



Hayward Unified School District
Purchasing Department
24411 Amador Street, Hayward, CA 94544

**RFQ # 24.138 CONSTRUCTION MANAGEMENT SERVICES
(MEASURE I)**

Addendum # 01 - 3/14/24

(Total of 46 pages including attachments)

CHANGES AND ADDITIONS:

- REMOVE: "RFQ 24.138 CONSTRUCTION MANAGEMENT SERVICES (MEASURE I) Document(s) in its entirety"**
- REPLACE WITH: "RFQ 24.138 CONSTRUCTION MANAGEMENT SERVICES (MEASURE I) DATED 3/14/24"**

Hayward Unified School District

24411 AMADOR STREET
HAYWARD CA, 94544
510.784.2600



RFQ 24.139
REQUEST FOR QUALIFICATIONS
FOR ARCHITECTURAL & ENGINEERING SERVICES
(MEASURE I 2024)
3/14/24 REVISED

RFQ DUE DATE AND TIME:

Thursday, March 28, 2024 at 3:00PM

HAYWARD UNIFIED SCHOOL DISTRICT
Purchasing Department
24411 Amador Street
Hayward, California 94544
Phone: 510-784-2600 x72620

REQUEST FOR QUALIFICATIONS

Notice is hereby given that the governing board ("Board") of the **Hayward Unified School District** ("District") will receive RFQ's for the following project:

24.138 Construction Management Services (Measure I 2024) ("Project" or "Contract")

Proposers must submit sealed Request for Qualification (RFQs) on or before, **March 28, 2024, at 3:00 p.m.**, at the District Administration/ Purchasing Department, located at 24411 Amador St, Hayward, California, 94544 at or after which time the District will open the RFQ and publicly read them aloud. Any claim by a Proposer of error in its submittal must be made in compliance with Public Contract Code § 5100, et seq. Any RFQ that is submitted after this time shall be non-responsive and returned to the Proposer. The District is not responsible for submittals of RFQs that are received after the deadline noted above.

The Project consists of: The **Hayward Unified School District** ("**District**") is requesting submission of statements of qualifications ("**Response**") from qualified persons, firms, partnerships, corporations, associations, or professional organizations ("**Firm(s)**") to establish a pool of qualified consultants to perform Construction Management Services as needed and directed by District ("**Project(s)**").

All submittals of RFQs shall follow the submittal instructions provided in Article 2 of the RFQ. Each submittal of an RFQ must conform and be responsive to all pertinent Contract Documents, including, but not limited to, the Request for Qualifications.

Contract Documents are available on the Districts website at <https://www.husd.us/purchasing>

The District's Board reserves the right to reject any and all submittals of RFQs and/or waive any irregularity in any RFQs received. Unless otherwise required by law, no Proposer may withdraw its RFQs for ninety (90) days after the date of the bid opening.

All proposers' questions must be submitted in writing via email to Purchasing Manager @ vcoronado@husd.k12.ca.us no later than **5:00 p.m., on Wednesday, March 20, 2024.**

The District is planning to engage in major modernization projects, new construction, site development, planning, and growth projects, should the District's local school Bond Measure I pass on March 5, 2024.

Date of Advertisement #1: 3/8/24

Date of Advertisement #2: 3/15/24

HAYWARD UNIFIED SCHOOL DISTRICT
24411 AMADOR STREET, HAYWARD, CA 94544

March 8, 2024

REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR
CONSTRUCTION MANAGEMENT SERVICES

The Hayward Unified School District (“**District**”) is requesting submission of statements of qualifications (together, “**Response(s)**”) from qualified firms, partnerships, corporations, associations, persons, or professional organizations (“**Firm(s)**”) to perform construction management services, as needed and directed by the District and directed by District (“**Project(s)**”).

District is authorized by California Government Code section 4525, et seq., to contract with and employ any persons for the furnishing of architecture, landscape architecture, engineering, environmental services, land surveying, and construction management through a fair, competitive selection process, which District is utilizing.

This request is not a formal request for bids or an offer by District to contract with any firm responding to this Request for Statements of Qualifications (“**RFQ**”). District intends to choose multiple firms that respond to this RFQ to include in its pool of qualified firms. Inclusion in this pool and any award of a contract will be subject to District’s Governing Board’s approval. **All Firms that have currently or in the past provided construction management services to District MUST still respond to this RFQ.**

Firms that intend to submit a Response must satisfy the following requirements:

- Be insured;
- Either be a licensed architect, engineer, or contractor; and
- Firm can be located anywhere, but it must maintain a staffed office within 75 miles of District.

Questions. Questions regarding this RFQ must be submitted in writing and directed only to **Victoria Coronado**, vcoronado@husd.k12.ca.us. All questions must be submitted by **5:00 PM on Wednesday, March 20, 2024**. District may respond to questions presented via addenda to this RFQ. **FIRMS MUST NOT CONTACT ANY OTHER DISTRICT PERSONNEL DIRECTLY WITH INQUIRIES REGARDING THIS RFQ.**

Responses. Interested Firms are invited to submit a sealed response to the District Administration/Purchasing Department, located at 24411 Amador St. Hayward, California 94544 in accordance with this RFQ no later than **3:00 PM on Thursday, March 28, 2024**. The District reserves the right to not accept late Responses.

Thank you for your interest in working with the Hayward Unified School District.

1. **General Information.**

- 1.1. **General.** District invites qualified Firms to submit a Response related to its ability to provide the Services, as more fully indicated herein. Firms must be appropriately licensed to perform the Services and have extensive experience with the Office of Public School Construction (“**OPSC**”), California Building Standards Code (Title 24, California Code of Regulations), Department of Toxic Substances Control, and the Division of the State Architect (“**DSA**”). Firms must have extensive experience in the management of the construction of public school facilities in addition to being a public school district representative, working with architects, inspectors, contractors and other school facility related consultants, and establishing project scope and project budgets.
- 1.2. **Scope of Services.** The selected Firm must be prepared to perform some, or all, of the construction management services, as directed by the District, as described in the Form of Agreement for Construction Management Services (“**Agreement**”) attached hereto as **Attachment A (“Services”)**. **Note:** District reserves the right to enter into an Agreement on a project-by-project basis, or to enter into one overall, master Agreement with a selected firm, but only authorizing the performance of Services based on “Project Authorization(s)” tied to that master Agreement, each consistent with the form of Agreement attached as **Attachment A**.

2. **Firms’ Responses.** Each Firm’s Response must be concise, well organized, and demonstrate Firm’s qualifications. It must be consecutively numbered on each page and must include the following information, using the outline structure and numbering system reflected below, except as may be otherwise directed by District via written addenda. Firm’s Response must **be no longer than Fifty (50) pages**, inclusive of résumés, forms, and pictures. Two hard copies and one e-copy of the RFQ must be submitted.

- 2.1. **Cover Letter / Letter of Interest.** A dated Letter of Interest must be submitted, including the legal name of Firm(s), address, telephone, and the name, title, and signature of the person(s) authorized to submit the Response on behalf of Firm.
- 2.2. **Table of Contents.** A table of contents of the material contained in the Response should follow the Letter of Interest.
- 2.3. **History / Structure.** Provide a brief history of Firm, and, if a joint venture, of each participating entity. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted.
- 2.4. **Financial Resources.** Provide a statement of Firm’s financial resources, certifying the correctness of that information.
- 2.5. **Insurance.** Please provide a statement demonstrating that Firm can meet the insurance requirements as set forth in Exhibit E of the Agreement.
- 2.6. **Education.** Indicate ongoing commitment to professional education of staff, total number of permanent employees, and any other data that may assist District in understanding Firm’s qualifications and expertise.
- 2.7. **QA / QC.** Describe Firm’s approach to quality control / assurance procedures, including coordination of design, construction, testing and inspection disciplines.
- 2.8. **Proposed Personnel / Firm Team.**
- 2.8.1. Include resumes of key personnel who would be performing Services for District.

Specifically, define the role of each person and outline the person's individual experience and responsibilities. Indicate personnel who will serve as primary contact(s) for District. Indicate Firm's and personnel's availability to provide the Services, and list all applicable professional registration certification and/or license designations and numbers for all professional team members that are currently active in the State of California.

- 2.8.2. Provide a schedule of subconsultants, that are likely to be used by Firm to perform Services for District, including their applicable professional registration certification and/or license designations and numbers that are currently active in the State of California.
- 2.9. **Services Offered.** Provide a comprehensive description of the services offered by Firm, including the following:
 - 2.9.1. Describe how your Firm approaches modernization projects compared to new construction projects.
 - 2.9.2. Describe the Firm's experience with performing constructability reviews and value engineering and construction cost reduction measures, including how Firm intends to assist District in meeting established Project budgets and in prioritizing Project construction to meet the budget.
 - 2.9.3. Describe how Firm intends to assist District in meeting established Project budgets and in prioritizing Project construction to meet budget. Describe Firm's approach to preserving, and maximizing return, on expended bond funds.
 - 2.9.4. Discuss Firm's ability to meet construction schedules for projects with very tight timetables, Firm's schedule management procedures, and how Firm has successfully handled potential and actual delays both for the contract documents and for field changes. Identify established methods and approaches utilized by Firm to successfully meet completion deadlines, and provide examples demonstrating effective use of stated methods and approaches.
 - 2.9.5. Describe Firm's experience managing construction projects, and bond programs, within political environments including facilitation of community involvement.
 - 2.9.6. Describe Firm's experience with various state agencies including DSA, local fire authorities, local public works departments, California Geological Survey, California Department of Education, Office of Public School Construction and the State Allocation Board. Specifically, describe your experience and strict compliance with the DSA inspector card process and final closeout
 - 2.9.7. **RFIs / PCOs.** Discuss Firm's ability and process for timely reviewing and responding to requests for information and proposed change orders.
- 2.10. **Claims.** Provide a statement of **ALL** claim(s) filed against Firm in the past five (5) years. Briefly indicate the nature of the claim and the resolution, if any, of the claim(s). For the claim(s) identified herein, identify which claims proceeded to mediation, settlement meetings or similar dispute resolution proceedings, and describe the outcome of the mediation or other proceeding.
- 2.11. **References.** Include letters of reference or testimonials, if available. Firm should limit letters of reference or testimonials to no more than ten (10).
- 2.12. **Conflicts of Interest.** Provide a statement of any recent, current, or anticipated contractual

obligations that relate in any way to similar work for District construction or bond projects, or any other work with District that may have a potential to conflict with Firm's ability to provide the Services described herein. **Except for the Services specifically contracted for under its Agreement(s) with District (if any), a Firm cannot submit, propose, bid, contract, subcontract, consult, or have any other economic interests in the project to which Firm may provide those Services.**

- 2.13. **Firm's Current Work Commitments.** Specify the projected workload of Firm and describe if any future commitment may impact Firm's ability to complete the Services as required herein.
- 2.14. **Past Projects.** Identify **ALL** K-14 projects performed by Firm in the past five (5) years. Limit your response to no more than the ten (10) **MOST RECENT** projects. If Firm has provided its services to school districts at multiple project sites as part of an overall construction program, please indicate that and Firm may adjust its response as the Firm wishes from up to 10 "programs," to up to 10 "projects," or a combination of these. Include the following information for each project (or program, as applicable):
- 2.14.1. Name of project and district,
 - 2.14.2. Name of project architect,
 - 2.14.3. Scope of projects, description of services provided,
 - 2.14.4. Contact person and telephone number at district,
 - 2.14.5. Firm person in charge of each project,
 - 2.14.6. Original construction budget and final construction cost, and
- 2.15. **Additional Data.** Provide additional information about the Firm as it may relate to Firm's Response.
- 2.16. **Compensation.** Provide Firm's proposed fee for performance of the Services. State if the proposed fee would be based on an hourly rate, an hourly rate with a maximum "not to exceed" for each Project, a percentage of the construction costs, a combination of these structures, or another structure.
- 2.16.1. **Fee Schedule.** Provide a current fee schedule for the types of services the Firm offers which will be used for the performance of, if approved by the District, hourly work for Services or for Extra Services. If referencing basic services costs, include typical staffing expectations, professional fee schedules, and variations that the District could expect for specific types of projects, if applicable.
 - 2.16.2. **Billing Practices.** Please also provide detailed information on your billing practices (i.e. lump sum, percentage-based, other), including reimbursable cost categories and hourly billing rates by position for additional services.
 - 2.16.2.1. **Alternative Pricing.** The District is willing to entertain alternate pricing proposals. Please provide any proposed alternative pricing methods, if any, and identify what types of projects (modernization, new construction, etc.) that the Firm's proposed pricing method will apply to.
 - 2.16.2.2. **Additional Costs.** Identify any additional fees, costs, expenses or reimbursable fees for which Firm would be seeking compensation.
- 2.17. **Agreement Form (Attachment A).** If a Firm has any comments or objections to the Agreement, it must provide those comments or objections in its Response. The Agreement (which includes insurance and indemnification provisions) specifies the Services generally, but District reserves the right to adjust the Agreement and Services as necessary for each specific project. **PLEASE NOTE: District will not consider any substantive changes to the form of Agreement if they are not**

submitted at or before the time Firm's Response is due. In addition, once District establishes the pool, District will not entertain any further revisions to the Agreement.

3. District's Evaluation / Selection Process. The District intends to select one (1) Firm but reserves the right to select multiple, that best meets the District's needs to perform the Services, or any component thereof, as described herein and the Agreement.

3.1. **Selection.** Based on its evaluation of Responses, District staff will select Firm(s) based on the following criteria, without limitation:

- 3.1.1. Experience and performance history of the Firm with similar projects
- 3.1.2. Experience and performance history of the Firm with the District
- 3.1.3. Experience and results of proposed personnel
- 3.1.4. References from clients contacted by the District
- 3.1.5. Technical capabilities and track record of their use
- 3.1.6. Overall responsiveness of the Response
- 3.1.7. Firm's pricing information

3.2. **Interviews.** From Firms who provide a Response to District, District may, at its discretion, interview some or all of those Firms. If interviews occur, Firm's proposed project manager, executive, and construction administration employee likely to work on District project(s) must attend. District may instruct Firms regarding other staff members required to attend interviews in its sole discretion.

3.3. **District Investigations.** The District may perform investigations of proposing parties that extend beyond contacting the districts identified in a Firm's Response.

3.4. **Final Determination and Award.** The District reserves the right to contract with any entity responding to this RFQ, to reject any Response as non-responsive, and not to contract with any Firm for the Services described herein. The District makes no representation that participation in the RFQ process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek Responses from or to contract with any Firm not participating in this process. District intends to make recommendations to the Board of Education and ask the Board to award contract(s).

4. Terms and Conditions.

4.1. District is not responsible for late delivery of a Response or the cost of preparing any Response. It is the responsibility of the responding Firm to ensure that the Response is submitted on time to District. Responses that are received after the deadline may not be considered.

4.2. The selected Firm(s) and each of its (their) subconsultants and/or co-venture partners, must comply with all applicable federal and California laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment and Housing Act beginning with Government code section 12900, Labor Code section 1735, and any other applicable federal and state laws and regulations hereinafter enacted, including the Federal Americans with Disabilities Act ("ADA"). Firms must be responsible for establishing and implementing an ADA program within Firm's workplace. Firms must not discriminate against any prospective or active employee based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The selected respondent must cause the above provisions to be inserted in all subcontracts for any work covered by this RFQ so that such provisions will be binding upon each subconsultant.

4.3. **Public Records.** Responses will become the property of District and subject to the California Public

Records Act, Government Code sections 7920.000 et seq. Those elements in each Response that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. District must not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. A Firm that indiscriminately identifies all or most of its response as exempt from disclosure without justification may be deemed non-responsive. In the event District is required to defend an action on a Public Records Act request for any of the contents of a response marked "Confidential," "Proprietary," or "Trade Secret," Firm agrees, by submitting a Response, to defend and indemnify District from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.

Attachment A

Form of Agreement for Construction Management Services

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
BY AND BETWEEN
HAYWARD UNIFIED SCHOOL DISTRICT AND
[INSERT NAME]**

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This Agreement for Construction Management Services ("**Agreement**") is made as of _____ 20_____, between the **Hayward Unified School District** ("**District**") and _____ ("**Consultant**") (individually a "**Party**" and collectively the "**Parties**"), for Construction Management Services ("**Project**").

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

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

Article 1. Definitions

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. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
- 1.2. **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s). The Architect is a member of the Design Team.
- 1.3. **Construction Budget (or "Project Budget"):** The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.4. **Construction Cost Budget:** A component of the Construction Budget that is the total cost to District of all elements of the Project designed or specified by the Design Team, as adjusted throughout the Preconstruction Phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Consultant, the Design Team, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 1.5. **Consultant(s):** The entity listed in the first paragraph including all sub-consultant(s), subcontractor(s), or agent(s) to the Consultant.
- 1.6. **Design Team:** The architect(s), engineer(s), and other designer(s) that the District designates as designing all or a portion of the Project, including all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.
- 1.7. **District:** The **Hayward Unified School District**.
- 1.8. **DSA:** The Division of the State Architect.
- 1.9. **Extra Services:** Extra Services are defined in **Article 6**.
- 1.10. **Fee:** The Consultant's Fee is defined herein, payable as set forth herein and in **Article 6**.
- 1.11. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Consultant is

required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary to manage the design, construction, and completion of the Project.

Article 2. Scope, Responsibilities and Services of Consultant

- 2.1. **Scope:** Consultant shall provide the Services described herein and under **Exhibit A** for the Project. The District reserves the right to change the Services of which the Parties agree may require the Consultant’s Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.
- 2.2. **Coordination:** In the performance of Consultant’s services under this Agreement, Consultant agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District’s Design Team, and the persons responsible for overseeing the District’s compliance with Labor Code and prevailing wage obligations, if any. If the Consultant employs Consultant(s), the Consultant shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of the District’s Labor Code and prevailing wage obligations, if any.
- 2.3. **Consultant’s Services:** Consultant shall act as the District’s agent to render the Services and furnish the work as described in **Exhibit A**, which will commence upon the receipt of a Notice to Proceed signed by the District representative. Consultant’s services will be completed in accordance with the schedule set forth herein.

Article 3. Consultant Staff and Subconsultants

- 3.1. The Consultant has been selected to perform the work herein because of the skills and expertise of key individuals (“**Key Personnel**”).
- 3.2. The Consultant agrees that the following Key Personnel in Consultant’s firm and Consultant’s subconsultants shall be associated with the Project in the following capacities:

Job Title:	Consultant’s Personnel/Employees:
Principal in Charge	[Insert Name]
Construction Manager	[Insert Name]
Onsite Superintendent	[Insert Name]
Onsite Construction Foreman	[Insert Name]
Project Engineer	[Insert Name]
Onsite Clerical	[Insert Name]
Subconsultant	Subconsultant’s Personnel/Employees:
[Insert Firm Name]	[Insert Name]
[Insert Firm Name]	[Insert Name]
[Insert Firm Name]	[Insert Name]

- 3.3. The Consultant shall not change any of the Key Personnel listed above without prior written approval by District, unless an individual ceases to be employed by Consultant. In all cases, whether upon initial designation or changing of Key Personnel, District shall have the right to interview and shall approve all Key Personnel.
- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Consultant shall immediately remove that person from the Project and provide a temporary replacement. Consultant shall within seven (7) days provide a permanent

replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions previously stated in this paragraph.

- 3.5. Consultant, Consultant’s employees, subconsultants, subconsultants’ employees, or any person associated with the Services shall conduct themselves in a manner appropriate for a school site. The District will not permit any (1) verbal or physical contact with neighbors, students, or faculty; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, students, or faculty or any posting of any photographs, videos, or audio recordings of any neighbors, students, or faculty on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording. District may require Consultant to permanently remove noncomplying persons from Project Site.
- 3.6. Consultant represents that the Consultant has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Consultant.

Article 4. Schedule of Services / Term

- 4.1. The Consultant shall commence Services under this Agreement upon receipt of a Notice to Proceed for the Project, and shall perform the Services diligently as described in **Exhibit A** and in accordance with the schedule set forth herein. Time is of the essence and failure of Consultant to perform Services on time as specified in this Agreement is a material breach of this Agreement.
- 4.2. **Schedule for the Project:** Consultant shall provide the Services pursuant to the following schedule. **[FILL IN AS MUCH AS POSSIBLE UPON EXECUTION, BUT IF CONSULTANT PERFORMS WORK ON MULTIPLE PROJECTS OR THE PROGRAM OVER MULTIPLE YEARS, THE PARTIES WILL UPDATE THIS PROVISION VIA AMENDMENT.]**

Phase	Date/Time **
Preconstruction Phase	____, 20__
Pre-Bid Phase	____, 20__
Bidding Phase	____, 20__
Construction Phase	____, 20__
Project Completion Phase	____, 20__

**** Date to be Completed OR days for completion based on Notice to Proceed or authorization to move to next phase.**

Article 5. Construction Cost Budget

- 5.1. The Consultant shall have responsibility to develop, review, and reconcile the Construction Cost Budget with the Design Team and the District throughout the design process and construction.
- 5.2. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s). The Construction Cost Budget does not include the compensation of the Consultant, the Project design professional(s), the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 5.3. Consultant shall work cooperatively with the Project design professional(s) during the Preconstruction Phase so that the construction cost of the work designed by the Project design

professional(s) will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Consultant shall notify the District if it believes the construction cost of the work by the Project design profession(s) will exceed the Construction Cost Budget. The Consultant, however, shall not perform or be responsible for any design or architectural services.

- 5.4. Evaluations of the District's Construction Budget, which includes the Construction Cost Budget, and preliminary and detailed cost estimates prepared by the Consultant, represent the Consultant's best judgment as a professional familiar with the construction industry.
- 5.5. If the Pre-Bid Phase of the Project has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.6. If any of the following events occur for the Project:
 - If the lowest responsive base bid or proposal received is in excess of fifteen percent (15%) of the Construction Cost Budget, or
 - If the combined total of base bid or proposal and all additive alternates come in fifteen percent (15%) or more under the Construction Cost Budget, or
 - If the Construction Cost Budget increases in phases subsequent to the Pre-Bid Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, 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, then the District, in its sole discretion, has one or a combination of the following alternatives:
 - 5.6.1. Give the Consultant written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.6.2. Authorize the Consultant to re-negotiate, where appropriate, or re-bid or re-solicit within three (3) months' time (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.6.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party.
 - 5.6.4. Instruct the Project design professional(s) to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding or re-soliciting, with Consultant's performing cost estimating, value engineering, and/or bidding and solicitation support at no additional cost to the District.
- 5.7. The Construction Cost Budget shall be reconciled throughout the Preconstruction Phase.

Article 6. Fee and Method of Payment

- 6.1. **District shall pay Consultant:**

[ONE OF THE FOLLOWING, ONLY UPON PRE-APPROVAL BY THE DISTRICT]

an amount equal to _____ dollars
(\$ _____) for all services contracted for under this Agreement and based on the Fee Schedule set forth herein.

[OR]

an amount equal to _____ percent
(_____ %) of the Construction Cost Budget for all services contracted for under this Agreement and based on the Fee Schedule set forth herein.

[OR]

on a monthly time and materials basis for which Consultant shall bill its work under this Agreement on a monthly time and materials basis in accordance with the terms set forth herein.

From _____, 20__, to _____, 20__. _____
() Months, beginning on _____, 20__.

("Fee").

- 6.2. Consultant shall submit monthly invoices on a form and in the format approved by the District. Consultant shall submit these invoices in duplicate to the District via the District's authorized representative.
- 6.3. Consultant shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants (if any).
- 6.4. Upon receipt and approval of Consultant's invoices, the District agrees to make payments on all undisputed amounts within thirty (30) days of receipt of the invoice.
- 6.5. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Consultant's error.
- 6.6. The Consultant's Fee set forth in this Agreement shall be full compensation for all of Consultant's Services incurred in the performance thereof as indicated herein, including, without limitation, overhead, administrative cost, profit, 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**. The mark-up on any approved item expenses or deliverables shall not exceed five percent (5%).
- 6.7. The Fee shall not exceed the amount set forth in this Agreement, including all billed expenses, without advance written approval of the District. The Fee shall be paid in accordance with the hourly rates as indicated below ("**Fee Schedule**").

<u>Job Title</u>	<u>Hourly Rate</u>
Principal in Charge	\$ ____
Construction Manager	\$ ____
Onsite Superintendent	\$ ____
Onsite Construction Foreman	\$ ____
Project Engineer	\$ ____
Onsite Clerical	\$ ____

6.8. **Payment for Extra Services**

- 6.8.1. District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursable fees not included in Consultant's Fee are "Extra Services." Any charges for Extra Services shall be paid by the District in accordance with the terms for payment as

set forth in this Agreement and only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.

- 6.8.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Consultant to the District for written approval before proceeding with any Extra Services.
- 6.8.3. The mark-up on any approved item of Extra Services shall not exceed five percent (5%).
- 6.8.4. The following Extra Services to this Agreement shall be performed by Consultant if needed and requested by District as indicated in the Agreement. The rates identified in the Fee Schedule include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services.
 - 6.8.4.1. Providing deliverables or other items in excess of the number indicated in **Exhibit A**. Before preparing, providing, sending, or invoicing for extra deliverables, Consultant shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit A**, so that District can procure the additional deliverables itself or direct Consultant to procure the deliverables at District's expense or on District's account at a specific vendor.
 - 6.8.4.2. Providing services as directed by the District that are not part of the Services of this Agreement.
 - 6.8.4.3. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
 - 6.8.4.4. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
 - 6.8.4.5. Providing services made necessary by the default of contractor(s), or by major defects or deficiencies in the work of the contractor, or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the Project involved.
 - 6.8.4.6. The selection, layout, procurement or specification at the District's request of movable furniture, furnishings, equipment or other articles that are not included in the Contract Documents.
 - 6.8.4.7. Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.
 - 6.8.4.8. Preparing to serve or serving as a witness in connection with any public hearing (except for a contractor's hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Consultant or where the Consultant is party thereto.

6.8.4.9. Performing technical inspection and testing.

6.8.4.10. Providing any other services not otherwise included or reasonably inferred by the terms in this Agreement or not customarily furnished in accordance with generally accepted scope of project construction management practice.

Article 7. Ownership of Data

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

Article 8. Termination of Agreement

- 8.1. **District's Right to Terminate for Cause.** If Consultant fails to perform Consultant's duties to the satisfaction of the District, or if Consultant fails to fulfill in a timely and professional manner Consultant's material obligations under this Agreement, or if Consultant violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Consultant. In the event of a termination pursuant to this subdivision, Consultant may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs, including the costs to retain a new firm in place of Consultant, because of Consultant's actions, errors, or omissions that caused the District to terminate the Consultant.
- 8.2. **District's Right to Terminate Without Cause.** District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Consultant 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 Consultant's if there is a termination for convenience.
- 8.3. **Consultant's Right to Terminate.** The Consultant has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Consultant. Such termination shall be effective after receipt of written notice from Consultant to the District.
- 8.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 8.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Consultant, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Consultant only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.
- 8.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Consultant shall be compensated for services performed prior to notice of

such suspension. When the Project is resumed, the schedule shall be adjusted and the Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Consultant's services. Upon resumption of the Project after suspension, the Consultant will take all reasonable efforts to maintain the same Project personnel.

Article 9. Indemnity

- 9.1. Consultant shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, members, and volunteers ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death ("**Claim(s)**"), but only to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Consultant, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub-consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Consultant's liability as to the active or sole negligence or willful misconduct of the District.
- 9.2. Consultant shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Consultant, its directors, officials, officers, employees, contractors, subcontractors, consultants, sub-consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. District shall have the right, within reason, to accept or reject any legal representation that Consultant proposes to defend the Indemnified Parties.

Article 10. Responsibilities of the District

- 10.1. The District shall examine the documents submitted by the Consultant and shall render decisions so as to avoid unreasonable delay in the process of the Consultant's services.
- 10.2. The District shall provide to the Consultant complete information regarding the District's requirements for the Project.
- 10.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 10.4. The District shall, in a timely manner, and with Consultant'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 Consultant's and/or the design professional(s) duties to recommend or provide same.
- 10.5. The District, its representatives, and consultants shall communicate with the contractor either directly or through the Consultant.
- 10.6. During the Construction Phase of the Project, the District may require that the contractors submit all notices and communication relating to the Project directly to the Consultant.
- 10.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be

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

Article 11. Liability of District

- 11.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 11.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Consultant in its performance hereunder, shall be paid to District by Consultant as provided for herein and/or under California law.
- 11.3. 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 Consultant, or by its employees, even though such equipment be furnished or loaned to Consultant by District.
- 11.4. The Consultant hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Consultant agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Consultant's insurance company on behalf of the District.

Article 12. Insurance

- 12.1. Consultant shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, their agents, representatives, employees and Consultant(s).
- 12.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits and shall be an occurrence-based basis unless otherwise indicated:
 - 12.2.1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 12.2.2. **Commercial Automobile Liability, Any Auto.** Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
 - 12.2.3. **Workers' Compensation Liability.** For all Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per accident for bodily injury or disease. Consultant 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.

- 12.2.4. **Employment Practices Liability.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per occurrence. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 12.2.5. **Sexual Molestation and Abuse Liability Insurance.** Two million dollars (\$2,000,000) per incident. Consultant shall procure and maintain, during the life of this Agreement, sexual molestation and abuse insurance. Consultant shall require its Consultants to procure and maintain sexual molestation and abuse insurance for all employees of Consultants. Any class of employee or employees not covered by a Consultant's insurance shall be covered by Consultant's insurance. If any class of employee or employees engaged in Services under the Agreement, on or at the Site of the Project, are not covered under the sexual molestation and abuse insurance, Consultant shall provide, or shall cause a Consultant to provide, adequate insurance coverage to cover any employee(s) not otherwise covered before any of those employee(s) commence work.
- 12.2.6. **Professional Liability.** This insurance shall cover the Consultant's liability arising from the services of Consultant with a minimum of one million dollars (\$1,000,000) per claim limit and two million dollars (\$2,000,000) aggregate limit, and subject to no more than **twenty-five thousand dollars (\$25,000) per claim deductible**, coverage to continue through completion of construction plus "tail" coverage for two (2) years thereafter. This policy can be on a claims-made basis.
- 12.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 12.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 12.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 12.5.1. The District, the Consultant, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 12.5.2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Consultant's insurance

and shall not contribute with it.

12.5.3. 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.

12.5.4. The Consultant'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.

12.5.5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

12.6. **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. Architect 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, either:

12.6.1. District can accept the lower rating;

12.6.2. Require Architect to procure insurance from another insurer.

12.7. **Verification of Coverage:** Consultant shall furnish the District with:

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

12.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

Article 13. Nondiscrimination

Consultant agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person. Consultant shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 14. Covenant Against Contingent Fees

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

Article 15. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes

the entire understanding of the parties hereto. Consultant shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Consultant specifically acknowledges that in entering this Agreement, Consultant relies solely upon the provisions contained in this Agreement and no others.

Article 16. Non-Assignment of Agreement

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

Article 17. Law, Venue

- 17.1. 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.
- 17.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 18. Alternative Dispute Resolution

If all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties. Consultant shall not rescind or stop the performance of its Services pending the outcome of any dispute.

Article 19. 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 20. Employment Status

- 20.1. Consultant shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Consultant performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 20.2. Consultant understands and agrees that the Consultant's personnel are not and will not be

eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.

- 20.3. 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 Consultant is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Consultant which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 20.4. Should a relevant taxing authority determine a liability for past services performed by Consultant for District, upon notification of such fact by District, Consultant shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Consultant under this Agreement (and offsetting any amounts already paid by Consultant which can be applied as a credit against such liability).
- 20.5. 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, Consultant shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Consultant was not an employee.
- 20.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 21. Warranty of Consultant

- 21.1. Consultant warrants that the Consultant is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 21.2. Consultant certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.
- 21.3. **Labor Code Requirements.** Consultant certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Consultant is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Consultant shall comply with all applicable provisions of the California Labor Code sections 1720-1861, without limitation, the payment of the general prevailing per diem wage rates for public work projects (including repairs and maintenance, where applicable) of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file

with the District/COE. In addition, the Consultant and each subcontractor shall comply with Sections 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Consultant or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. **Registration:** As applicable, Consultant and its subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code. **Certified Payroll Records:** Consultant and its subcontractor(s) shall keep accurate certified payroll records of employees, as applicable, and shall make them available to the District/COE immediately upon request.

Article 22. Cost Disclosure - Documents and Written Reports

Consultant 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 23. Communications / Notice

Notices and communications between the Parties may be sent to the following addresses:

District:

Hayward Unified School District
2441 Amador Street
Hayward, CA 94544
ATTN: Allan Garde, Assistant
Superintendent, Business Services
agarde@husd.k12.ca.us

Consultant:

_____, CA _____
Attn: _____

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery.

Article 24. Disabled Veteran Business Enterprise Participation

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

Article 25. Other Provisions

- 25.1. The Consultant shall be responsible for the cost of construction change orders caused directly by the Consultant's willful misconduct or negligent acts, errors or omissions. Without limiting Consultant's liability for indirect or consequential cost impacts, the direct costs for which the Consultant 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.
- 25.2. Neither the District's review, approval of, nor payment for, any of the services required under

this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Consultant shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Consultant's failure to perform any of the services furnished under this Agreement to the standard of care of the Consultant for its Services, which shall be, at a minimum, the standard of care of Consultants performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.

- 25.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 25.4. The Consultant acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Consultant may not be apprised of all facts surrounding the Project that Consultant is working on. Accordingly, Consultant shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Consultant shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Consultant receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 25.5. Consultant, and its Subconsultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 25.6. Exhibits. Any and all exhibits attached hereto are hereby incorporated by this reference and made a part of this Agreement.
- 25.7. **Fingerprinting/Certification.**
- 25.7.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement that Consultant and its subcontractors and employees will have only limited contact with pupils, the Consultant shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant.
- 25.7.2. Verification of compliance with this section and the Criminal Background Investigation Certification shall be provided in writing to the District prior to each individual's commencement of employment or participation on the Project and prior to permitting

contact with any student.

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

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

Dated: _____, 20__

Dated: _____, 20__

Hayward Unified School District

_____ [Consultant]

By: _____

By: _____

Print Name: _____

Allan Garde
Assistant Superintendent, Business Services

Print Title: _____

FORM OF AGREEMENT

EXHIBIT A
PROJECT SCOPE

**[THIS IS SAMPLE SCOPE ONLY. THE REQUIRED SCOPE OF SERVICES MUST BE
REVIEWED AND APPROVED BY THE CONSULTANT AND THE DISTRICT.]**

Consultant shall provide all services necessary for completing the following:

1. **PROGRAM LEVEL SERVICES.** In addition to the construction management services indicated herein, Consultant may be directed by the District to perform Bond program-level management services, including:
 - 1.1 **Project List.** Assist and advise the District in prioritizing, structuring and sequencing the Projects in the Program in the form of a master Project list, which shall include:
 - 1.1.1 Preliminary Project programming & scoping
 - 1.1.2 Master priorities development
 - 1.1.3 General Program strategies
 - 1.1.4 Recommendations on assignment of like scope to similar Projects
 - 1.1.5 Recommendations on organizing Projects to achieve schedule goals
 - 1.1.6 Recommendations on logical bidding structure based on industry knowledge
 - 1.1.7 Recommendations on organizing Projects to meet logistics goals (e.g., relocation requirements or restrictions)
 - 1.1.8 Advise the District regarding project delivery systems and bid packaging strategies.
 - 1.2 **Schedules.** Prepare and update as required, a master Program schedule incorporating design periods, approval periods, and construction periods for all Projects identified in the Program, and perform the following:
 - 1.2.1 Monitor and revise, as required, Project schedules relative to overall master Program schedule.
 - 1.2.2 Include significant milestones on each schedule.
 - 1.2.3 Provide monthly reports and updates to the District, including schedule projections and analysis.
 - 1.3 **Budgets.** All budgets must be in accordance with and tied to the District's accounting codes. In addition to the budget requirements indicated in the Agreement itself, Consultant shall prepare and update as required a Program Budget, Construction Budgets for each Project, and Construction Cost Budgets for each Project, which shall include:
 - 1.3.1 All anticipated expenditures
 - 1.3.2 Detailed cash flow projections
 - 1.3.3 Resource identification (bond funds and other fund sources)
 - 1.3.4 State matching grant eligibility profile by site
 - 1.3.5 Individual preliminary Project costs
 - 1.3.6 Interim housing
 - 1.3.7 Provide monthly reports and updates to the District.
 - 1.4 **Meetings.**
 - 1.4.1 Chair, conduct and take minutes of periodic meetings between District and its design professional(s). Consultant shall keep meeting minutes to document comments generated in

- these meetings, but shall not be responsible for analyzing design issues raised in said meetings.
- 1.4.2 Attend each meeting of the District's Board of Education as needed to provide updates at each meeting.
 - 1.4.3 Attend District Citizen Bond Oversight Committee meetings, planning workshops, or other specific Project-related meetings as requested and required by the District.
 - 1.4.4 Attend Site meetings during month (site bond committee(s) with site personnel, neighborhood groups, etc., related to projects including scope and other items.
- 1.5 **Regulatory Agencies.** Advise the District as to the regulatory agencies that have jurisdiction over Projects in the Program, and as to coordination with and implementation of the requirements of the regulatory agencies including, without limitation, the Division of the State Architect, the California Department of Education, the Department of Toxic Substances Control, the Department of Industrial Relations, the Office of Public School Construction, and the State Allocation Board.
- 1.6 **Existing Conditions.** Compile all District information and documentation of existing conditions including, without limitation, soils reports, topographic surveys, geotechnical reports, as-built drawings, site maps, etc.
- 1.7 **Professional Responsibility.** 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 Consultant under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Consultant. Consultant shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.
- 1.8 **Minutes.** Maintain minutes and a log of all meetings, site visits or discussions held in conjunction with the work of the Program, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Program documentation.
- 1.9 **On-Going Updates.** Monitor and advise the District as to all material developments in each Project. Consultant shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for each Project. The Consultant shall provide District administration and the Board of Trustees updates of the Program, Projects, and performance of the Consultant's Services. Additionally, Consultant shall be the focal point of all communication between District and its Design Team.
- 1.10 **Pictures.** Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 1.11 **Project Design/Programming.** Prepare and attend meetings with District administrative staff to review Project specific programming and design of each project, at each school site. Review and verify meeting minutes prepared by Architect, as necessary.
- 1.12 **On-Going Program Management Services**
- 1.12.1 Perform Program master schedule updates as necessary over the course of the Program.
 - 1.12.2 Perform Program master budget updates as necessary over the course of the Program.
 - 1.12.3 Prepare, attend and manage District meetings, as requested with District's Superintendent and Board of Trustees subcommittees.
 - 1.12.4 Perform Bond Oversight Committee support, including accounting, reporting, and attending all meetings.

- 1.12.5 Provide updates on the status of the Program at monthly Board of Trustees Meetings, and any applicable special meeting of the Board of Trustees.

1.13 **Project Logistics Services**

- 1.13.1 Develop classroom relocation maps.
- 1.13.2 Develop, assist and advise moving/relocation strategies.
- 1.13.3 Prepare and attend meetings with site administration and teachers for each phase of modernization moving, and present moving instructions and explain move day tactics.
- 1.13.4 Develop, attend and manage teacher packing orientation and instructions.
- 1.13.5 Prepare and update moving schedules.
- 1.13.6 Perform moving scope coordination.
- 1.13.7 Coordinate with moving company for pre-move scoping and final pricing adjustments.
- 1.13.8 Perform on-site coordination the day of the moves (weekends, holidays and after hours).

2. **GENERAL CONSTRUCTION MANAGEMENT SERVICES**

- 2.1 Provide overall coordination of the Project; receive transmit information to the District and Project team on general aspects of the Project, including progress reporting, design review, dispute resolution, and documentation. Communications from the contractor(s) to District and Project Design Team shall be through the Consultant. The Consultant shall receive simultaneous copies of all written communications from the District or the Project Design Team to the contractor(s).
- 2.2 Implement District-approved implementation procedures, forms, and reporting requirements for the Project that involve all members of the Project teams, including District, Design Team, and construction contractor(s).
- 2.3 Provide and maintain a management team on the Project sites.
- 2.4 **Submittal Procedures – Use of Software.** Consultant shall use the District provided Construction Management Software Application (Orion) to communicate and transmit all the Project related documents such as: RFIs, Cost Proposals, Daily Inspection Reports, Drawings, Change Orders and other District/Construction related documents

3. **PRECONSTRUCTION PHASE – CONSTRUCTION MANAGEMENT SERVICES**

- 3.1 Coordinate and conduct a project kick-off meeting for each Project, attended by the designer, District and others, as necessary, to review the scope of work, master schedule, project schedule, budget(s) and the MIS.
- 3.2 Monitor and document the designer’s compliance with the scope of work schedule, budget and coordinate the flow of information between the District, designer and others, as necessary, including meeting minutes and budget and schedule updates.
- 3.3 **Value Engineering**
 - 3.3.1 **“Value Engineering” or “VE”** as used herein shall mean an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies depicted in the Design Documents for the Project to identify equipment, materials or systems which provide for comparable function at reduced initial or life-time cost consistent with required performance, reliability, quality, and safety for similar types of school construction projects. Value Engineering shall include, without limitation, proposed changes to the Design

Documents, or other contract requirements, consistent with industry practice in the construction of public schools.

3.3.2 Value Engineering is intended to enable a general contractor to construct the Project more efficient and economically consistent with the Project's goals and objectives, without sacrificing quality.

3.3.3 The Consultant shall perform Value Engineering for the Project as set forth herein at the 100% Design Development Phase and the 50% Construction Document Phase. Consultant shall perform Value Engineering concurrently with, and without delay to, the schedule attached to the applicable **Project Authorization**.

3.3.4 General Value Engineering Requirements

3.3.4.1 In performing Value Engineering, the Consultant shall, without limitation:

3.3.4.1.1 Identify all documents necessary for Consultant to fully understand the background and decisions that have influenced the design up to Design Development.

3.3.4.1.2 Coordinate with the District and Design Team to obtain any further documentation necessary to develop this understanding.

3.3.4.1.3 Review relevant meeting minutes, master plans, District design guidelines, Design Documents and all other necessary documents related to the Project.

3.3.4.1.4 Analyze and understand key functional issues governing the Project, Project design, and Project systems to so that Consultant understands how to best approach Value Engineering.

3.3.4.1.5 Develop an understanding of the District's key criteria, objectives, and budgetary constraints with respect to the development of the Project.

3.3.4.2 The Consultant shall coordinate with the District and the Design Team as necessary in the performance of Value Engineering to ensure that the Consultant's recommendations are consistent with the District's criteria, objectives, and budgetary constraints.

3.3.4.3 The Consultant shall consider all ways to provide function within the Project at a lesser initial or life-cycle-cost representing improved value to the District without sacrificing quality.

3.3.4.4 The Consultant shall coordinate with the Design Team to ensure that any recommendation is compliant with any authority having jurisdiction over the Project, including, without limitation, DSA.

3.3.5 Value Engineering Workshop

3.3.5.1 As part of the Value Engineering for each phase, the Consultant shall organize and conduct a value engineering workshop ("**Workshop**").

3.3.5.2 The Consultant shall invite the Design Team to participate in the Workshop.

- 3.3.5.3 Prior to the Workshop, the Consultant and the Design Team will provide all participants with a preliminary list of Value Engineering items for discussion and order of magnitude estimates of cost both for design and construction.
- 3.3.5.4 The Workshop will consist of an initial Project design review related to that phase of development, research of alternative solutions, and evaluations of alternatives. The Workshop will conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.
- 3.3.5.5 The Consultant will incorporate the Workshop findings into the VE Report (as defined below) for that phase. Although the Workshop findings may include Value Engineering recommendations, Consultant shall perform its own, independent Value Engineering and provide any recommendations that are different or in addition to the Workshop findings.
- 3.3.6 VE Report
- 3.3.6.1 At the conclusion of Value Engineering for each phase of design, Consultant shall prepare a report (“**VE Report**”) and submit the VE Report to the District. Each VE Report shall include recommendations for alternatives, deletions, or amendments to the Design Documents for the Project that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies.
- 3.3.6.2 The VE Report shall contain as an attachment the Workshop findings.
- 3.3.6.3 At a minimum, Consultant shall include the following in the VE Report:
- 3.3.6.3.1 Recommendation Narrative. A narrative describing the difference between the existing Design Documents and any change to the Design Documents, the comparative advantages and disadvantages of each, to the extent applicable, a justification if an item’s function is being altered, and the effect of the change on system and facility performance.
- 3.3.6.3.2 Changes to Design Documents. A list and analysis of design criteria or specifications that must be changed if the District accepts the recommendation.
- 3.3.6.3.3 Hard Costs. A detailed estimate of the impact on Project cost of the recommendation, if accepted and implemented by the District.
- 3.3.6.3.4 Soft Costs / Maintenance Costs. A description and estimate of costs the District may incur in implementing the recommendation, including, without limitation, design costs, additional testing and inspections, and ongoing maintenance costs.
- 3.3.6.3.5 Life Cycle Costs. A prediction of any effects the proposed recommendation may have on life cycle cost.
- 3.3.6.3.6 Schedule Impacts. The effect the recommendation may have on design or construction schedules. The Consultant shall include the

amount of calendar days the Project would expected to extended or reduced based upon the change, which shall be broken down by each individual task related to that scope of work (e.g., shop drawing submittals, lead times for the procurement of materials and supplies, construction, etc.).

- 3.3.6.4 Deliverables. Consultant shall submit one (1) hard copy and one (1) electronic .pdf of the VE Report to the District. Consultant shall also submit one (1) electronic .pdf version of the VE Report to the Design Team, including the Architect.
- 3.3.7 VE Report Presentation / Meeting. After the submittal of the VE Report, and upon the District's request, the Consultant shall meet with the District to present the VE Report to the District and respond to any questions concerning the recommended changes in the VE Report.
- 3.3.8 District Review / Acceptance
- 3.3.8.1 Prior to authorizing the Design Team's performance of next phase design services, the District shall review the VE Report and decide whether to accept in writing any changes to the Design Documents.
- 3.3.8.2 Upon the District's acceptance of change(s) to the Design Documents, the Consultant shall send written direction to the Design Team to incorporate those changes into the Design Documents.
- 3.3.8.3 Upon the Design Team's notice that it has incorporated the changes into the Design Documents, Consultant shall review the modified Design Documents to ensure that the District accepted changes are incorporated into the Design Documents. If the Consultant determines that the Design Team has not incorporated into the Design Documents the changes accepted by the District, the Consultant shall advise the District in writing of the changes that were not included in the modified Design Documents, and shall assist the District in ensuring that the Design Team incorporates those modifications.
- 3.3.8.4 If the Design Team disputes or otherwise recommends the denial of any recommendation from a VE Report, Construction Manager shall meet and coordinate with the Design Team to determine the proper resolution of the dispute and shall issue a written recommendation to the District as to whether to include the recommendation into the Design Documents. The District shall thereafter issue a written decision, which will be binding on the Architect.

3.4 **Constructability Reviews**

- 3.4.1 **"Constructability Review(s)" or "CR(s)"** as used herein shall mean a systematic review of the Design Documents to ensure that the Design Documents delineate clear and feasible construction techniques, including, without limitation, making certain that the requirements of the construction work are clear, the Design Documents are coordinated, and that they assist the contractor in subcontractor bidding, construction and project administration to result in reduced impacts to the Project.
- 3.4.2 The purpose of the Constructability Review is to eliminate flaws in the Design Documents, eliminate issues that may cause other impacts, and to ultimately enable a general contractor

to bid, coordinate, schedule, sequence and construct the Project efficiently, and without time and scheduling impacts.

3.4.3 The Consultant shall perform Constructability Review for the Project as set forth herein at the 100% Design Development Phase and the 90% Construction Document Phase. Consultant shall perform Constructability Reviews concurrently with, and without delay to, the schedule attached to the applicable **Project Authorization**.

3.4.4 General Constructability Review Requirements.

3.4.4.1 In performing a Constructability Review, the Consultant shall review the Design Documents and all other necessary documents related to the Project, including, without limitation, geotechnical reports, soils reports, and hazardous materials reports, to fully understand the Project, Project scope, and the Project site and to enable the Consultant to identify issues regarding constructability and associated risks arising from the current Design Documents. The Constructability Review shall include the review of every element encountered by the general contractor during construction of the Project, including, without limitation whatsoever: material delivery, storage, site clearing, utilities work (location, interconnection, existing utilities, etc.), excavation, SWPPP requirements, field office locations, demolition, depiction of existing conditions, required equipment, required permits, coordination of the trades, verifying design elements, visual depictions, site access, traffic control, foundation of piers, etc.

3.4.4.2 In reviewing the scope of work in the Design Documents, Consultant shall identify existing conditions which may present construction problems and make recommendations regarding the project footprint, including, without limitation, Project limits within the Project site.

3.4.4.3 The Consultant shall perform a field inspection to familiarize itself with the Project site and to enable it to provide detailed comments to the Design Documents during the Constructability Review.

3.4.4.4 The Consultant shall review the project budget for the current phase of design to determine whether the Project can be constructed within budget constraints and in light of risks identified during Constructability Review.

3.4.4.5 The Consultant shall review the Design Documents and propose an appropriate Project duration, sequencing, phasing, and the separation of subcontracts into categories of the work and trade bid packages.

3.4.4.6 The Consultant shall coordinate with the District and the Design Team as necessary in the performance of the Constructability Review.

3.4.4.7 The Consultant is not responsible for providing, nor does the Consultant control, the Project design or the contents of the Design Documents. The Consultant's actions in reviewing the Project design and Design Documents, and in making any findings, recommendations, or assessments as provided herein, are advisory only to the District. The Design Team members are not third party beneficiaries of the Constructability Review and the Design Team members remains solely responsible for the contents of the Design Documents. Unless the Consultant holds a professional architect or engineering license, or unless the Constructability Review is performed by a consultant or subconsultant of Consultant who holds that type of license, the

Consultant shall be held to the standard of care for general contractors performing constructability reviews on public school construction projects within the same geographic area as the District.

3.4.5 100% Design Development Constructability Review.

3.4.5.1 The 100% Design Development Constructability Review (“**DD CR**”) shall evaluate the Design Documents and must address all items that are or will be critical to the completion of the construction of the Project.

3.4.5.2 The DD CR should address all structural, architect, mechanical, electrical, plumbing, civil, landscaping, and off-site work related to the Project as set forth in the Design Documents. The DD CR should be performed such that it provides the Design Team guidance and direction in proceeding with the final design of Construction Documents, and identify any alterations or revisions to the Design Documents, or other special considerations.

3.4.6 90% Construction Documents Constructability Review.

3.4.6.1 The 90% Construction Documents Constructability Review (“**CD CR**”) shall evaluate all Design Documents, with special attention given to drawings and specifications, to serve as a final check on those documents prior to soliciting bids and to ensure the overall constructability of the Project, subject to revisions made during back-check.

3.4.6.2 The CD CR should identify details, omissions, or design problems not previously addressed or those that materialized or that were identified during this phase of design. Although the District expects that any omissions or deficiencies at this stage should be minor, the District expects that the Consultant shall fully review the Project for constructability as set forth herein.

3.4.6.3 The DD CR should address all structural, architect, mechanical, electrical, plumbing, civil, landscaping, and off-site work related to the Project as set forth in the Design Documents. The CD CR should include a final, detailed review of the Design Documents to ensure that the drawings and specifications are not only constructable, but are coordinated and can be read as a cohesive whole.

3.4.7 Constructability Review Report.

3.4.7.1 At the conclusion of the Constructability Review for each phase of design, Consultant shall prepare a report (“**CR Report**”) and submit the CR Report to the District. Each CR shall include all findings and recommendations made as a result of the CR, and shall identify any and all risks or impacts arising from any issues identified therein.

3.4.7.2 At a minimum, Consultant shall include the following in the CR Report:

3.4.7.2.1 Issue / Risk Narrative. A narrative identifying each issue and the impact or risk associated with that issue. The narrative shall also include recommendations to avoid the risk or impact by making changes to the Design Documents.

- 3.4.7.2.2 Coordination. Identify any areas in which the drawings or specifications are not coordinated.
- 3.4.7.2.3 Changes to Design Documents. A list and analysis of design criteria or specifications that could be changed based on any identified issue.
- 3.4.7.2.4 Budget Review. A narrative describing the Consultant's review of the budget, and discussing whether the current budget for the Project is sufficient or achievable in light of the issues identified.
- 3.4.7.2.5 Planning Review. A narrative describing Consultant's proposed Project duration, sequencing, phasing, and the separation of subcontracts into categories of the work and trade bid packages.
- 3.4.8 CR Report Presentation / Meeting. After the submittal of the CR Report, and upon the District's request, the Consultant shall meet with the District to present the CR Report to the District and respond to any questions concerning any issues raised in the CR Report.
- 3.4.9 District / Architect Review.
 - 3.4.9.1 Prior to authorizing the Design Team's performance of next phase design services, the District shall issue the CR Report to the Design Team and, in its discretion, may instruct the Design Team to address the issues raised in the CR report.
 - 3.4.9.2 The Design Team shall then address any issues identified in the CR Report. Upon the Design Team's notice that it has addressed all issues, Consultant shall review the modified Design Documents to ensure that the issues in the CR have been addressed. If the Consultant determines that the Design Team has not addressed any issue identified in the CR Report, the Consultant shall advise the District in writing of the unaddressed issues and shall assist the District in ensuring that the Design Team addresses those issues.
 - 3.4.9.3 If the Design Team objects to addressing any issue raised in the CR Report, Consultant shall meet and coordinate with the Design Team to determine the proper resolution of the objection and shall issue a written recommendation to the District as to whether Architect should address the issue. The District shall thereafter issue a written decision, which will be binding on the Architect.
- 3.5 Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with the Design Team and advise and consult with District. Consultant shall review and approve contractor(s)' schedules but shall not dictate any contractor(s)' means and/or methods of performance.
- 3.6 Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 3.7 Consultant shall fully comply with the requirements related to the Construction Cost Budget and the Construction Budget indicated in the Agreement.
- 3.8 Develop and 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. The system will allow for monthly progress reports to the District regarding the schedule for the Project.

- 3.9 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, Consultant 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.
- 3.10 Attend all planning, programming and master site planning meetings relating to the Project.
- 3.11 Provide updated cost estimates for the Project at the 100% Design Development, 50% Construction Documents Phase, and the 90% or 100% Construction Document Phase as directed by District; coordinate with the Design Team and reconcile cost estimates with Design Team's estimates.
- 3.12 Advise District regarding "green building" technology and lifecycle costing, if directed by the District.

4. PRE-BID PHASE – CONSTRUCTION MANAGEMENT SERVICES

- 4.1 Review and revise the master schedule and the construction milestone schedule for the Project.
- 4.2 Work with the Design Team to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.
- 4.3 Work with the Design Team to separate the construction phase for the Project into bid packages.

5. BIDDING PHASE – CONSTRUCTION MANAGEMENT SERVICES

- 5.1 **Bidder List.** Prepare a bidders list for each bid or RFP package for approval by District. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 5.2 **Prequalification.** Assist the District in pre-qualifying bidders if prequalification is desired by the District. This service shall include the following:
 - 5.2.1 Preparation and distribution of prequalification questionnaires;
 - 5.2.2 Receiving and analyzing completed questionnaires;
 - 5.2.3 Interviewing possible bidders, bonding agents and financial institutions; and
 - 5.2.4 Preparing recommendations for the District.
- 5.3 **Advertisement.** Assist the District in preparing and placing notices and advertisements to solicit bids for the Projects.
- 5.4 Coordinate the delivery of bid documents to the bidders.
- 5.5 Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Receive questions from bidders, referring questions to the Design Team and District as required. Coordinate with the Design Team to respond to bidder questions by addenda.
- 5.6 Prepare an estimate of costs for all addenda and submit the estimate to the District for approval.

- 5.7 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.
- 5.8 **Alternative Delivery Methods.** When applicable, assist District in reviewing and negotiating final pricing with contractor(s) for alternative delivery methods (lease-leaseback, design-build, etc.), including the corresponding final Guaranteed Project Cost (“GPC” or “**Guaranteed Maximum Price**” or “GMP”), and any contingencies or allowances. Consultant shall, without limitation, perform the following tasks:
- 5.8.1 Ensure that a contractor complies with any applicable District procedures for the procurement of subcontractors;
 - 5.8.2 Review project drawings and specifications;
 - 5.8.3 Review all addenda, RFIs, DSA, and District changes to the drawings and specifications;
 - 5.8.4 Provide comprehensive evaluation of the Contractor’s GMP and represent the District in GMP negotiations, which shall include, without limitation, and to the extent applicable:
 - 5.8.4.1 Review all of the Contractor’s obligations related to the open book procurement of subcontractors pursuant to the District’s solicitation and the Contractor’s contract (“**Subcontractor Procurement Process**”), and Contractor’s obligations related to self-performed work;
 - 5.8.4.2 Review Contractor’s subcontractor bid documents to ensure completeness and determine whether Contractor properly categorized and captured scope;
 - 5.8.4.3 Review all bids submitted by subcontractors to ensure they were responsive to scope and to eliminated scope gaps or overlaps;
 - 5.8.4.4 Review and identify Contractor’s proposed self-performed work and assess reasonableness of cost and compliance with the Contractor’s obligations related to self-performed work;
 - 5.8.4.5 Ensure that Contractor adequately justified the use of “best value” selection over low bid;
 - 5.8.4.6 Ensure that Contractor properly prequalified bidders;
 - 5.8.4.7 Provide a comprehensive analysis of Contractor’s GMP to determine reasonableness and compliance with project budget;
 - 5.8.4.8 Determine and recommend percentage for any contingency or allowance;
 - 5.8.4.9 Interface with the Contractor and represent the District in the negotiation of the final GMP; and
 - 5.8.4.10 Attend and meetings as necessary with District representative(s), the Architect, and the Contractor; maintain, prepare, and distribute minutes.
- 5.9 Conduct pre-award conferences with successful bidders.

6. CONSTRUCTION PHASE – CONSTRUCTION MANAGEMENT SERVICES

- 6.1 Schedule and conduct preconstruction meetings; maintain, prepare, and distribute minutes.
- 6.2 Coordinate with District staff, contractor(s), and school site staff, and develop a construction staging plans that shall accommodate, without limitation, school site occupancy, parking, traffic, and safety.
- 6.3 Ensure that contractor(s) timely obtain all required permits, inspections, and approvals necessary to complete the Project.
- 6.4 Oversee, administer and manage the implementation of the construction contracts.

- 6.5 Comply with any storm water management program that is approved by the State and County and applicable to the Project, at no additional cost to the District.
- 6.6 Ensure that all Project contractor(s), Project sub-contractor(s) and Consultant's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 6.7 The Consultant shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with all mitigation measures required by the District's compliance with the California Environmental Quality Act ("CEQA"), any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 6.8 Assist District in resolving issues pertaining to the plans and specifications. Assist District in review and approval of requests for substitution of materials or any deviation from the plans and specifications that are made by the Design Team or contractor(s).
- 6.9 Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, to the satisfaction of the District. Consultant expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Consultant shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 6.10 Coordinate work of the construction contractor(s) and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Consultant shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 6.11 Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction contractor(s), and the Design Team.
- 6.12 Ensure that Contractor develops and maintains a Project schedule for construction of the Project. Report to the District on Contractor's compliance with Project schedules and milestones each month. Promptly notify the District of any delay to or deviation from the Project schedule or milestones. Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. Consultant shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, Consultant will take appropriate measures to secure compliance, subject to District approval.
- 6.13 Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. Consultant shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.

- 6.14 Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.
- 6.15 The Consultant may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Consultant shall provide to the Design Team and the District copies of these authorizations.
- 6.16 Develop, implement, and coordinate with assistance from the District, the Design Team, and the Project Inspector(s) ("**Inspector**"), procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts.
- 6.17 The Consultant shall review the Contractor(s)' Safety Program submittals and review and document the implementation of the Contractor(s)' Safety Program. The Consultant shall report any observed deviations from the Contractor(s)' Safety Program and applicable CalOSHA requirements to the appropriate contractor personnel and follow-up with a written safety notice to both the contractor and the District. Neither the Consultant nor the District shall be responsible for or have any liability for contractor(s) failure to provide, comply with or enforce said safety programs.
- 6.18 Record the progress of the Project by a daily log.
- 6.19 Monitor ongoing Project costs to verify that projected costs do not exceed approved master Program budget, the Construction Budget, and Construction Cost Budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Consultant.
- 6.20 Negotiate contractor's proposals and review change orders prepared by the Design Team, with the Design Team's input as needed, for approval by the Governing Board or the County Administrator of the District. Coordinate with Contractor(s) and Design Team to provide District change order documentation in standard District format. Assist District to prepare reports for the Governing Board or the County Administrator of the District on change orders and the status of all Project contingency funds. Ensure that Contractor(s) comply with the provisions of the Contract Documents in requesting the issuance of a change order.
- 6.21 Maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 6.22 Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 6.23 Assist District in selecting and retaining special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, surveyors, and testing laboratories, and coordinate their services.
- 6.24 Assist District in review and approval of uses of any Project contingency fund or allowances.
- 6.25 In conjunction with the Inspector and the Design Team, monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the Construction Documents. As appropriate, with assistance from the Design Team and the Inspector, make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the construction Contract Documents.

- 6.26 To protect District against defects in the work of the construction contractor(s), Consultant shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
- 6.26.1 Accepted industry standards;
 - 6.26.2 Applicable laws, rules, or ordinances; and the design documents and Contract Documents;
 - 6.26.3 Where the work of a Construction contractor does not conform as set forth above, Consultant shall, with the input of the Design Team:
 - 6.26.4 Notify the District of any non-conforming work observed by the Consultant;
 - 6.26.5 Reject the non-conforming work; and
 - 6.26.6 Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
- 6.27 Maintain logs of requests for information (“RFI”) from construction contractor(s), based on information obtained from the Design Team.
- 6.28 Establish and implement procedures, in collaboration with the District and the 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(s) to the Design Team for review and approval. Maintain submittal and shop drawing logs.
- 6.29 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.
- 6.30 Prepare and distribute monthly project status reports for the Project, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, status of RFIs, change orders, and submittals.
- 6.31 Maintain at the Project site and, if necessary, at the District Facilities office, a current copy of all approved documents, drawings, specifications, addenda, change orders and other modifications, and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. 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(s). At the completion of the Project, deliver all such records to District. Construction contractor(s) and the Design Team share responsibility to prepare “Record Drawings” and “As-Built” documents.
- 6.32 **Claims and Stop Payment Notices.** Consultant shall receive and track all of, and shall immediately notify the District and, if directed by the District, the District’s legal counsel, of the following items:
- 6.32.1 Preliminary notices
 - 6.32.2 Stop notices,
 - 6.32.3 Stop payment notices,
 - 6.32.4 Payment bond claims,
 - 6.32.5 Contractor disputes or claims of any type including, without limitation, claims of design errors/omissions, extra compensation, extra time, etc.

7. PROJECT COMPLETION – CONSTRUCTION MANAGEMENT SERVICES

- 7.1 The Consultant shall observe, with District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Consultant shall maintain records of start-up and testing as provided by the construction contractor(s), ensure District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative.
- 7.2 At the punch list phase of the Project or designated portions thereof, the Consultant shall, in consultation with the Architect(s), the Design Team and Inspector, ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Consultant shall provide this list to the construction contractor(s). The Consultant shall coordinate construction contractors' performance and completion of punch list work. The Consultant shall review the completed punch list work with the District, the Architect(s), the Design Team and Inspector. The Consultant shall ensure, with input from these entities, that the completed punch list work complies with applicable provisions of the Construction contract(s).
- 7.3 The Consultant shall determine, with the District, the Architect(s), the Design Team and Inspector, when the Project or designated portions thereof are complete.
- 7.4 The Consultant shall conduct, with the District, the Architect(s), the Design Team and Inspector, final inspections of the Project or designated portions thereof. The Consultant shall notify District of final completion.
- 7.5 The Consultant shall consult with the District, the Architect(s), the Design Team and Inspector and shall determine when the Project and the contractor's work are finally completed. The Consultant shall assist with the issuance of a Certificate of Final Completion and shall provide to the District a written recommendation regarding payment to the contractors.

8. FINAL DOCUMENTS – CONSTRUCTION MANAGEMENT SERVICES

- 8.1 The Consultant shall review, monitor and approve all as built drawings, maintenance and operations manuals, and shall collect all warranty/guarantee certificates, and other closeout documents to be sure all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Consultant shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.
- 8.2 The Consultant shall use its best efforts and all due diligence to ensure all Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or DSA's approval of the Project.
- 8.3 **Warranty.** The Consultant shall implement a Warranty Inspection and Warranty Work procedure that all contractors are to follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.
- 8.4 **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Pursuant to Government Code Section 8546.7, this Agreement shall be subject to examination and audit of the State Auditor as specified in the code. Consultant shall permit the District, its agent, other representatives, or an

independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

FORM OF AGREEMENT

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c).)

Date: _____
District Representative's Name and Title: _____
Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, 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 that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- _____ The installation of a physical barrier at the worksite to limit contact with pupils.
- _____ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- _____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

Date: _____
District Representative's Name and Title: _____
Signature: _____

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____
Name of Consultant or Company: _____
Signature: _____
Print Name and Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Consultant shall complete **ONLY ONE** of the following three paragraphs.

- 1. Consultant's total Fee is less than one million dollars (\$1,000,000).
OR
- 2. Consultant's total Fee is one million dollars (\$1,000,000) or more, but Consultant 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 § 2203(b), and Consultant is 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.
OR
- 3. Consultant's total Fee is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Consultant to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Agreement.**

I certify that I am duly authorized to legally bind the Consultant to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

RUSSIAN SANCTIONS CERTIFICATION

On February 21, 2022, President Biden issued Executive Order 14065 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/21/executive-order-on-blocking-property-of-certain-persons-and-prohibiting-certain-transactions-with-respect-to-continued-russian-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/>; “**Federal Order**”) imposing economic sanctions and prohibiting many activities including, but not limited to, investing in, importing to, exporting from, and contracting with, areas of Ukraine and in Russia. On March 4, 2022, California Governor Newsom issued Executive Order N-6-22 requiring state agencies to take steps to ensure any agency and entity under contract with state agencies comply with the Federal Order (<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>; “**State Order**”).

The District requires the Consultant, as a vendor with the District, to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including the orders and sanctions identified on the U.S. Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>).

If your Firm’s contract with the District has a cumulative value of \$5 million or more, you must also provide a written response to the District, in addition to this certification, indicating:

- (1) that your Firm is in compliance with the required economic sanctions of the Federal and State Orders;
- (2) the steps your Firm has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

I certify that I am duly authorized to legally bind the Consultant to this certification, and I certify that the Consultant is compliant with the Federal Order and the State Order.

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____