

**REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P) #25-B21-24  
PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES**

**NOTICE IS HEREBY GIVEN** that the Cupertino Union School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide comprehensive program and construction management (PM/CM) services for the District's Measure Z Bond Program and projects thereunder.

Respondents to this RFQ/P should mail or deliver five (5) bound copies and one (1) electronic copy on flash drive of their Statement of Qualifications ("SOQ") and Proposal (together, "Submittal"), as further described herein, labeled "Submittal for Program and Construction Management Services" to:

**CUPERTINO UNION SCHOOL DISTRICT  
10301 Vista Drive  
Facility Modernization, Door 10  
Cupertino, CA 95014  
ATTN: Dana Ino, Director, Business Operations  
RFQ/P#25-B21-24**

If you have any questions regarding this RFQ/P, please email Dana Ino, at [ino\\_dana@cusdk8.org](mailto:ino_dana@cusdk8.org) before **2:00 p.m. on March 14, 2025**. Answers will be posted by addenda on the District website by 5:00 p.m. on March 17, 2025. Bid information is available on the District's website, <https://www.cusdk8.org/departments/purchasing/bid-opportunities>

**ALL RESPONSES ARE DUE BY 2:00 P.M., ON MARCH 28, 2025.** Any Submittal received after that date and time will not be accepted and will be returned unopened. **FAXED OR EMAILED RESPONSES WILL NOT BE ACCEPTED.**

Each Submittal must conform and be responsive to the requirements set forth in this RFQ/P. The District reserves the right to waive any informalities or irregularities in received Submittals. Further, the District reserves the right to reject any and all Submittals and to negotiate contract terms with one or more Respondents for one or more of the work items. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified.

**RFQ/P RESPONSE SCHEDULE SUMMARY**

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

<b>DATE</b>	<b>EVENT</b>	<b>TIME DEADLINE</b>
February 26, 2025	Release of RFQ/P #25-B21-24.	2:00 pm
March 14, 2025	Deadline for submission of written questions to District concerning RFQ/P #25-B21-24.	2:00 pm
March 17, 2025	Answers posted by addenda	5:00 pm
March 28, 2025	RFQ/P #25-B21-24 bids due.	2:00 pm
April 3, 2025	Release of short-listed firms selected to interview.	5:00 pm
April 7-11, 2025	Interviews of short-listed firms.	TBD
April 25, 2025	Notification to Respondent(s) selected for contract negotiation.	4:00 pm

## **I. BACKGROUND**

The Cupertino Union School District ("District") comprises of 17 elementary schools, one TK-8 school, and five middle schools located throughout the city of Cupertino and portions of Sunnyvale, San Jose, Saratoga, Los Altos, and Santa Clara.

Located in the heart of Silicon Valley, CUSD consistently ranks amongst the top performing elementary (TK-8) school districts in California. The District employs approximately 1,480 Full Time Equivalent (FTE) staff and serves a highly diverse student population of approximately 13,500 that encompasses over 20 nationalities and 45 languages.

In November 2024, the voters approved Cupertino Union School District's Measure Z authorizing \$347 million to make critical renovations and improve schools and classrooms throughout the District.

Briefly stated, the District is seeking experienced and proven firms to provide program and construction management services for District's Measure Z Bond Program and projects thereunder. This RFQ/P defines the services sought and generally outlines the District's requirements.

## **II. SCOPE OF SERVICES**

Any firm selected based on this RFQ/P process must be capable of providing full program and construction management services through all phases of any and all selected projects under the Measure Z Bond Program in accordance with District's form of Agreement for Program and Construction Management Services ("Agreement"), attached hereto as **APPENDIX A**. The detailed scope of services is set forth at **Exhibit A** to District's form Agreement.

It is vital that the selected firm(s) have the ability to work cooperatively and effectively with the District's Board of Education ("Board"), the Superintendent, District staff, the various school site planning committees, and the community. The District places great emphasis on facilitation and communication with all of its stakeholders. The firm(s) retained by the District will be part of the District team and will be expected to operate in a team environment.

## **III. LIMITATIONS**

The District reserves the right to contract with any person or entity responding to this RFQ/P. The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing a response to this RFQ/P.

The Submittals and any other supporting materials submitted to the District in response to this RFQ/P, will not be returned and will become the property of the District unless portions of the material are designated as proprietary at the time of the Submittal and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, Submittals shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an agreement, or (2)

the District has rejected all Submittals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any Submittal.

#### **IV. FULL OPPORTUNITY**

No Respondent will be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status in any consideration leading to the award of the contract. The District hereby affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), and Disabled Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to submit in response to this RFQ/P.

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

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

#### **VI. SUBMITTAL REQUIREMENTS**

##### **A. Format Requirements**

Submittals shall be no more than twenty (20) single-sided pages or ten (10) double-sided pages in length. This page limitation excludes front/back covers, divider sheets/tabs, and allowed appendices. Submittals containing more than the authorized number of pages will not be considered. Material must be in 8½- x 11-inch format with no less than 11 point font size. Submittals shall include divider tabs labeled with boldface headers below; e.g. the first tab would be entitled "Cover Letter", the second tab would be entitled "Business Information", etc.

Provide five (5) bound copies, one (1) unbound copy, and one (1) electronic copy of the Submittal. The electronic copy will only be accepted via flash drive in the following programs: Microsoft Office Suite or PDF. The unbound copy shall be marked "Copy for Reproduction", and shall be formatted as follows:

- No divider sheets or tab.
- Pages with proprietary information removed.
- A cover sheet listing Respondent's name, the total number of pages, and identifying those pages that were removed due to proprietary information.

**B. Content Requirements**

**1. Cover Letter** (maximum of 2 pages)

- Provide a letter of introduction signed by an authorized officer of Respondent. If Respondent is a joint venture, duplicate the signature block and have a principal or officer also sign on behalf of each party to the joint venture.
- Include a brief description of why Respondent is well suited for, and can meet, the District's needs.
- Clearly identify the individual(s) who are authorized to speak for Respondent during the evaluation process.
- Include one (1) of the follow statements:

*"[INSERT RESPONDENT'S NAME] received a copy of the District's form of Agreement for Program and Construction Management Services ("Agreement") attached as APPENDIX A to the RFQ/P. [INSERT RESPONDENT'S NAME] has reviewed the Agreement, including the indemnity provisions and insurance provisions contained therein. If given the opportunity to contract with the District, [INSERT RESPONDENT'S NAME] has no objections to the use of the Agreement."*

OR

*"[INSERT RESPONDENT'S NAME] received a copy of the District's form of Agreement for Program and Construction Management Services ("Agreement") attached as APPENDIX A to the RFQ/P. [INSERT RESPONDENT'S NAME] has reviewed the Agreement, including the indemnity provisions and insurance provisions contained therein. If given the opportunity to contract with the District, [INSERT RESPONDENT'S NAME] has objections to the use of the Agreement, listed as follows: [IDENTIFY ALL OBJECTIONS; REFER TO APPENDIX (TAB 9) IF NEEDED]."*

- Certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.
- Certify that no official or employee of Respondent has ever been convicted of an ethics violation.
- Include verification as follows: "By virtue of submission of this Submittal, [INSERT RESPONDENT'S NAME] declares that all information provided is true and correct."

**2. Business Information**

- Company name.
- Address.

- Telephone and fax.
- Website.
- Name and email of main contact.
- Federal Tax I.D. Number.
- License Number.
- Type of organization (e.g., corporation, partnership, etc.). If a joint venture, describe the division of responsibilities between participating firms, offices (location) that would be the primary participants, and percentage interest of each firm.
- A brief description and history of the firm, including number of years the firm has been in business and date firm was established under its given name.
- Number of employees.
- Location of office where the bulk of services solicited will be performed.
- State of California certification for Respondent of Small Business or Disabled Veteran Business Enterprise status, if any.

### **3. Relevant Qualifications**

- Provide a statement demonstrating your firm's or team's ability to accomplish the scope of services in a comprehensive and thorough manner with an aggressive schedule.
- Describe your firm's approach to and experience with state and other agencies involved in the planning, design, and construction process for TK-12 and other school projects, in particular, the State Department of Education, the Division of the State Architect, and the Office of Public School Construction.
- Describe your firm's capabilities in valuating/reporting on program status to District staff, Board, and the public.
- Describe your firm's experience with design-build and lease/lease-back projects, and energy savings projects.
- Demonstrate your firm's flexibility in adapting to the changing needs and priorities of a TK-12 school district.
- Describe how your firm approaches modernization versus new construction projects.
- Describe your firm's approach to quality control/assurance procedures, including ability to monitor consultants.
- Identify established methods and approaches utilized by your firm to successfully meet completion deadlines and provide examples demonstrating effective use of stated methods and approaches.

- Provide a statement of your firm's work plan including your firm's present workload and number of current projects, and where possible, projected workload for the coming two (2) years, which should include available staff.

#### **4. Relevant Experience**

- Program Management. Provide information about prior services furnished by your firm in the last ten (10) years on a minimum of three (3) TK-12 bond programs, and list the following for each program:
  - Project name and location.
  - District name and name of contact person, title, telephone number, and email address to be contacted for a reference.
  - Main program elements.
  - Size of program.
  - Key individuals of the firm involved and their roles in the project.
  - Briefly state relevance of programs included for consideration in this RFQ/P.
- Construction and/or Project Management. Provide information about prior services furnished by your firm in the last ten (10) years on a minimum of five (5) TK-12 educational projects, and list the following for each project:
  - Project name and location.
  - District name and name of contact person, title, telephone number, and email address to be contacted for a reference.
  - Nature of project (e.g., modernization, new construction, repair).
  - Project delivery method (e.g., design-bid-build, design-build, lease-leaseback).
  - Beginning and end dates of project (i.e., Notice of Completion and DSA final certification).
  - Main project elements, including square footage.
  - Original budget, bid amount, and final amount at close-out.
  - Key individuals of the firm or subconsultants, if any, involved and their roles in the project. Specify role of firm or individual if work was not exclusively by the firm (e.g., joint venture, association).
  - Briefly state relevance of projects included for consideration in this RFQ/P.

## 5. Team Summary

- Identify key team members and roles, including subconsultants, if any, and state their qualifications relevant to the scope of services for the project(s). Identify the team leader, indicate each team member's proposed time for this program (i.e. staffing ratios such as 0.5 FTE), and clearly indicate the employer of each team member.
- Each Submittal must include evidence that the Respondent is legally permitted and properly licensed for the scope of work and to conduct business in the State of California.
- The District expects that the team shall remain intact through the duration of the project(s). If a team member must leave, the District reserves the right to approve that team member's replacement.

## 6. Litigation History

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

## 7. Form of Agreement

Any Respondent selected based on this RFQ/P process must be able to execute the District's form of Agreement for Program and Construction Management Services ("Agreement"), which is distributed with this RFQ/P as **APPENDIX A** and incorporated herein by this reference. Any objections/proposed changes to the form of agreement shall be stated in writing in the submittal. An explanation of the objection and proposed revised language shall be provided. The District will not consider any objections/proposed changes to the agreement that are raised after the deadline for submittals. Respondents must provide proposed language in redline, merely providing comments or objections is not acceptable.

## 8. Fee Proposal

The final form of the Agreement will incorporate the final scope of services and not-to-exceed fee, which shall be negotiated if a Respondent is selected for a project or projects by the District.

Accordingly, Respondents should include a general fee proposal that will enable future consideration by and negotiation with the District. The fee proposal shall include hourly billing rates by position (proposed), staffing plan (proposed), and reimbursable schedule (proposed). Proposal shall provide a Schedule of Rates ("SOR") by position, by company entity, for each position proposed by Respondent. The SOR should identify proposed reimbursables by category. Travel and related expenses shall be reimbursed in accordance with the federal government Joint Travel Regulation.

## 9. Appendix

- Agreement for Program and Construction Management Services. (**APPENDIX A.**)



- Non-Collusion Declaration. (**APPENDIX B.**)

## **VII. SELECTION PROCESS**

The District's selection committee will evaluate all submissions. Each Submittal must be complete. Incomplete Submittals will be considered nonresponsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified. Based upon the information presented in the submissions, the District may elect to conduct interviews with some or all of the Respondents. After the interviews, if any, the District will identify the Respondent(s) selected based on the criteria set forth below.

### **A. Criteria**

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

- Firm's management experience, including successful experience with similar bond programs and projects for California TK-12 school districts, including successful experience with DIR, DSA, OPSC, modernization and new construction projects; experience with presentation of reports to governing bodies; experience with project delivery systems other than design-bid-build; energy management/conservation experience; experience with information technology and telecommunications projects.
- Experience of proposed key personnel.
- Assessment of the firm's approach or methodology, including, without limitation, the firm's experience with preconstruction support, scheduling, and budgeting, and skill, creativity, and experience in problem-solving.
- Knowledge of the community and local construction market.
- An evaluation of the firm's proposed fee.
- Quality of interview responses.
- Firm's successful experience developing and implementing programs for California TK-12 public school districts, including the types of delivery methods, experience with budgeting and value engineering, and experience with scheduling and solving scheduling challenges.
- Assessment of the firm's experience and approach to drafting board policy regarding facilities and their funding.
- Assessment of the firm's experience and approach to analysis and recommendations on facilities staffing.
- Assessment of the firm's experience and approach to financial analysis that compares bond rate comparisons to construction cost escalators and how to make recommendations on schedule.

### **B. Interviews**

The District, at its sole discretion, may elect to interview selected Respondents. If a Respondent is requested to come for an interview, the key proposed program staff will be

expected to attend the interview. The interview will be an opportunity for the District to review the Submittal and any other matters the District deems relevant to its evaluation. Any objections/proposed changes to the form of Agreement attached hereto as **APPENDIX A** shall be stated in writing in the Submittal and may be the subject of inquiry at the interview. The District will not consider any objections/proposed changes to the Agreement that are raised after the deadline for Submittals.

**C. District Investigations**

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

**VIII. FINAL DETERMINATION AND AWARD**

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

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

**WE THANK YOU FOR YOUR INTEREST!**

**APPENDIX A**  
**Form of Agreement**

See attached.

**APPENDIX B**

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

The undersigned declares:

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

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

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

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

at \_\_\_\_\_, \_\_\_\_\_.  
[City] [State]

Date: \_\_\_\_\_  
Proper Name of Bidder/Proposer: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

END OF DOCUMENT

**EXHIBIT A**

**RESPONSIBILITIES AND SERVICES OF PM/CM**

- |           |   |             |
|-----------|---|-------------|
| <b>1.</b> | <b>PROGRAM MANAGEMENT SERVICES</b>      | <b>A-1</b>  |
| <b>2.</b> | <b>CONSTRUCTION MANAGEMENT SERVICES</b> | <b>A-3</b>  |
| <b>3.</b> | <b>MISCELLANEOUS SERVICES</b>           | <b>A-16</b> |

## EXHIBIT A

### RESPONSIBILITIES AND SERVICES OF PM/CM

PM/CM shall provide professional services necessary for completing the following:

#### **1. PROGRAM MANAGEMENT SERVICES**

- 1.1. **General:** Monitor and advise the District as to all material developments in the Program and each Project. Develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for the Program and each Project in the District's Program. Serve as the focal point of all communication to and from construction contractor(s). Provide Services that shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. **Strategic Planning:** Advise and assist the District on all matters related to strategic planning, including prioritization of work, program and project planning, financial issues, and other advice, as needed.
  - 1.2.1. Organize an initial planning workshop to create baseline parameters for the Program, overall building requirements, Project(s) strategy, conceptual budget, and schedule. Develop an implementation plan that will include a detailed strategy, Program Budget, and Program schedule as well as identification of critical events and milestone activities.
  - 1.2.2. At the request of the District, develop and implement a Management Information System to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Program and to assist in establishing communications between the District, third party construction manager (if any), the Design Team, developer/builder(s) and other parties involved in the Program. In developing the MIS, the PM/CM shall interview the District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system. The system will allow for monthly progress reports to the District regarding the schedule for the Program and each Project(s).
  - 1.2.3. Advise the District as to the regulatory agencies that have jurisdiction over any portion or all of the Program, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation Division of the State Architect. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
  - 1.2.4. Determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies.
- 1.3. **State Funding:** Assist District in preparing and submitting applications for State funding. Assist District in preparing and submitting required post-bid/post-agreement and project close-out documents.

- 1.4. **Program Budget Tracking, Control Reporting System:** Establish program budget tracking system to control and all budgeted, committed, and actual expenditures in the program. Provide recommendations to ensure that the District's Program is completed within the Program Budget.
  - 1.4.1. **Master Program Budget:** Develop, maintain, monitor, and advise District on the Master Program Budget and its components. The Master Program Budget shall include each Project, Program-wide costs, reserves, contingencies and shall provide for the ability to determine the financial status of the Measure Z and facilities program budgets, revised budgets, commitments, expenditures, and remaining balances in a readable format for use by the PM/CM, District staff, Board of Trustees and community stakeholders. The Board of Trustees shall make the final decisions as to all budgets.
  - 1.4.2. **Budget Tracking:** Develop, maintain, monitor, and advise District on a budget and expenditure tracking system for the overall Program, including all costs that are proposed to be funded by Measure Z and any other approved facility funding.
  - 1.4.3. **Accounting Interface:** Meet and confer with the District to ensure consistency between the budget and expenditure tracking system (i.e., accounting codes) and the District fund accounting system.
  - 1.4.4. **Invoice due diligence and processing:** Assist the District as needed in processing capital outlay program vendor invoices for payment, and performing due diligence on selected categories of invoices, achieving District turnaround of vendor payments within 30 days, as required by California law and within the cut-off timelines at the end of each fiscal year.
  - 1.4.5. **Reports to Board:** Provide regular budget/expenditure reports on the overall Program to Board of Trustees and Bond Oversight Committee as determined in consultation with District, with adequate lead times for District staff approvals prior to presentation to Board of Trustees and Bond Oversight Committee.
- 1.5. **District fund accounting budgets:** Recommend initiation and modification of specific fund accounting budgets to correspond with ongoing budget and commitment information generated within the capital outlay program on a regular basis.
- 1.6. **Cash Flow Requirements:** Prepare predictions of program cash flow requirements for use by the District's financial advisor and budget director.
- 1.7. **Scheduling:**
  - 1.7.1. Develop methods to track and report on schedule status for each Project and for the overall Program. PM/CM shall develop master schedules and milestone schedules for the Program and each Project, sequence, and schedule Project(s) for each Site, consult with Design Team, consultants, District staff, and each Site to refine and confirm Project scope and schedule, and shall report on schedule compliance and changes each month to the District. The Program schedule shall provide realistic time frames for the Program and for each Project.

- 1.7.2. Prepare methods to track and report on schedule status for each Project and for the overall Program. PM/CM shall develop master schedules and milestone schedules for each Project and shall report on same each month to the District.
- 1.8. **Program Meetings:** Assist the District in scheduling various meetings with the Program Team, Facility Committee, Citizen's Oversight Committee and Board. Chair, conduct and take minutes of periodic meetings, site visits or discussions held in conjunction with the work of the Projects. These shall be furnished to the District and/or its representative for inclusion in the overall Program documentation.
- 1.9. **Communications to Board and District Community:** The Program/Project Manager is required to regularly attend meetings of the District's Board of Education, and to provide updates at Board meetings. In addition, the PM/CM shall attend District property committee meetings, Citizen Bond Oversight Committee meetings, COC, or other Program-related meetings within the community. If requested, PM/CM shall assist the District in conducting a public information campaign to keep the community informed.
- 1.10. **Coordination:** In the performance of PM/CM's services under this Agreement, Program/Construction agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the Project Team(s). Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project(s).
- 1.11. Interface with all trade contractors to ensure that the District is provided with an acceptable Program and the best value for taxpayer dollars.
  - 1.11.1. Assist in pre-qualifying contractors if prequalification is desired required by the District and/or required by statute.
  - 1.11.2. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified developers for lease-leaseback projects or bidders, as applicable.
  - 1.11.3. Assist the District in preparing and placing notices and advertisements to solicit proposals or bids for Projects.
- 1.12. **District facilities staffing:** Assist District in interviewing, and training facilities department staff positions related to the Bond Program.
- 1.13. Assist District in completing OPSC expenditure reports, close-out, and audit procedures.
- 1.14. Assist District in preparing and providing documentation requested for District auditor.

## **2. CONSTRUCTION MANAGEMENT SERVICES**

- 2.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.



- 2.2. Monitor and advise the District as to all material developments in the Project(s). Maintain reporting systems for scope, sequencing, scheduling, budgets, and communication for the Project(s) using existing District software.
- 2.3. Be the focal point of all communication to and from construction Contractor(s).
- 2.4. Implement methods to budget and track all expenditures on the Project(s). PM/CM shall generate monthly reports to the District reflecting this information and shall maintain the District's financial reporting systems.
- 2.5. Prepare methods to track and report on schedule status for the Project(s) PM/CM shall develop master schedules and milestone schedules for the Project(s) and shall report on same each month to the District.
- 2.6. The PM/CM will be required to attend and provide updates at each Board meeting. The PM/CM shall work cooperatively with District to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 2.7. PM/CM shall work cooperatively with the Design Team and the District to:
  - 2.7.1. Define and schedule the Project(s).
  - 2.7.2. Provide Services that will result in the development of an overall Project(s) strategy with regard to phases, construction schedules, timing, budget, prequalification, contractor procurement, construction materials, building systems, and equipment.
- 2.8. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, of materials, preliminary budgets, and possible economies.
- 2.9. Interface with the Contractor and all subcontractors all general and/or trade Contractors during construction to ensure that the District is provided with an acceptable Project(s) and the best value for taxpayer dollars.
- 2.10. Advise the District as to the regulatory agencies that have jurisdiction over any portion or all of the Project(s), and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation DSA.
- 2.11. Contract for or employ, at PM/CM's expense, sub-consultant(s) to the extent deemed necessary for PM/CM's services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the PM/CM under terms of this Agreement.
- 2.12. Cooperate with the District, Board, and other professionals employed by the District for the design, coordination or management of other work related to the Project(s), including District staff and consultants, citizens' oversight committee, other District committees, and the community to facilitate the

timely completion of the Project(s) within Board-approved budgets and to District design standards.

- 2.13. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Project(s). PM/CM shall invite the District and/or its representative and the Project Inspector(s) to participate in these meetings. PM/CM shall keep meeting minutes to document comments generated in these meetings.
- 2.14. Develop for District approval a Project time schedule at the start of Project(s) development that does the following:
  - 2.14.1. Provides sufficient time for prequalification, and if necessary, the resolution of any appeals, bidding, and, if necessary, rebidding, or negotiating if applicable, the Project(s);
  - 2.14.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;
  - 2.14.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
  - 2.14.4. Takes into account the District's occupancy requirements (showing portions of the Project(s) having occupancy priority and ongoing operational occupancy requirements).
- 2.15. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by PM/CM under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to PM/CM. PM/CM shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 2.16. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the Project(s), with documentation of major discussion points, observations, decisions, questions, or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project(s) documentation.
- 2.17. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
- 2.18. Prepare a bidders list for each bid package for approval by the District.
- 2.19. Assist the District in pre-qualifying bidders if prequalification is permitted or required by the District. This service shall include the following:
  - 2.19.1. Preparation and distribution of prequalification questionnaires;

- 2.19.2. Receiving and analyzing completed questionnaires;
  - 2.19.3. Interviewing possible bidders, references, bonding agents and financial institutions;
  - 2.19.4. Preparing recommendations for the District; and
  - 2.19.5. Assisting with resolution of any appeals.
- 2.20. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
  - 2.21. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project(s).
  - 2.22. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved contract documents from the design professional(s) and the PM/CM shall arrange for printing, binding, wrapping, and delivery to the bidders. The PM/CM shall maintain a list of bidders receiving contract documents.
  - 2.23. For Lease Leaseback projects, coordinate Request for Qualifications/Proposal ("RFQ/P") process and assist in negotiation of agreements, including Preliminary Services Agreement, Site Lease, and Facilities Lease with guaranteed maximum price.
  - 2.24. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website, and as otherwise necessary, for public access to show Project(s) status.
  - 2.25. Ensure that Contractor, all subcontractor(s), Consultants, and sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project(s), at no additional cost to the District.
  - 2.26. Provide direction and planning to ensure Project(s) adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency ("EPA"), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations, and rules. The PM/CM shall comply with, and ensure that all Consultants, the Contractors and subcontractors, and all design professionals and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project(s), at no additional cost to the District.
  - 2.27. Maintain accurate Project(s) cost accounting records, using GAAP, on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. PM/CM shall provide accounting records to the District on a monthly basis, or as reasonably requested by District. PM/CM shall afford the District access to these records

and preserve these records for a period of three (3) years after final payment, at no cost to the District.

2.28. Assist Architect with the preparation of an estimate of costs for all addenda and coordinate with Architect to submit the estimate to the District for approval. Assist and coordinate with Architect as required to adjust the Construction Cost Budget and other Project(s) costs as indicated in this Agreement and as required in the Agreement for Architectural Services.

2.29. Provide and maintain a management presence on the Project(s) site(s).

2.30. PM/CM is **NOT** responsible for:

2.30.1. Ground contamination or hazardous material analysis.

2.30.2. Any asbestos testing, design, or abatement; however, it shall coordinate and integrate its work with any such information provided by District.

2.30.3. Compliance with the California Environmental Quality Act ("CEQA"), except that PM/CM agrees to coordinate its work with that of any CEQA consultants retained by the District, and the work of Contractor and the Design Team to provide current information for use in CEQA compliance documents and to identify and carry out mitigation measures.

2.30.4. Historical significance report.

2.30.5. Soils investigation.

2.30.6. Geotechnical hazard report.

2.30.7. Topographic survey, including utility locating services.

2.31. **GENERAL PROJECT SERVICES**

2.31.1. **General:** Monitor and advise the District as to all material developments on the Project(s). PM/CM shall implement with District approval reporting methods for schedules, cost, and budget status. The PM/CM shall be the focal point of all communication to and from construction Contractor and shall be copied on all communications between the District and its design professional(s).

2.31.2. **Scheduling:** Track and report on schedule status for Project(s) using methods. The PM/CM shall develop Project(s) master schedules and milestone schedules, and review and approve Contractor project schedules and milestone schedules for the project(s) per specifications and shall report on same each month to the District.

2.31.3. **Cost Controls:** Implement methods to track construction expenditures on the Project(s) using methods. The PM/CM shall generate monthly reports to the District reflecting this information.

- 2.31.4. **Communications to Board:** The PM/CM may be required to attend Board meetings, and to provide updates at each meeting.

2.32. **PRECONSTRUCTION PHASE**

- 2.32.1. Provide overall coordination of the Project(s); serve as the focal point of communication, transmitting information to the District and Design Team on general aspects of the Project(s), including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction Contractor to the District and Design Team shall be through the PM/CM. The PM/CM shall receive simultaneous copies of all written communications from the District or the Design Team to the construction Contractor.
- 2.32.2. Assist with the detailed definition of project scope, budget, and schedule, as needed. Review and reconcile cost estimates from the assigned architect and coordinate peer review estimates when requested by the District. Assist in organizing and, if relevant, segregating bid packages for maximum cost effectiveness for the District. Advise the District regarding owner-supplied equipment and other potential cost-saving measures.
- 2.32.3. Assist the District in the solicitation and retention of design and engineering consultants, and coordinate design consultants' activities and delivery schedules, as needed. Provide value engineering and life cycle cost analysis.
- 2.32.4. Provide design-phase services in conjunction with the architecture firms awarded the Project(s) by the District. Work with the Architect to conform and refine designs to correlate designs to budget and Facilities Master Plan, if applicable. Review design documents for constructability, scheduling, consistency, and coordination during schematic and design development phases of work. Perform constructability reviews at appropriate stages of design. Assist with verification of site conditions. Expedite design reviews, including modifications. Keep accurate documentation of all discussions with users regarding scope and resolution.
- 2.32.5. Prepare and maintain a Construction Management schedule for the Project(s). Prepare a procurement plan, where required.
- 2.32.6. Monitor and report to the District on status of design and state approval in relation to the schedule for the Project(s). Attend meetings to coordinate design efforts for the Program. Assist in identifying and obtaining all necessary approvals.
- 2.32.7. Solicit proposals, evaluate, and recommend other professional consultants needed to complete the Project(s).

- 2.32.8. Implement District-approved implementation procedures, forms and reporting requirements for the Project(s) that involve all members of the Project team, including the District, design professional(s), and construction Contractor(s).
- 2.32.9. Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Project(s).
- 2.32.10. Provide value engineering at the Schematic Design and/or 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems, and other items depicted in the design documents and shall be coordinated with the District's design guidelines and design professional(s). The PM/CM will prepare a value engineering report documenting the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The PM/CM shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
- 2.32.11. Perform or subcontract for constructability reviews of the Project(s) at the Design Development Phase and at 90% of the Construction Documents Phase. The PM/CM shall review the design documents for clarity, consistency, constructability, and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The PM/CM shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, and construction duration.
- 2.32.12. Develop master bid/award schedule(s) including construction milestones for the Project(s) through the completion of construction, as directed by the District, in coordination with design professional(s) and advise and consult with the District. PM/CM shall review and approve construction Contractor's schedules but shall not dictate any construction Contractor's means and/or methods of performance.
- 2.32.13. Establish schedules for any Consultant, and for any hazardous materials or other testing, and review costs, estimates, and invoices of each.
- 2.32.14. Implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress, and identifying and documenting problems and solutions for the Project. Prepare monthly progress reports for the District and regarding the schedule for the Project(s).
- 2.32.15. Organize an initial planning workshop to create baseline parameters for the Project(s), to define overall building requirements, Project(s) strategy, conceptual budget, and schedule. Pursuant to understandings reached at these meetings, PM/CM will develop an

implementation plan that identifies the various phases of the Project(s), coordination among phases, and budget and time constraints for each phase of the Project(s). The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.

- 2.32.16. Provide updated cost estimates for the Project(s) at the Schematic Design, Design Development, and Construction Documents Phases as directed by District; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 2.32.17. Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 2.32.18. Fully coordinate all changes requested by any utility company needed to complete the Project(s).
- 2.32.19. Review and tailor the District's front end documents for the Project(s). Recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of the liquidated damages.

### 2.33. **PRE-BID PHASE**

- 2.33.1. Develop master schedules and construction schedules for the Project(s). Develop budget(s) for the Project(s) based on construction cost estimates.
- 2.33.2. In consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project(s). Establish, accordingly, a communications procedure for the Project(s) that allows for decision making at appropriate levels of responsibility and accountability.
- 2.33.3. Work with the design professional(s) to modify or add to standard, special, or general conditions for contract documents that might be needed for unique Project(s) or contract conditions, for the District's approval, and/or assist in the development of documents necessary for the bidding phase.
- 2.33.4. Make recommendations for development and implementation of procedures to comply with applicable bidding or RFP requirements for the Project(s) as applicable and for expediting completion of the bidding process for the Project(s). The scope of the foregoing includes without limitation, recommendations of PM/CM with respect to: (a) pre-qualification of potential contractors; and (b) alternative construction delivery approaches for the Project(s), including consideration of a single general contractor and/or Lease Leaseback approach to construction for the Project(s).

### 2.34. **BIDDING PHASE**

- 2.34.1. Assist with pre-qualification process for the selection of prime and/or sub-contractors based on the detailed definition of Project(s) scope, budget, schedule, and programming support. Develop a list of pre-qualified prime and sub-contractors, as required.
- 2.34.2. Develop bidders' interest in the Project(s). Coordinate all bid phase activities with District departments. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials, or methods and with Project(s) procedures. Conduct job walks and bidders' conferences, maintain and prepare minutes of job walks or bidder's conferences. Field questions from bidders, referring questions to design professional(s) and District as required. Coordinate with design professional(s) to respond to bidder questions by addenda.
- 2.34.3. Prepare public solicitation notices for District approval. Review, coordinate, and estimate cost of bid phase addenda.
- 2.34.4. Review bid proposals for responsiveness to bid requirements, evaluate bidder responsibility, and conduct reference checks. Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.
- 2.34.5. Conduct post-bid conferences as required. Assist and advise District regarding bid protests.
- 2.34.6. If appropriate, coordinate contracting with Contractor awarded the contract, including evaluating bonds and insurance, and negotiate final terms of construction contractor's contract(s), if applicable.
- 2.34.7. Conduct pre-award conferences with successful bidders.
- 2.34.8. Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.
- 2.34.9. Assist with the preparation of agenda items for Board approval. Coordinate submittals required by governing agencies.
- 2.35. **CONSTRUCTION PHASE**
  - 2.35.1. Administer the construction Contract.
  - 2.35.2. Develop detailed construction schedules or review Contractor's submitted schedules, as needed. Administer and coordinate the work of Contractor on a daily basis. Enforce performance, scheduling, and notice requirements. Review Contractor's schedule submittals and make recommendations to the District.



- 2.35.3. Monitor schedule and cost information for Contractor. Document the progress and costs of the Project(s). Report and advise proactively on potential schedule and budget variances and impacts. Recommend potential solutions to schedule and cost problems. Work cooperatively with the District, Architect, and Contractor to ensure that Project(s) is delivered on time and within budget. Review construction progress and prepare reports.
- 2.35.4. Verify permits, approvals, bonds, insurances, and schedules of values. Coordinate with DSA Project inspector and ensure compliance with all DSA reporting and closeout requirements. Submit necessary reports to state and local authorities.
- 2.35.5. Monitor the construction Contractor to verify that tools, equipment, and labor are furnished, and work performed and completed within the time required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. The PM/CM expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.
- 2.35.6. Coordinate work of the construction Contractor and effectively manage the Project(s) to achieve the District's objectives in relation to cost, time and quality.
- 2.35.7. Provide continuous on-site construction management personnel, as needed. Conduct construction meetings for the Project(s) to discuss and resolve such matters as progress, quality, and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction Contractor, and design professional(s).
- 2.35.8. Establish and implement team communication procedures.
- 2.35.9. Ensure that construction Contractor provides construction schedules as required by the construction Contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The PM/CM shall review construction Contractor's construction schedules for conformity with the requirements of the construction Contract and conformity with the overall schedule for the Project(s). Where construction Contractor's construction schedules do not so conform, the PM/CM will take appropriate measures to secure compliance, subject to District approval.
- 2.35.10. Ensure construction Contractor's compliance with the requirements of the respective construction Contract for updating, revising, and other obligations relative to their respective construction schedules.

- 2.35.11. Cost Control. PM/CM shall develop and monitor an effective system of construction cost control for the Project(s). PM/CM shall identify variances between actual and budgeted or estimated costs and advise District and design professional(s) whenever a Project(s) cost exceeds budgets or estimates. PM/CM shall manage the construction bids and contracts in accordance with the Construction Budget.
- 2.35.12. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when Contractor fails to fulfill contractual requirements.
- 2.35.13. PM/CM may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The PM/CM shall provide to the design professional(s) and the District copies of these authorizations.
- 2.35.14. Evaluate and process payment applications and verify progress.
- 2.35.15. Verify that safety programs are developed and submitted by the construction Contractor as required by the Contract. Neither PM/CM, nor District shall be responsible for or have any liability for Contractor's failure to provide, comply with, or enforce said safety programs.
- 2.35.16. Implement quality control program, including As-Built Drawings accuracy. Coordinate and evaluate Contractor's recovery schedules.
- 2.35.17. Record the progress of the Project(s) by a log.
- 2.35.18. Monitor ongoing Project(s) costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to PM/CM.
- 2.35.19. Negotiate Contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District.
- 2.35.20. Evaluate and process change order requests. Make recommendations to the District. Determine cost and schedule effects of change orders. Prepare change order reports and maintain a change order log for the Project(s) and implement procedures to expedite processing of change orders.
- 2.35.21. Assist the District in coordinating the services of special consultants and testing laboratories on the Project(s).
- 2.35.22. In conjunction with the design professional(s), monitor work of the construction Contractor to determine that the work is being performed in accordance with the requirements of the respective construction documents for the Project(s), including but not limited to

the plans, specifications, addenda, and all other contract documents, as well as all applicable laws, regulations, and directives of agencies with jurisdiction over any of the Project. As appropriate, with assistance of design professional(s), make recommendations to the District regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents.

2.35.23. To guard District against defects in the work of the construction Contractor, the PM/CM shall implement a quality control program to monitor the quality and workmanship of construction for conformity with:

2.35.23.1. Accepted industry standards;

2.35.23.2. Applicable laws, rules, or ordinances; and

2.35.23.3. The design documents and contract documents.

2.35.24. Where the work of a construction Contractor does not conform as set forth above, the PM/CM shall, with the input of design professional(s):

2.35.24.1. Notify the District of any non-conforming work observed by the PM/CM;

2.35.24.2. Reject the non-conforming work; and

2.35.24.3. Take any and all action(s) necessary to compel the construction Contractor to correct the work.

2.35.25. Evaluate, track, and maintain logs of requests for information ("RFI") from construction Contractor and responses, shop drawings, samples, and other submittals, based, in part, on information obtained from the design professional(s). Advise District as to status and criticality of RFIs.

2.35.26. Implement procedures, in collaboration with the District and design professional(s), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction Contractor to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.

2.35.27. Record the progress of work at the Project(s). When present, prepare daily reports for the Project(s) containing a record of weather, construction Contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.

2.35.28. Prepare and distribute monthly project status reports for the Project(s) including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.

- 2.35.29. Coordinate, assist, and support Architect during construction administration phase as required.
- 2.35.30. PM/CM shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction Contractor. At the completion of the Project(s), deliver all such records to District. Construction Contractor and design professional(s) share responsibility to prepare Record Drawings and As-Built Drawings.
- 2.35.31. Coordinate the move into the Project(s).
- 2.35.32. Work with District team to develop lists of incomplete or unsatisfactory work ("punch lists").
- 2.35.33. Fully document and prepare deductive change orders for extra services of consultants that are the responsibility of a Contractor or another consultant. Present such a change order for signature by the Contractor or consultant.
- 2.35.34. Determine final completion and payment. Determine completion dates, final payments, and release of retention. Coordinate procurement and installation of Furniture, Fixtures, and Equipment ("FF&E").

**2.36. PROJECT COMPLETION**

- 2.36.1. PM/CM shall observe the construction Contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. PM/CM shall maintain records of start-up and testing as provided by the construction Contractor and shall ensure the District of compliance with applicable provisions of the Contract, that all work has been performed and accepted, and that all systems are complete and operative.
- 2.36.2. At the punch list phase of the Project(s) or designated portions thereof, the PM/CM, in consultation with the Architect, shall ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. PM/CM shall provide this list to the construction Contractor. PM/CM shall coordinate construction Contractor's performance and completion of punch list work. PM/CM shall review, with the Architect and District, the completed punch list work. PM/CM shall ensure that, with input of the Architect, the completed punch list work complies with applicable provisions of the construction Contract.
- 2.36.3. PM/CM shall determine, with the Architect and District, when the Project(s) or designated portions thereof are complete.
- 2.36.4. PM/CM shall conduct, with the Architect and District, final inspections of the Project(s) or designated portions thereof. PM/CM shall notify the District of final completion.

- 2.36.5. PM/CM shall consult with the Architect and District and shall determine when the Project(s) and the construction Contractor's work are finally completed. PM/CM shall assist with the issuance of a Certificate of Final Completion and shall provide to the District a written recommendation regarding payment to the Contractor.
- 2.36.6. PM/CM shall coordinate close-out procedures, including personnel training. Advise District staff on systems operations, training and close-out of Project(s).
- 2.36.7. PM/CM shall coordinate and expedite Contractor close-out requirements, including guarantees/warranties, certificates, keys, manuals, As-Built Drawings, Record Drawings, specifications, daily logs, and verified reports. Ensure that all other project participants submit necessary close-out documentation.
- 2.36.8. PM/CM shall coordinate operational safety reviews with District post occupancy and manage corrective work as necessary.
- 2.36.9. PM/CM shall ensure that all building commissioning requirements have been fulfilled in a timely manner through District commissioning agents.
- 2.36.10. PM/CM shall obtain occupancy permits (where required), coordinate final testing, documentation, and regulatory inspections. Prepare occupancy plan report.
- 2.36.11. PM/CM shall prepare final accounting reports.

2.37. **FINAL DOCUMENTS**

PM/CM shall review and monitor all As-Built Drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The PM/CM 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(s).

2.38. **WARRANTY**

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

**3. MISCELLANEOUS SERVICES**

- 3.1. Maintain accurate cost accounting records maintained with generally accepted accounting principles (GAAP) on authorized work performed under unit costs,

actual costs for labor and material, or other basis for maintaining required accounting records. Provide accounting records to the District on a monthly basis, or as reasonably requested by District. Afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.

- 3.2. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 3.3. Provide annual reports to the District on or before July 15 of each year, stating the amount paid to PM/CM, the amount remaining under the Agreement, and a description of the Services performed by PM/CM for the previous fiscal year (i.e., July 1 through June 30).
- 3.4. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by PM/CM under this Agreement as well as coordination with all Master Plans, studies, reports, and other information provided by District to PM/CM. PM/CM shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 3.5. PM/CM is NOT responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when required and PM/CM shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:
  - 3.5.1. Ground contamination or hazardous material analysis.
  - 3.5.2. Any asbestos testing, design or abatement.
  - 3.5.3. Compliance with the California Environmental Quality Act ("CEQA"), except that PM/CM shall provide current information for use in CEQA compliance documents.
  - 3.5.4. Historical significance report.
  - 3.5.5. Soils investigation.
  - 3.5.6. Geotechnical hazard report.
  - 3.5.7. Topographic survey, including utility locating services.
  - 3.5.8. Other items specifically designated as the District's responsibilities under this Agreement.
  - 3.5.9. Other items specifically designated as the District's responsibilities under this Agreement.
  - 3.5.10. As-built documentation from previous construction projects
  - 3.5.11. Preparation of Storm Water Pollution Prevention Plan.
  - 3.5.12. Archaeology Services.

- 3.5.13. Building Envelope Consulting.
- 3.5.14. Project Inspector Services.
- 3.5.15. Other specialty testing and inspection services.

[END OF EXHIBIT]

**I. EXHIBIT B**

**CRITERIA AND BILLING FOR EXTRA SERVICES**

The following Extra Services to this Agreement shall be performed by PM/CM if needed and requested by District as indicated in the Agreement:

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

**Hourly Rates for Extra Services**

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

<b><u>Job Title</u></b>	<b><u>Hourly Rate</u></b>
Principal in Charge	\$
Senior Project Manager	\$
Project Manager	\$
Administrative Assistant	\$

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



**Format and Content of Invoices:**

PM/CM acknowledges that the District requires PM/CM's invoices to include detailed explanations of the Services performed. For example, a six-hour charge for "RFIs and CORs" is unacceptable and will not be payable. A more detailed explanation, with specificity, is required.

[END OF EXHIBIT]

**EXHIBIT C**

**II. SCHEDULE OF WORK**

**<INSERT>**

[END OF EXHIBIT]

**1. EXHIBIT D**

**FEE SCHEDULE**

**Compensation**

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

**B. Method of Payment of Basic Services**

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

[END OF EXHIBIT]

**EXHIBIT E**

**FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION**

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

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

- The Work of the Agreement is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Agreement shall come in contact with District pupils or (ii) if PM/CM's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to PM/CM under the Agreement.
- CM, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all PM/CM's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When PM/CM performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that PM/CM's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code section 45122.1.

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

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

PM/CM's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of PM/CM.

Date: \_\_\_\_\_  
Name of PM/CM: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION**

**ATTACHMENT A**

**List of Employees/Subcontractors**

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

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

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

Name of PM/CM: \_\_\_\_\_

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

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

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

[END OF EXHIBIT]

**AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES**

**CUPERTINO UNION SCHOOL DISTRICT  
WITH**

**FOR**

**MEASURE Z BOND PROGRAM**

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## AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Program and Construction Management Services ("Agreement") is made as of \_\_\_\_\_, 2025, between the Cupertino Union School District, a California public school district ("District"), and \_\_\_\_\_ ("PM/CM") (both collectively "Parties"), for District's Measure Z Bond Program ("Program").

The administration of the Program, including oversight and coordination of the projects comprising the Program and construction management of projects that comprise the Program. The PM/CM will perform both Program Management and Construction Management Services for the Program.

PM/CM shall render services and furnish the work as described herein, including acting as District's agent for the Program, commencing upon execution of the Agreement and provision of the required insurance certificates and endorsements.

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

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

### ARTICLE 1. Definitions

- 1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1 **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2 **Architect:** The architect(s) that District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
  - 1.1.3 **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by District's construction Contractor on a Conforming Set.
  - 1.1.4 **Board:** District's Board of Education and/or the County Administrator.



- 1.1.5 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.
- 1.1.6 **Construction Budget:** The total amount indicated by District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.1.7 **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
- 1.1.8 **Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted during and at the end of the design phase in accordance with this Agreement and the Agreement for Architectural Services. The Construction Cost Budget does not include the compensation of the Project Design Team, the PM/CM and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of District.
- 1.1.9 **Construction Manager:** May refer to third party providing construction managements services to District. Or, may refer to the entity listed in the first paragraph of this Agreement.
- 1.1.10 **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the PM/CM.
- 1.1.11 **Contractor:** One or more licensed and registered contractors under contract with District for construction of all or a portion of the Project.
- 1.1.12 **Design Team:** The Architect(s) that District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** The Cupertino Union School District.
- 1.1.15 **District's Representative:** The individual identified herein that is authorized to act on District's behalf with respect to the Project. The initial District's Representative

shall be **[Name], [Title]**. District may change District's Representative by notice as set forth herein.

- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursables not included in PM/CM's fee.
- 1.1.18 **Fee:** The PM/CM's Fee is defined in Section 7.1, payable as set forth in Article 7 and in **Exhibit D**.
- 1.1.19 **Program:** District's Measure Z Bond Program.
- 1.1.20 **Program Budget:** The total amount available for all costs related to the Program including, but not limited to, Program design, Program administration, Program financing, the services pursuant to this Agreement, and the construction of the Program. The Program Budget is the sum of all the Construction Budgets for each Project and all other Program expenses. The Program Budget is derived from the funds designated by District for the Program, and the Program/Construction Manager shall ensure that no additional funds are necessary for the Program. The Board may, at its sole discretion, determine to expand the Program Budget based on receipt of additional funding.
- 1.1.21 **Program/Construction Manager, PM/CM:** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the PM/CM.
- 1.1.22 **Project(s):** The Projects identified in District's Measure Z Bond Program.
- 1.1.23 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.
- 1.1.24 **Record Drawings:** A final set of drawings prepared by the Architect incorporating all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.25 **Service(s):** All labor, materials, supervision, services, tasks, and work that the PM/CM is required to perform and that are required by, or reasonably inferred from, the

Agreement, and that are necessary for the design and completion of the Project(s).

**ARTICLE 2. Term**

- 2.1 **Term:** This Agreement shall become effective on \_\_\_\_\_, 2025, and, except as otherwise provided herein, will continue in effect until \_\_\_\_\_, 20\_\_.
- 2.2 **Option to Renegotiate:** During the five year term of this Agreement, District shall have the option to renegotiate PM/CM's staffing, scope and fee, on an annual basis. The first option to renegotiate vests on or about \_\_\_\_\_, 20\_\_.

**ARTICLE 3. Scope, Responsibilities and Services of PM/CM**

- 3.1 **Scope:** PM/CM shall provide the Services described herein and under **Exhibit A** for the Project.
- 3.2 **Standard of Care:** PM/CM, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom PM/CM is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. District's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that PM/CM has complied, nor in any way relieve the PM/CM of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.
- 3.3 **Coordination:** In the performance of PM/CM's services under this Agreement, PM/CM agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of District's Design Team, the Project Inspector, and the third-party Construction Manager(s), if any.
- 3.4 **Other Consultants:** If the PM/CM employs sub-consultant(s), the PM/CM shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 3.5 **PM/CM's as District Representative:** PM/CM will act as District's agent to render the Services and furnish the work as described in **Exhibit A**, commencing with the receipt of a written Notice to Proceed signed by District Representative. PM/CM's services will be completed in accordance with the schedule attached as **Exhibit C**. During the Project's Construction Phase, District may require that the Contractors submit all notices and communication relating to the Project directly to the PM/CM.

- 3.6 **Review of General Obligation Bond Program Report and District's Facilities Master Plan:** PM/CM will review District's Facilities Master Plan for District and other written materials District makes available by District to PM/CM to understand fully the nature, extent and intent of the Facilities Plan and the Project.
- 3.7 **Review of Measure Z:** PM/CM will review written materials made available by District to PM/CM that relate to Measure Z to fully understand the extent of funding available to implement District's Master Facilities Plan for District, the anticipated schedule for issuance of Bonds under Measure Z relative to the anticipated design, bidding and construction of projects.
- 3.8 **Conflicts of Interest Prohibited:**
- 3.8.1 PM/CM understands that District officials and employees are prohibited from involvement in decisions in which they may have a financial interest pursuant to Government Code sections 1090 and 87100 et seq., and certifies that it does not know of any facts indicating that any District official or employee has an ownership or other financial interest, direct or indirect, in this Agreement. Further, PM/CM hereby certifies that no current District official or employee of District, and no one who has been a District official or employee of District within the past two years has participated in bidding, selling or promoting this Agreement. PM/CM understands that in addition to the remedies available at law, that any failure to provide an accurate certification or any violation of this provision shall make the Agreement voidable by District.
- 3.8.2 PM/CM shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by District in connection with any project covered by this Agreement: Design Professional, IORs or Test/Inspection. If PM/CM identifies potential Design Professionals, Project Inspectors or Test/Inspection services in connection with a project, PM/CM shall affirmatively and unequivocally represent and warrant to District that neither PM/CM nor any person who holds equity interest in PM/CM's organization is a former or current holder of any equity interest in the firm identified or has any financial interest in the firm identified. District reserves the sole discretion to waive this subsection's requirements on a case-by-case basis.

#### **ARTICLE 4. PM/CM Staff**

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

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

Principal In Charge: \_\_\_\_\_

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

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

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

Asst. Construction Manager: \_\_\_\_\_

Asst. Project Manager: \_\_\_\_\_

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

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

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

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

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

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

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

**ARTICLE 5. Schedule of Work**

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

C exceeds five (5) years, District may, at its sole discretion, extend the term of this Agreement pursuant to Article 2 of this Agreement.

#### ARTICLE 6. **Construction Cost Budget**

- 6.1 PM/CM shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget with the Architect and District throughout the design process and construction.
- 6.2 The Construction Cost Budget shall be the total cost to District of all Project elements the Design Team designs or specifies.
- 6.3 PM/CM shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit A**, so that the Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with District's written approval. PM/CM shall notify District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. PM/CM, however, shall not perform or be responsible for any design or architectural services.
- 6.4 Evaluations of District's Construction Budget, and PM/CM's preliminary and detailed cost estimates, represent the PM/CM's best judgment as a professional familiar with the construction industry.
- 6.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval of the plans and specifications, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to District and the date on which proposals are sought.
- 6.6 District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 6.7 occur:
  - 6.6.1 Give PM/CM written approval of an agreed adjustment to the Construction Cost Budget.
  - 6.6.2 Authorize PM/CM to re-negotiate and/or re-bid the Project, when appropriate, within three (3) months' time of receipt of bids, at no additional cost to District (exclusive of District and other agencies' review time).
  - 6.6.3 Terminate this Agreement if the Project is abandoned by District without further obligation by either party.
  - 6.6.4 Within three (3) months of receipt of bids, instruct Design Team to revise the drawings and specifications (in scope

and quality as approved by District) to bring the Project within the Construction Cost Budget for re-bidding. PM/CM will perform cost estimation, value engineering, constructability reviews, and/or bidding support at no additional cost to District.

- 6.7 If any of the following events occur, District may exercise any one, or any combination of, the actions set forth in Article 6.6 above:
- 6.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or
  - 6.7.2 The combined total of base bid and all additive alternates equal or exceed ten percent (10%) of the Construction Cost Budget; or
  - 6.7.3 The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in Bay Area, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

**ARTICLE 7. Fee and Method of Payment for Basic Services**

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



## ARTICLE 8. **Payment for Extra Services**

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

## ARTICLE 9. **Ownership of Data**

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



preceding sentence, PM/CM and its Consultants shall be entitled to reuse work product generated under this Agreement.

#### **ARTICLE 10. Termination of Contract**

- 10.1 District's Request for Assurances: If District at any time reasonably believes PM/CM is or may be in default under this Agreement, District may in its sole discretion notify PM/CM of this fact and request written assurances from PM/CM of performance of Services and a written plan from PM/CM to remedy any potential default under the terms this Agreement that District may advise PM/CM of in writing. PM/CM shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets District's requirements in its request for assurances. PM/CM's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 10.2 District's Termination of PM/CM for Cause: If PM/CM fails to perform PM/CM's duties to District's satisfaction, or if PM/CM fails to fulfill in a timely and professional manner PM/CM's material obligations under this Agreement, or if PM/CM violates any of the material terms or provisions of this Agreement, District shall have the right to terminate this Agreement effective immediately upon District giving PM/CM written notice thereof. In the event of a termination pursuant to this subdivision, PM/CM may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to District's costs because of PM/CM's actions, errors, or omissions.
- 10.3 District's Termination of PM/CM for Convenience: District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, PM/CM may invoice District and District shall pay all undisputed invoice(s) for Services provided and approved by District since the last paid invoice and until the notice of termination. This shall be the only amount(s) potentially owing to PM/CM if there is a termination for convenience.
- 10.4 PM/CM's Termination of Agreement for Cause: PM/CM has the right to terminate this Agreement if District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from PM/CM. Such termination shall be effective after receipt of written notice from PM/CM to District.
- 10.5 Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and

obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.

- 10.6 Ceasing Services upon Termination: If, at any time in the progress of the Project, District determines that the Project should be terminated, the PM/CM, upon District's written notice of such termination, shall immediately cease work on the Project.
- 10.7 Project Suspension: If the Project is suspended by District for more than one hundred and eighty (180) consecutive days, the PM/CM shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the PM/CM's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the PM/CM's services. Upon resumption of the Project after suspension PM/CM shall make every effort to maintain the same Project personnel.

#### **ARTICLE 11. Indemnity**

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

**ARTICLE 12. Conduct on Project Site and Fingerprinting**

- 12.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 12.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.
- 12.3 Pursuant to Education Code section 45125.1, District has determined on the basis of the scope of Services in this Agreement that if PM/CM and its subcontractors and employees interact with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee. PM/CM will promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that interaction will not take place under the immediate supervision and control of the pupil's parent or guardian or a school employee.
- 12.4 If PM/CM and its subcontractors and employees interact with pupils without the immediate supervision and control of the pupil's parent or guardian or a school employee, PM/CM shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. PM/CM shall not permit any employee to have any contact with District pupils until such time as the PM/CM has verified in writing to the District's Board of Trustees that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. PM/CM's responsibility shall extend to all employees, agents, and employees or agents of its Consultants regardless of whether those individuals are paid or unpaid, concurrently employed by District, or acting as PM/CM's independent contractors.
- 12.5 PM/CM shall provide to District verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit E**) in writing prior to each individual commencing employment or participating on the Project and prior to permitting contact with any student.

**ARTICLE 13. Responsibilities of District**

- 13.1 District shall examine the documents submitted by the PM/CM and shall render decisions so as to avoid unreasonable delay in the process of the PM/CM's Services.
- 13.2 District shall provide to the PM/CM as complete information as is available to District regarding District's Project requirements.

- 13.3 District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between District and design professional(s).
- 13.4 Unless the contract documents require that Contractor provide any of the following, District shall, in a timely manner, and with PM/CM's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to PM/CM's and/or the Design Team's duties to recommend or provide same.
- 13.5 District, its representatives, and consultants shall communicate with the Contractor either directly or through the PM/CM.
- 13.6 District shall designate an officer, employee and/or other authorized representatives to act on District's behalf with respect to the Project. District's Project representative shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

#### **ARTICLE 14. Liability of District**

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

## ARTICLE 15. Insurance

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

agents, representatives, consultants, trustees, and volunteers.

- 15.2.5 **Professional Liability.** This insurance shall cover the PM/CM and its sub-consultant(s), if any, for one million dollars (\$1,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 15.3 District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 15.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by District. At the option of District, either:
  - 15.4.1 District can accept the higher deductible;
  - 15.4.2 PM/CM's insurer shall reduce or eliminate such deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers; or
  - 15.4.3 PM/CM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 15.5 **Other Insurance Provisions:** Endorsements, certificates and insurance policies shall contain, or be endorsed to contain, the following provisions:
  - 15.5.1 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent, and length of notice period.
  - 15.5.2 All policies, except for the worker's compensation, employer's liability and professional liability insurance policy, shall be written on an occurrence form.
  - 15.5.3 Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes PM/CM's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by PM/CM for a period of five (5) years following termination of this Agreement. Such insurance must have the same coverage and limits as the

policy that was in effect during the term of this Agreement, and will cover PM/CM for all claims made

- 15.5.4 District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the PM/CM; Instruments of Service and completed operations of the PM/CM; premises owned, occupied or used by the PM/CM; or automobiles owned, leased, hired or borrowed by the PM/CM. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. All endorsements shall waive any right to subrogation against any of the Additional Insureds.
- 15.5.5 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 15.5.6 PM/CM shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If PM/CM fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due PM/CM under the Agreement.
- 15.5.7 The PM/CM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 15.5.8 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.
- 15.5.9 PM/CM's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project(s). Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the PM/CM's insurance and shall not contribute with it.
- 15.5.10 PM/CM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 15.5.11 PM/CM shall require all subconsultants to maintain the level of insurance PM/CM deems appropriate with respect to the consultant's scope of the Work unless otherwise



indicated in the Agreement. PM/CM shall cause the subconsultants to furnish proof thereof to District within ten (10) Days of District's request. Should PM/CM not require subconsultants to provide the same level of insurance as is required of PM/CM, as provided in this Agreement, PM/CM is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.

- 15.5.12 If PM/CM normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, PM/CM hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 15.6 **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. PM/CM shall inform District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of District, District may either:
- 15.6.1 Accept the lower rating; or
- 15.6.2 Require PM/CM to procure insurance from another insurer.
- 15.7 **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, but no later than three (3) calendar after the Notice of Award, PM/CM shall furnish District with:
- 15.7.1 Certificates of insurance showing maintenance of the required insurance coverage;
- 15.7.2 Original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by District before work commences.
- 15.8 **Copy of Insurance Policy(ies):** Upon District's request, PM/CM will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.
- 15.9 The insurance requirements set forth herein shall in no way limit PM/CM's liability arising out of or relating to the performance of the Work or related activities.
- 15.10 Failure of PM/CM to comply with the insurance requirements herein shall be deemed a material breach of the Agreement and constitute a Default by PM/CM pursuant to this Agreement.



**ARTICLE 16. Nondiscrimination**

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

**ARTICLE 17. Covenant Against Contingent Fees**

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

**ARTICLE 18. Entire Agreement/Modification**

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

**ARTICLE 19. Non-Assignment of Agreement**

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

**ARTICLE 20. Law, Venue**

- 20.1 This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 20.2 To the fullest extent permitted by California law, San Mateo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

## **ARTICLE 21. Alternative Dispute Resolution**

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

## **ARTICLE 22. Tolling of Claims**

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

## **ARTICLE 23. Severability**

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

## **ARTICLE 24. Employment Status**

- 24.1 PM/CM represents and warrants that, during the entire term of Agreement, PM/CM is an independent contractor that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Nothing in this Agreement is intended nor shall it be

construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which PM/CM performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by PM/CM shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

- 24.2 PM/CM understands and agrees that PM/CM's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.
- 24.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that PM/CM or any employee of PM/CM is an employee of District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by PM/CM which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 24.4 Should a relevant taxing authority determine a liability for past services performed by PM/CM for District, upon notification of such fact by District, PM/CM shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to PM/CM under this Agreement (again, offsetting any amounts already paid by PM/CM which can be applied as a credit against that liability).
- 24.5 A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, PM/CM shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine PM/CM is an employee for any other purpose, then PM/CM agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined PM/CM was not an employee.
- 24.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**ARTICLE 25. Warranty of PM/CM**

- 25.1 PM/CM warrants that PM/CM is properly licensed and/or certified under the laws and regulations of the State of California to provide the Services that it has herein agreed to perform. PM/CM further warrants that all of the work PM/CM performs under this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. PM/CM also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of San Mateo County.
- 25.2 PM/CM certifies that it is aware of the provisions of the California Labor Code of the State of California, requiring every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 25.3 PM/CM certifies that it is aware of the provisions of California Labor Code and California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). To the extent that work is performed as part of an applicable "public works" or "maintenance" project, where the total compensation is \$1,000 or more, PM/CM agrees to fully comply with and to require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws. To the extent that the work performed under this contract is subject to labor compliance and enforcement by the DIR, PM/CM specifically acknowledges and understands that it shall perform the Services while complying with all applicable provisions of Division 2, Part 7, Chapter 1 of the Labor Code and Title 8 of the California Code of Regulations.

**ARTICLE 26. Cost Disclosure - Documents and Written Reports**

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

**ARTICLE 27. Communications / Notice**

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

**District:**

CUPERTINO UNION SCHOOL DISTRICT  
10301 Vista Drive  
Cupertino, CA 95014

**PM/CM:**

[Name of PM/CM]  
[Address]  
ATTN: [Name], [Title]

ATTN: Chris Jew, Chief Business Official

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

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

#### **ARTICLE 28. Disabled Veteran Business Enterprise Participation**

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

#### **ARTICLE 29. District's Right to Audit**

- 29.1 District retains the right to review and audit, and the reasonable right of access to PM/CM's and any Consultant's premises to review and audit the PM/CM's compliance with the provisions of this Agreement ("District's Right"). District's Right includes the right to inspect, photocopy, and to retain copies, outside of PM/CM's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by District in its sole discretion. District shall keep this information confidential, as allowed by applicable law.
- 29.2 District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that District determines is necessary to discover and verify whether PM/CM is in compliance with all requirements of this Agreement.
- 29.3 If there is a claim for additional compensation or for Extra Services, District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

- 29.4 PM/CM shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. PM/CM shall make available to District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, PM/CM shall submit exact duplicates of originals of all requested records to District.
- 29.5 PM/CM shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 29.6 PM/CM shall comply with these provisions within fifteen (15) days of District's written request to review and audit any or all of PM/CM's Project-related records and information.

### **ARTICLE 30. Other Provisions**

- 30.1 PM/CM shall be responsible for the cost of construction change orders caused directly by PM/CM's willful misconduct or negligent acts, errors or omissions. Without limiting PM/CM's liability for indirect or consequential cost impacts, the direct costs for which PM/CM shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared Construction Documents. These amounts shall be paid by PM/CM to District or District may withhold those costs from amounts due or to become due to PM/CM.
- 30.2 Neither District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and PM/CM shall remain liable to District in accordance with this Agreement for all damages to District caused by PM/CM's failure to perform any of the Services furnished under this Agreement to the standard of care of the PM/CM for its Services, which shall be, at a minimum, the standard of care of program and construction managers performing similar work for California public school districts at or around the same time and in or around the same geographic area of District.
- 30.3 PM/CM shall share, credit, or reimburse District fifty percent (50%) of the amount of any tax deduction and/or credit PM/CM receives for District Projects under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D ("Section 179D"). PM/CM shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction. PM/CM shall notify District in writing of the Section 179D tax deduction within 30 days of when PM/CM receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.
- 30.4 Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges

that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

- 1.1 The individual executing this Agreement on behalf of PM/CM warrants and represents that she/he is authorized to execute this Agreement and bind the PM/CM to all terms hereof.
- 1.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

**ARTICLE 2. Exhibits.**

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

[SIGNATURES ON FOLLOWING PAGE]

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

**CUPERTINO UNION SCHOOL DISTRICT**

**[NAME OF PM/CM]**

Date: \_\_\_\_\_, 2025

Date: \_\_\_\_\_, 2025

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

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

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

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

SAMPLE