4 CM hereby waives any and all claim(s) for recovery from District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. CM 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 CM's insurance company on District's behalf.

ARTICLE 15. Insurance

- 15.1 CM shall procure, prior to commencement of Services, and will maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CM, their agents, representatives, employees and sub-consultant(s). CM's liabilities, including but not limited to, CM's indemnity or defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and CM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by District, subject to its sole discretion, as a material breach of contract.
- 15.2 **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
- 15.2.1 **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
- 15.2.2 **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.
- 15.2.3 **Workers' Compensation.** Statutory limits required by the State of California. For all of CM's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, CM shall keep in full force and effect, a Workers' Compensation policy. CM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 15.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease. For all of CM's employees who are subject to this Agreement, CM shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of Two million dollars (\$2,000,000) per occurrence. CM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected

officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

- 15.2.5 **Professional Liability.** This insurance shall cover CM and its sub-consultant(s), if any, for one million dollars (\$1,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus three 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.
- 15.3 District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 15.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by District. At the option of District, either:
 - 15.4.1 District can accept the higher deductible;
 - 15.4.2 CM's insurer shall reduce or eliminate such deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers; or
 - 15.4.3 CM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 15.5 **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - 15.5.1 All policies except for the worker's compensation, employer's liability and professional liability insurance policy shall be written on an occurrence form.
 - 15.5.2 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 CM; Instruments of Service and completed operations of CM; premises owned, occupied or used by CM; or automobiles owned, leased, hired or borrowed by CM. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. All endorsements shall waive any right to subrogation against any of the Additional Insureds.
 - 15.5.3 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.

- 15.5.4 CM shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If CM fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due CM under the Agreement.
 - 15.5.5 CM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 15.5.6 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.
 - 15.5.7 CM's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of CM's insurance and shall not contribute with it.
 - 15.5.8 CM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 - 15.5.9 CM shall require all subconsultants to maintain the level of insurance CM deems appropriate with respect to the consultant's scope of the Work unless otherwise indicated in the Agreement. CM shall cause the subconsultants to furnish proof thereof to District within ten (10) days of District's request. Should CM not require subconsultants to provide the same level of insurance as is required of CM, as provided in this Agreement, CM is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
 - 15.5.10 If CM normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, CM hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 15.6 **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. CM shall inform District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of District, District may either:
- 15.6.1 Accept the lower rating; or

- 15.6.2 Require CM to procure insurance from another insurer.
- 15.7 **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, but no later than three (3) calendar after the Notice of Award, CM shall furnish District with:
 - 15.7.1 Certificates of insurance showing maintenance of the required insurance coverage;
 - 15.7.2 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 District before work commences.
- 15.8 **Copy of Insurance Policy(ies):** Upon District's request, CM will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

ARTICLE 16. Nondiscrimination

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

ARTICLE 17. Covenant Against Contingent Fees

CM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CM, 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 CM, 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, 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 18. Entire Agreement/Modification

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

ARTICLE 19. Non-Assignment of Agreement

This Agreement is intended to secure CM's specialized services. CM may not assign, transfer, delegate or sublet any interest therein without District's

prior written consent. Any assignment, transfer, delegation or sublease without District's prior written consent shall be considered null and void.

ARTICLE 20. Law, Venue

20.1 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.

20.2 To the fullest extent permitted by California law, 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 21. Dispute Resolution

21.1 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.

21.2 If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, CM shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to CM's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time CM submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

21.3 Notwithstanding any disputes, claims or other disagreements between CM and District, CM shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

ARTICLE 22. Tolling of Claims

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

ARTICLE 23. 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 24. Employment Status

- 24.1 CM shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall 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 CM performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by CM shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 24.2 CM understands and agrees that CM'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.
- 24.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that CM or any employee of CM 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 CM which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 24.4 Should a relevant taxing authority determine a liability for past services performed by CM for District, upon notification of such fact by District, CM shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to CM under this Agreement (again, offsetting any amounts already paid by CM which can be applied as a credit against that liability).
- 24.5 A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, CM shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine CM is an employee for any other purpose, then CM agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined CM was not an employee.
- 24.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

ARTICLE 25. Warranty of CM

- 25.1 CM warrants that CM is properly licensed and/or certified under the laws and regulations of the State of California to provide the Services

that it has herein agreed to perform. CM further warrants that all of the work CM performs under this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. CM also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of Santa Clara County, California.

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

25.3 To the extent that the work performed under this contract is subject to labor compliance and enforcement by the DIR, CM 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, including all applicable prevailing wage requirements.

ARTICLE 26. Cost Disclosure - Documents and Written Reports

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

ARTICLE 27. 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:

Alum Rock Union School District
2930 Gay Avenue
San Jose, CA 95127
ATTN: Kolvira Chheng
Assistant Superintendent of
Business Services
EMAIL: kolvira.chheng@arUSD.org

CM:

ATTN: _____
EMAIL: _____

With a Copy to:
Dannis Woliver Kelley
200 California Street #400
San Francisco, CA 94111
ATTN: Deidree Sakai, Esq.

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.

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

ARTICLE 28. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, 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 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, CM, before it executes the Agreement, shall provide to 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 CM's good faith efforts to meet these goals.

ARTICLE 29. District's Right to Audit

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

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

ARTICLE 30. Other Provisions

- 30.1 CM shall be responsible for the cost of construction change orders caused directly by CM's willful misconduct or negligent acts, errors or omissions. Without limiting CM's liability for indirect or consequential cost impacts, the direct costs for which CM shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared Construction Documents. These amounts shall be paid by CM to District or District may withhold those costs from amounts due or to become due to CM.
- 30.2 Neither 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 CM shall remain liable to District in accordance with this Agreement for all damages to District caused by CM's failure to perform any of the Services furnished under this Agreement to the standard of care of CM 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 District.
- 30.3 CM shall share, credit, or reimburse District fifty percent (50%) of the amount of any tax deduction and/or credit CM receives for District Projects under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D ("Section 179D"). CM shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction. CM shall notify District in writing of the Section 179D tax deduction within 30 days of when CM receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.
- 30.4 Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 30.5 The individual executing this Agreement on behalf of CM warrants and represents that she/he is authorized to execute this Agreement and bind CM to all terms hereof.
- 30.6 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

ARTICLE 31. Exhibits.

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

[SIGNATURES ON THE FOLLOWING PAGE]

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

ALUM ROCK UNION SCHOOL DISTRICT **[CM]**

Date: _____, 202_

By: _____

Title: _____

Date: _____, 202_

By: _____

Title: _____

EXHIBIT A

EXHIBIT A

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

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EXHIBIT A

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager ("CM") shall provide professional services necessary for completing the following:

1. BASIC SERVICES

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Monitor and advise 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, if applicable.
- 1.3. Be the focal point of all communication to and from construction Contractor(s).
- 1.4. Implement methods to budget and track all expenditures on the Project. CM shall generate monthly reports to District reflecting this information.
- 1.5. Prepare methods to track and report on schedule status for the Project. CM shall develop master schedules and milestone schedules for the Project, and shall report on same each month to District.
- 1.6. CM shall work cooperatively with District to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 1.7. CM shall work cooperatively with the Design Team and District to:
 - 1.7.1. Define and schedule the Project.
 - 1.7.2. Provide Services that will result in the development of an overall Project strategy with regard to phases, construction schedules, timing, budget, prequalification, contractor and consultant procurement, construction materials, building systems, and equipment.
- 1.8. Organize an initial planning workshop to create baseline parameters for the Project(s), to define overall building requirements, Project(s) strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, CM will develop an implementation plan that identifies the various phases of the Project(s), coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, Project Budget and Project schedule as well as identification of critical events and milestone activities.
- 1.9. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, of materials, preliminary budgets, and possible economies.

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

- 1.17. 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 District and/or its representative for inclusion in the overall Project documentation.
- 1.18. Coordinate transmittal of documents to regulatory agencies for review and advise District of potential problems in completion of such reviews.
- 1.19. Prepare a bidders list for each bid package for approval by District.
- 1.20. Assistance with administration of the prequalification process;
- 1.21. Assistance in development of documents necessary or appropriate for bidding the Construction Contract for the Project;
- 1.22. Development of bidders' interest in a Project, including but not limited to telephonic and correspondence campaigns and preparing and placing notices and advertisements to solicit bids for the Project(s);
- 1.23. Assistance in conducting job walks and bidders' conferences and the maintenance and preparation of minutes of job walks or bidder's conferences;
- 1.24. Assistance in responding to bidders' inquiries and the development of bid addenda as necessary or appropriate;
- 1.25. Review of bid proposals for responsiveness to bid requirements, evaluation of bidder responsibility, and analysis of completed questionnaires;
- 1.26. Interviewing possible bidders, references, bonding agents and financial institutions;
- 1.27. Preparing recommendations for District for pre-qualification of prospective bidders;
- 1.28. Tabulations and evaluation of bid results along with a recommendation for award of the Construction Contract for a Project;
- 1.29. Assisting with resolution of any appeals;
- 1.30. For Lease Leaseback projects, coordinate Request for Qualifications/Proposals ("RFP") process and assist in negotiation of agreements, including, Site Lease and Facilities Lease with guaranteed maximum price; and
- 1.31. Preparation of agenda items for Board approval.
- 1.32. Provide documentation, pictures, and other information and assistance to District for District's use on a website for public access to show Project status.
- 1.33. 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"), and State of California laws, regulations and rules. CM shall comply with, and ensure that all Consultants, all Contractors and their subcontractors and design professionals and their subconsultants comply with, any storm water

pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by District and applicable to the Project, at no additional cost to District.

- 1.34. Cooperate and implement District's reporting to and interface with the Labor Commissioner's Office, including but not limited to:
 - 1.34.1. 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;
 - 1.34.2. Requiring proof of public works contractor registration before accepting a bid or awarding a contract; and
 - 1.34.3. Reporting any suspected public works violations to the Labor Commissioner.
- 1.35. CM shall maintain accurate Project cost accounting records maintained with generally accepted accounting principles ("GAAP") on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. CM shall provide accounting records to District on a monthly basis, or as reasonably requested by District. CM shall afford District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to District.
- 1.36. Assist Architect with the preparation of an estimate of costs for all addenda and coordinate with Architect to submit the estimate to 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.
- 1.37. Provide and maintain a management presence on the Project site.
- 1.38. CM is **NOT** responsible for:
 - 1.38.1. Ground contamination or hazardous material analysis.
 - 1.38.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 1.38.3. Compliance with the California Environmental Quality Act ("CEQA"), except that CM agrees to coordinate its work with that of any CEQA consultants retained by 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.
 - 1.38.4. Historical significance report.
 - 1.38.5. Soils investigation.
 - 1.38.6. Geotechnical hazard report.

1.38.7. Topographic survey, including utility locating services.

2. GENERAL PROJECT SERVICES

- 2.1 **General:** Monitor and advise District and Program Manager as to all material developments on the Project. CM shall implement with District approval reporting methods developed by Program Manager for schedules, cost and budget status. CM shall be the focal point of all communication to and from construction Contractor and shall be copied on all communications between District and its Design Team.
- 2.2 **Scheduling:** Track and report on schedule status for Project. CM 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 District and Program Manager.
- 2.3 **Cost Controls:** Implement methods to track construction expenditures on the Project using methods developed by Program Manager. CM shall generate monthly reports to District reflecting this information.

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 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 District and Design Team shall be through CM. CM shall receive simultaneous copies of all written communications from 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 District. Advise District regarding owner-supplied equipment and other potential cost-saving measures.
- 3.3 To the extent requested by District or Program Manager, assist 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 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 District on status of design and state approval in relation to the schedule for the Project. Attend meetings to coordinate design efforts for the Project. Assist in identifying and obtaining all necessary approvals.
- 3.7 To the extent requested by District or Program Manager, assist with soliciting proposals, evaluate, and recommend other professional consultants needed to complete the Project.
- 3.8 Implement District-approved implementation procedures, forms and reporting requirements for the Project that involve all members of the Project team, including District, Design Team, and construction Contractor.
- 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 District's design guidelines and design professional(s). CM will prepare a value engineering report documenting the results of the evaluation and make recommendations to 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. CM shall provide to 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. CM shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to District. CM shall also make recommendations to 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 District, in coordination with design professional(s) and advise and consult with District. CM 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 District 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, CM will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 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; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 3.17 Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 3.18 Fully coordinate all changes requested by any utility company needed to complete the Project.
- 3.19 Review and tailor District's front end documents for the Project. Recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of the liquidated damages.

4. PRE-BID PHASE

- 4.1 Develop master schedules and construction schedules for the Project. Develop budget(s) for the Project based on construction cost estimates.
- 4.2 In consultation with 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 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 CM with respect to: (a) pre-qualification of potential contractors; (b) combination of two or more of the Projects for design,

bidding and/or construction purposes; and (c) alternative construction delivery approaches for the Project, including consideration of a single general contractor and/or Lease Leaseback approach to construction for each 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 Team and District as required. Coordinate with Design Team 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 District on compliance of bidders with District requirements and bid requirements. Report and recommend to District after review and evaluation. Make recommendations to 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 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 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 District. CM expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.
- 6.6 Coordinate work of the construction Contractor and effectively manage the Project to achieve 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 District, the affected construction Contractor, and Design Team.
- 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. CM 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, CM 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. CM shall develop and monitor an effective system of construction cost control for the Project. CM 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. CM 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 District when Contractor fails to fulfill contractual requirements.
- 6.13 CM may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. CM shall provide to the design professional(s) and 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 CM, Project Manager nor District shall be responsible for or have any liability for Contractor's failure to provide, comply with, or enforce said safety programs.
- 6.16 Implement quality control program, including As-Built Drawings accuracy. Coordinate and evaluate Contractor's recovery schedules.
- 6.17 Record the progress of the Project by a log.
- 6.18 Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide District timely notice of any potential increase in costs in excess of approved budgets provided to CM.
- 6.19 Negotiate Contractor's proposals and review change orders prepared by Design Team, with Design Team's input as needed, for approval by District.
- 6.20 Evaluate and process change order requests. Make recommendations to 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 District in coordinating the services of special consultants and testing laboratories on the Project.
- 6.22 In conjunction with the Design Team, 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 Team, make recommendations to 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, CM 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, CM shall, with the input of Design Team:
- 6.24.1 Notify District of any non-conforming work observed by CM;
- 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 District, Program Manager and Design Team, 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 Team 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 CM 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 Projects.
- 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 CM shall observe the construction Contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. CM shall maintain records of start-up and testing as provided by the construction Contractor and shall ensure 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, CM, 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. CM shall provide this list to the construction Contractor. CM shall coordinate construction Contractor's performance and completion of punch list work. CM shall review, with the Architect and District, the completed punch list work. CM shall ensure that, with input of the Architect, the completed punch list work complies with applicable provisions of the construction Contract.
- 7.3 CM shall determine, with the Architect and District, when the Project or designated portions thereof are complete.
- 7.4 CM shall conduct, with the Architect and District, final inspections of the Project or designated portions thereof. CM shall notify District of final completion.
- 7.5 CM shall consult with the Architect and District and shall determine when the Project and the construction Contractor's work are finally completed. CM shall assist with the issuance of a Certificate of Final Completion, and shall provide to District a written recommendation regarding payment to the Contractor.
- 7.6 CM shall coordinate close-out procedures, including personnel training. Advise District staff on systems operations, training and close-out of Project.
- 7.7 CM 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 CM shall coordinate operational safety reviews with District post occupancy and manage corrective work as necessary.
- 7.9 CM shall ensure that all building commissioning requirements have been fulfilled in a timely manner through District commissioning agents.
- 7.10 CM shall obtain occupancy permits (where required), coordinate final testing, documentation, and regulatory inspections. Prepare occupancy plan report.
- 7.11 CM shall prepare final accounting reports.

8. FINAL DOCUMENTS

CM shall review and monitor all As-Built Drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall secure and transmit to District and Program Manager those documents and all required guarantees, keys, manuals, record drawings, and daily logs. CM shall also forward all documents and plans to 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

CM 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, CM 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.

[END OF EXHIBIT]

EXHIBIT B

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by CM if needed and requested by District:

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

Format and Content of Invoices

CM acknowledges that District requires CM's invoices to include detailed explanations of the Services performed. For example, a six hour charge for the entire day is unacceptable and will not be payable. A more detailed explanation describing specific tasks is required.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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. CM shall bill in quarter-hour increments for all Extra Services.

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

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%).

[END OF EXHIBIT]

EXHIBIT C
SCHEDULE OF WORK

[To be completed/inserted]

[END OF EXHIBIT]

EXHIBIT D
FEE SCHEDULE

Compensation

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

Method of Payment of Basic Services

1. CM shall submit monthly invoices for the portion of the overall fee reflecting the services performed and costs incurred for each respective month. In no event shall the total payments exceed CM's fee set forth in Article 7 this Agreement except as authorized under **Exhibit B**.
2. CM shall submit these invoices in duplicate to District via District's authorized representative.
3. CM shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.
4. Upon receipt and approval of CM's invoices, District agrees to make payments on all undisputed amounts after the funds are available to District and approved by the County Office of Education but no later than thirty (30) days from receipt of the invoice.
5. District may withhold or deduct from amounts otherwise due CM hereunder if CM fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after CM has fully cured such failure of performance, less costs, damages or losses sustained by District resulting therefrom.

[END OF EXHIBIT]

EXHIBIT E

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

PROJECT/CONTRACT NO.: _____ between the Alum
Rock Union School District ("District") and _____
_____ ("CM") ("Contract" or "Project").

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 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.** 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.** 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 proposal.*

CERTIFICATION:

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

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

[END OF EXHIBIT]

EXHIBIT F

FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION

The undersigned does hereby certify to District that I am a representative of CM entering into this Agreement with District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of CM.

CM certifies that it has taken at least one of the following actions (check all that apply):

- The Work of the Agreement is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Agreement shall come in contact with District pupils or (ii) if CM's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to CM under the Agreement.

- CM, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all CM's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When CM performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that CM's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

A complete and accurate list of CM's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto as ATTACHMENT "A."

- CM is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all CM's employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and hereby agrees to District's preparation and submission of fingerprints such that the California Department of Justice may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that CM has not been convicted of a felony as defined in Government Code Section 45122.1.

CM'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 CM.

FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION

ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

Date: _____

Name of CM: _____

Signature: _____

Print Name: _____

Title: _____

[END OF EXHIBIT]

EXHIBIT G

COVID-19 VACCINATION STATUS/TESTING CERTIFICATION

COVID-19 VACCINATION/TESTING CERTIFICATION

Construction Manager ("CM"): _____

The California Department of Public Health ("CDPH") requires, pursuant to its August 11, 2021, Order ("Order"), that all public and private schools serving students in transitional kindergarten through grade twelve, unless exempt, are required to verify the vaccine status of all K-12 school workers, effective October 15, 2021. Further, pursuant to the Order, all such schools are required to verify that all workers are either fully vaccinated or undergo weekly diagnostic testing.

In light of these CDPH requirements, CM certifies that the following entity: _____ has verified that CM personnel providing services at District's Project site(s):

- Have all been fully vaccinated in accordance with the CDPH Order.
- Have not all been fully vaccinated, but those who are unvaccinated or not fully vaccinated undergo weekly diagnostic testing in accordance with the CDPH Order.
- Have not been fully vaccinated and do not undergo weekly diagnostic testing in accordance with the CDPH Order.

CM understands that the District's Project site will need to comply with the CDPH Order's COVID-19 requirements for fully vaccinated personnel or unvaccinated personnel. Personnel who are not fully vaccinated or decline to state their vaccination status will be treated as unvaccinated, and CM will comply with the CDPH Order, and all applicable state and local laws for vaccinated and unvaccinated personnel.

CERTIFICATION

I, _____,

certify that I am CM's _____ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein.

Date: _____

Name of Firm: _____

Signature: _____

Print Name: _____

Title: _____

[END OF EXHIBIT]

Evaluation Criteria

Evaluation Criteria

The following criteria, without limitation, will be used by the District for evaluation:

- **Response:** Clarity of submittal and responsiveness to this RFQ. (5 points)
- **Background and Project Team:** Qualifications, education and relevant experience of the key team members. (25 points)
- **Project History & References:** Demonstration of experience in comparable projects. Extensive experience with DSA, CEQA and Title 24 Requirements. Quality of previous projects and record of budget and schedule performance. (25 points)
- **Project Approach:** The techniques, procedures and tools used in the other similar projects applicable to District project(s). (25 points)
- **Savings:** Firm's experience with cost-saving features and past performance. (25 points)
- **Post Construction Service:** Firm's history in maintaining and on-going support of similar system. (10 points)
- **Fee proposal:** Overhead and profit markup proposal. (30 points)
- **Additional Benefits & Added Value:** Additional benefits resulting from ECM implementation and respondent's added value elements. (35 points)

Maximum Point Valuation: 200