

**REQUEST FOR QUALIFICATIONS (RFQ)  
#2021-301**

**CONSTRUCTION MANAGEMENT**

**and/or**

**PROJECT MANAGEMENT PLANNING**

**for**

**Districtwide Projects**



**Responses must be received no later than  
May 21, 2021 by 2:00pm**

**Submit Response To:** [FacilitiesRFP@RSCCD.edu](mailto:FacilitiesRFP@RSCCD.edu)  
**Attention: Carri M. Matsumoto**  
**Assistant Vice Chancellor**

**Questions or Clarifications:** All questions must be submitted in writing,  
via email to: [FacilitiesRFP@RSCCD.edu](mailto:FacilitiesRFP@RSCCD.edu)

## 1. REQUEST FOR QUALIFICATIONS

### 1.1. Purpose

By way of this Request for Qualifications (“RFQ”), the Rancho Santiago Community College District (“District”) is requesting Statements of Qualifications (“Responses”) to provide construction management services and/or project management planning services (“Services”). The District intends to pre-qualify a limited number of Construction Management firms and Project Management Firms (“Consultant”) that can provide comprehensive construction management and/or project management services for various District projects.

The District is seeking to both refresh and update the current list of prequalified consultants. **All existing prequalified firms and interested firms are required to submit a response, according to Section 1.5 “Response Format”,** for the request of qualifications to be considered for inclusion on the updated list of prequalified firms.

***Consultant has the option to respond to both Construction Management and Project Management Planning Services or select only one of the services. Please clearly indicate in the cover letter (see section 4.1) which service or services your firm is responding to.***

### 1.2. RFQ Schedule

Event / Occurrence	Deadline
District Issues RFQ	April 22, 2021
Deadline for Consultants to submit questions regarding this RFQ	May 5, 2021 By 2:00pm
<b>Deadline for Consultants to submit Responses</b>	<b>May 21, 2021 By 2:00pm</b>
District to interview Consultant(s) (Estimated)	June 1 -11, 2021
District to finalize recommendation for District Board of Trustees	N/A
District Board of Trustees approves successful Consultant	N/A

The District has set the above RFQ schedule that all Consultants must adhere to. The District reserves the right to modify this RFQ schedule as needed and will issue an addendum if it modifies the schedule.

### 1.3. Qualified Consultant

All Consultants submitting a Response to this RFQ and seeking to provide services for the District should be extremely familiar with all applicable regulations, including the procedures for state-funded projects, industry guidelines especially as they apply to community college projects, and be capable of providing work product that will enable the District to strictly comply with said requirements. Consultants must demonstrate a minimum of five (5) years of relevant experience and professional success with similar services for education projects. It is the District’s strong preference that relevant Community College experience be highlighted however relevant experience with other school districts such as K-12 districts will be considered also.

Pre-Qualified Consultants are in no way guaranteed to receive any work from the District. However, it is the District's intent to look to the pool of Pre-Qualified Consultants when choosing a Consultant to perform construction management services or project management planning services for various facilities improvement projects. The District, on an "as-needed" basis, will issue Request for Proposals ("RFP") to one or more Pre-Qualified Consultants to provide these services on behalf of the District for a particular site/project.

#### **1.4. Submission**

If your Firm is interested in performing Services for the District, please submit to the District a Response in accordance with this RFQ. Responses must be emailed to [FacilitiesRFP@RSCCD.edu](mailto:FacilitiesRFP@RSCCD.edu) and must be submitted no later than the date indicated in the RFQ schedule included in Section 1.2. As the District is working remotely due to the COVID-19 pandemic, only electronic submittals are accepted. Responses must be received no later than date and time indicated in the RFQ schedule, Section 1.2. Delivery of Responses is the sole responsibility of the Consultant. All Responses must be signed (electronic signatures accepted) and become the property of the District.

#### **1.5 Response Format**

Each Consultant is required to submit a Response they deem appropriate to the following request. Submittals should be brief and concise, but provide sufficient clarity to meet the criteria in the evaluation process. Each Response, tabbed, organized in the same order as the RFQ, and include all sections and information (as required) in Part 3, Statement of Qualifications Response Format. Each Consultant shall submit **one (1)** electronic submittal, in PDF format with bookmarks, of the Response. The District will evaluate the Responses based on the responsiveness to District requirements listed.

NOTE for Exhibits: All Exhibits should be tabbed, labeled and included as part of the appendix. It is at the Firm's discretion to determine how to reference, in the body of the Response, the location of the Exhibits in the appendix. All Exhibits may be recreated in another program as long as the formatting and information requested mirrors the PDF forms attached to this RFQ. The intent of the PDF forms is to keep all the requested information in a uniform format.

NOTE for Firms teaming with Sub-Consultants: Each responding Firm shall select their proposed sub-consultants based on their own criteria. However, RSCCD reserves the right to approve and request additional information or substitutions for sub-consultants proposed for any projects that may be awarded. Sub-Consultants do not need to complete all the Exhibits in this RFQ. Carefully read each section to determine which forms the Sub-consultants need to submit.

#### **1.6 Questions**

Consultants must carefully read the entire RFQ prior to submitting questions as most questions will be answered in this RFQ. If, however, you should have questions regarding this RFQ, please email [FacilitiesRFP@RSCCD.edu](mailto:FacilitiesRFP@RSCCD.edu). All questions must be submitted in writing, referencing RFQ #2021-301 in the title. The question deadline for this RFQ is included in Section 1.2. After this deadline, the District will not answer, address, and/or review any questions interested Consultants might submit. Responses to all questions received prior to the deadline will be provided to all Consultants via addendum. Addenda, if issued, to this RFQ will not be distributed by the District to any Respondent. Respondents are required and responsible to check the District's "Bid Opportunities" webpage to access any addenda to this RFQ.

## **1.7 Request for Proposals**

Pre-Qualified Consultants are in no way guaranteed to receive any work from the District. However, it is the District's intent to look to the pool of Pre-Qualified Consultants when choosing a Consultant to perform construction management services and/or project management planning services for various districtwide projects. The District, on an "as-needed" basis, will issue Request for Proposals ("RFP") to one or more Pre-Qualified Consultants to provide services on behalf of the District for a particular site/project. Each Proposal shall describe the Consultant's experience and expertise with respect to the services, if any, which are unique to the property or project that is the subject of the Proposal. In addition, the Proposal shall set forth a detailed scope of services, a completion schedule, a schedule of professionals that will be used to supervise and staff the project, and a not-to-exceed dollar amount for the services to be performed. The District will allocate work to said Pre-Qualified Consultants.

Future RFP projects vary in nature, scale, and scope. The projects may consist of improvements, alterations, renovations, additions, modifications, and upgrades related to; barrier removal, energy efficiency, scheduled maintenance, access control, safety and security, site and building infrastructure, MEP/AV/Technology, fire alarm, site improvements, and wayfinding. The projects also include special projects such as hazardous material remediation, staff relocations, portable upgrades/removals, structural investigations, building enclosure investigations, new site/building feasibility studies and major capital improvement projects should they develop during the duration of the services outlined in this RFQ. This project listing is representative of various project types and is not a listing of actual projects nor is it all-inclusive.

## **2. SCOPE OF SERVICES**

### **2.1. Scope of Services – Construction Management**

Provide Construction Management Services to the District, as further described in **Exhibit I – Construction Management Services Agreement** (specifically Exhibit "A" of the agreement). Such services shall be performed consistent with the standard of care for professionals performing similar scopes of services. The Consultant shall, at a minimum, undertake the scope of services reasonably necessary and customarily provided by Construction Management Consultant Firms conducting business in the Southern California area to ensure that all of the District's goals, standards, policies and procedures are adhered to over the course of the assignment.

### **2.2 Scope of Services – Project Management Planning**

The District is looking for a consultant to work as an extension of staff in the District's Facility Planning, District Construction and Support Services Department. The consultant shall work alongside staff in facilities planning, project and program development, including performing a variety of tasks from project planning, scoping, budget development administrative and regulatory approvals through close out, and other related tasks. Tasks may include a variety of planning, design management, oversight of construction and renovation work at facilities within the district's boundaries.

The consultants will work as an extension of District staff to manage and develop processes, procedures and develop projects that are aligned with the goals of the Department to ensure the continued progress of activities in any of the phases of planning/pre-design, design, construction, close-out, Division of State Architect review,

approval and certification, and other program related activities for various projects in the Measure Q building program, Scheduled Maintenance, Energy Efficiency Projects, Facility Modification Requests, Special Projects, Feasibility Studies, or other Capital Facilities project needs. They will be required to operate and comply within established protocols, policies and procedures including budget, accounting, contracting, and project management.

Planning, Preconstruction and Design Management Services may include the following and other duties and tasks as required:

- Gain familiarity with project needs, budget, and timing.
- Confirm scope and program requirements, including compliance with Title V requirements.
- Conduct meetings with site staff and design team to refine detailed scope and program, including compliance with District educational specifications and Material and Construction Standards.
- Review proposals received from design consultants for scope and reasonableness to provide recommendations to the District.
- Review proposals received from firms for preconstruction phase for scope and reasonableness to provide recommendations to the District.
- Review level of effort and associated costs for reasonableness and appropriate quantity.
- Interact with design consultant as needed to obtain appropriate scope and level of effort.
- Interact with construction consultant as needed to obtain appropriate scope and level of effort.
- Set up a decision-making framework to ensure timely District decisions.
- Ensure that project is properly set up in tracking software which may include initial project schedule and budget.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide monthly status reports in prescribed format.
- Attend weekly project meetings.
- Participate in and maintain minutes of critical pre-design phase meetings.
- Participate in the site acquisition process and/or environmental due diligence site planning as determined by the District.
- Interpret and apply California Environmental Quality Act (CEQA) and State Department of Education and State Chancellor's Office of Community College guidelines. Assist with filing CEQA documents with appropriate State and County agencies; obtain land use and property data from County records.
- Participate in other meetings as required.
- Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed.
- Additional tasks associated with successful project management.
- Develop proper scopes of work, schedules and budgets to manage other vendors or consultants.

Design Phase duties may include:

- Monitor design phase schedule and progress throughout all phases.
- Review design phase submittals and recommend approval.

- Monitor project budget to ensure compliance with the District's project budget.
- Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
- Ensure that project is properly maintained in tracking software.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide weekly status reports in prescribed format.
- Attend weekly program meetings.
- Participate in and maintain minutes of critical design phase meetings.
- Participate in other meetings as required.
- Assist in bidding preparation and award process.
- Participate in pre-bid meetings.
- Facilitate the functioning of an integrated project delivery team.
- Additional tasks associated with successful project management.

Construction Phase duties may include:

- Ensure that contract is properly constructed and executed and issue notice to proceed.
- Proactively manage change on the project.
- Review and approve contractor's change order requests for entitlement and cost.
- Manage project contingencies and allowances.
- Monitor project budget to ensure compliance with the District's project budget.
- Monitor construction schedule and report variances.
- Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
- Ensure that project is properly maintained in tracking software.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide daily status reports in prescribed format.
- Attend weekly program meetings.
- Participate in and maintain minutes of critical construction phase meetings.
- Maintain project documentation in compliance with program standards.
- Facilitate the functioning of an integrated project delivery team.
- Additional tasks associated with successful project management.

Closeout phase duties may include:

- Assist with final punch list and final inspections.
- Assist in review and transfer of the final warranty/guarantee.
- Monitor progress of design team in submitting required DSA closeout documentation and retrieve verification. Work with parties to ensure timely close out of projects or assist District is retaining certification for open applications.
- Assist in review and transfer of all required maintenance and operation manuals.
- Assistance with and/or coordinate moving activities with vendors, campus, staff, others as needed to ensure smooth transition into occupancy.
- Coordinate and ensure that required training on systems and materials takes place.
- Coordinate and monitor completion of commissioning process.
- Review final invoices.
- Review closeout documents.
- Reconcile expenditures and budget.

- Assist in the finalization of any outstanding contracts and claims.
- Ensure that all contract deliverables have been completed and submitted to the District.
- Additional tasks associated with successful project management.

Other duties may include:

- Provide administrative support as required, such as Board docket and agenda reports.
- Provide weekly project updates.
- Update, maintain and provide timely budgets and schedules.
- On-going review and/or processing of invoices to ensure timely payment as required.
- Review of contracts to ensure proper execution of scope of services related to the project as required.
- Provide specialized technical support as required.
- Assist the District's construction program, ensuring compliance with legal and contractual requirements and District policies and objectives.
- Miscellaneous duties related to effective and successful project management as required.
- Assist in the development and tracking of requests from the district, its campuses and other facilities providing program services.
- Provide estimating services as required.
- Provide scheduling services as required.

Program planning duties may include:

- Assist District in the development and maintenance of district standards, overseeing the process, identifying items to standardize, work with colleges to facilitate development of standards.
- Refine, develop, coordinate, and establish a system of management for the implementation of a comprehensive District wide Systems Condition Index management plan coordinated with the campuses and integrated into FUSION utilizing a variety of data sources from FUSION, the campuses, existing plans and reports, and the Building Condition Assessment recently provided by the Foundation in 2014. The goal is to have a comprehensive strategy for planning on-going routine maintenance projects at various sites that can be institutionally followed and coordinated between the District Office and the college, including a plan for assessing, developing and managing Scheduled Maintenance projects. Evaluate the criteria to be utilized and propose a system of management for the 5 year on-going plan that is updated annually. Work to identify the process and implement such by working with the District, College and others to understand and facilitate the execution of the plan.
- Assist in contract development and standardization of forms and templates for the district use, including any Request for Qualifications or Proposals that may still be needed to further develop projects.
- Preparation, distribution, tracking, reviewing and awarding of any RFQ and/or RFP needed
- Management and development of energy and sustainable projects to comply with CCCIOU requirements and District's sustainability plan goals (see

<https://www.rscdd.edu/Discover-RSCCD/Documents/SRC%20-%20Documents/RSCCD%20Sustainability%20Plan%20Final%20-%20Feb%202015.pdf> for the complete sustainability plan.

- Assist the District with securing funding for various projects.
- Assist with the preparation of reports for various agencies and coordination of applications needed on behalf of the District or other documentation that may be needed.
- Assist to resolve complaints and/or seek to resolve and mitigate issues that may arise on projects on behalf of the District with a variety of entities, consultants, contractors or others that may be needed occasionally on projects.

Move Services duties may include:

- Providing assistance in all aspects of planning, scheduling, coordinating and execution of the physical relocation of personnel, faculty, staff, including, furniture and equipment or other physical assets.
- Interacting with building users, project managers, faculty, college staff, district employees, other users, and project team members involved with moves and necessary relocations to implement construction projects or related to other capital facility projects.
- Development of a Move Plan for each relocation or move that is anticipated as per the District.
- Coordinate the details and planning aspects of the move from original locations to the complete set-up at the destination.
- Manage and oversee movers on the day of the scheduled moves as necessary.
- Assemble and Manage Project Team to outline Project Requirements (Kickoff meeting).
- Develop a detailed implementation schedule, project budget and communications plan.
- Coordinate with the Furniture Supplier insuring space efficiency.
- Make recommendations with respect to existing furnishings, relocation and installation of equipment, and move phase consolidation.
- Provide inventory of said furnishings.
- Assess and determine the amount of moving supplies (i.e. boxes) needed for the move.
- Work with Purchasing and other District personnel to coordinate asset management of furniture and equipment in keeping with the District's policies and procedures.
- Coordinate and supervise all aspects of interior workshop set-up, tear down, move/relocation, equipment and furniture requests as needed.
- Work and coordinate with equipment installers.
- Schedule and facilitate pre-move meetings with various stakeholders.
- Work and assist District Purchasing and other District personnel with the procurement process of actual moving services (i.e. supplies and transportation) to ensure proper and adequate resources are provided to ensure a smooth move.
- Implementation of Move Plan.
- Move administration including pre-move conferencing, approvals of vendor contractor plans, pricing and schedules, facilitation of team and project staff meetings.
- Project coordination and communication (signage, Department Coordination, project notes, request tracking, etc.).



- Hold meetings (with frequency to be determined with various stakeholders).
- Track project expenditures against budget; review and verify contractor vendor requests for payment.

### **2.3 Compliance with Applicable Laws**

Consultant's Response must set forth Consultant's understanding of all applicable laws, guidelines, and requirements, including the Education Code, Division of the State Architect (DSA), California Community Colleges Chancellors Office (CCCCO) and local ordinances and/or other applicable guidelines applicable to the Services to be undertaken, as well as Consultant's ability and methodology to comply with the same. Consultant's Response must confirm that the proposed Services will meet all the aforementioned requirements as set by the applicable codes, regulations and guidelines.

### **2.4 Working Conditions**

Each Consultant shall be capable of working indoors and outdoors, as required, in all weather and site conditions including, but not limited to, rain, dirt, mud, and ice. The Consultant's activities may require kneeling, bending, climbing ladders, stepping over trenches, etc.

### **2.5 Deadlines**

Each Consultant must be prepared to provide turnkey services for such cost estimating consulting services as the District may hereafter require. Each Consultant must be prepared and equipped to provide such services in an expeditious and timely manner and on relatively short notice to enable the District to meet critical, and at times unpredictable, time deadlines and schedules.

The District shall not be responsible in any manner for the costs associated with the preparation or submission of Consultant's Response. The Response, including all drawings, plans, photos, and narrative materials, shall become the property of the District. The District shall have the right to copy, reproduce, publicize and/or dispose of each Response in any way that the District may choose.

## **3. STATEMENT OF QUALIFICATIONS/PROPOSAL RESPONSE FORMAT**

### **3.1. Firm Information**

Provide a cover letter and introduction, including the company name, headquarters and local office (if different from headquarters) address, telephone number, and e-mail address of the person or persons authorized to represent the institution regarding all matters related to the Response. As part of the narrative, provide a brief synopsis of the firm's corporate structure and history. In a narrative discussion, describe any litigation or threatened litigation against your firm or its owners that may affect your performance or completion of this proposed program. A person authorized to bind the firm to all commitments made in the Response shall sign this letter. In addition to the cover letter, complete **Exhibit A – Firm Information Form** and **Exhibit B – Firm Information Questionnaire**.

### **3.2 Firm Approach and Methodology**

Describe the Consultant's philosophy with regard to approach and experience related to Services outlined in the RFQ, and experience in working with a Community College District. Identify key elements to providing quality service and project delivery that would lead to a successful project completion.

### **3.3 Firm Experience**

Provide a summary of Consultant's relevant expertise and experience in construction management and/or project management consulting services, especially as it relates to community college facilities. Consultant must demonstrate a minimum of five (5) years of relevant experience and professional success.

Using **Exhibit C – Firm Project Experience Form**, provide a **minimum of three (3)** completed projects, with a minimum of **one project in the State of California**. Provide detailed descriptions of the projects (particularly community college projects) that the consultant has worked on **within the last eight (8) years**, which demonstrates relevant experience for projects of various size, type, and difficulty. Each project description should include the date(s), the scope of work or similar services that was performed, the name, title, address, and telephone number of a contact person who can be contacted for verification of information provided by Consultant. Do not provide **Exhibit C** for Sub-Consultants.

Furthermore, provide a list of all Rancho Santiago Community College District contracts held within the last five (5) years including, with respect to each project, the project name, property address, contract amount, and Consultant's contact person at the District on said project. Past performance of the Consultant will be evaluated and Clients listed may be contacted for a reference.

### **3.4 Key Personnel/Team Members**

Please identify your Firm's available team members, key personnel and staff members and their specific expertise and experience in construction management and project management consulting services, especially as it relates to Community College campus projects. Include an organizational chart for the proposed staff and indicate who will be the District's main contact person for your Firm. Each team member proposed should at least have a minimum of 5 years of experience. Provide the names and detailed resumes of key personnel who will be the designated team available, knowledgeable, regularly attentive and working directly with the District. In addition, list all professional registration certification and/or license designations and numbers that are currently active in the State of California. Do not list any inactive registration and/or license designations.

### **3.5 Sub-Consultants**

Identify any Sub-Consultants, if any that are likely to be used by your Firm in carrying out Services for the District. You can list multiple firms if needed per category (i.e. cost estimating, schedule consultant, etc.) For each sub-consultant Firm, please list names, California license or registration numbers, contact person(s), business addresses, phone numbers, fax numbers, e-mail addresses, date established, and time associated with Firm. Please complete **Exhibit A – Firm Information Form** and **Exhibit B – Firm Information Questionnaire** for Sub-Consultants. Provide team member resumes for each team member.

### **3.6 Billing Rates**

Provide billing rates for all personnel and categories of employees as well as any overhead or other special charges. If applicable, Consultant's Response should provide estimates for certain standardized components of the Services. Provide Consultant's typical fee schedule as applicable, as well as any Sub-consultant fees or services that may be needed.

Please complete **Exhibit D-1** for Construction Management and/or **Exhibit D-2** for Project Management Planning.

Consultant hourly rates shall be **all-inclusive** and include/account for all direct labor costs, fringe benefits, travel, insurance, overhead, profit, and all other expenses the Consultant will incur in providing Services. All other services not included herein shall be negotiable as required.

### **3.7 Contract**

Consultants shall review the draft District agreement, and provide any comments or objections to the Agreement in its Response – **Exhibit I** for Construction Management Services and **Exhibit J** for Project Management Planning Services. Consultants will be required to substantially accept the form of Agreement, including the indemnification provisions therein. **PLEASE NOTE: The District will not consider any substantive changes to the form of Agreement.**

### **3.8 Certification**

Consultants shall certify that they have received the RFQ, read the instructions and submitted a Statement of Qualifications with the proper authorizations. Consultant shall complete **Exhibit E – Certification, Request for Qualification** and submit it with the Response. Do not provide this form for Sub-Consultants.

### **3.9 Non-Conflict of Interest**

Consultants shall certify that they shall perform Services as an independent contractor and not as an officer, agent or employee of the District. Consultant shall complete **Exhibit F – Statement of Non-Conflict of Interest**, and submit it with the Response. Do not provide this form for Sub-Consultants.

Note: During the qualification and selection process (i.e. from the date this RFQ and/or future RFQs are released to the conclusion of the selection process), if it is determined that any individual(s) who works for or represents any interested firm communicates with, contacts and/or solicits Board Members of the District in any fashion, said firm shall be disqualified from the RFQ and/or RFP selection process, and may be removed from any established prequalified list, as well as the removal from the “interested vendors list.”

### **3.10 Local Hire and Local Business Questionnaire**

Consultants shall certify by completing **Exhibit H – Questionnaire Form for Local Hire and Local Business** for Firm and any sub-consultants. The Rancho Santiago Community College District is interested in furthering opportunities for Local Hires and Local Businesses. The District collects this data as part of the RFQ process and any future RFP process.

## **4. INSURANCE REQUIREMENTS**

### **4.1 Insurance Requirements – Construction Management**

The Firm awarded a future contract will be required to maintain, in full force and effect and at their own expense, insurance policies with companies certified with the California Insurance Commission. For full insurance requirements, refer to **Exhibit I – Construction Management Services Agreement** (specifically Article 14.)

Prior to commencing any contract, the selected firm must provide the District with certificates of insurance that includes the following: the Rancho Santiago Community College District and its Board, Officers and employees, shall be named as additional insured parties on General Liability and Automobile policies. Endorsements must be submitted with the certificate(s).

#### **4.2 Insurance Requirements – Project Management Planning**

The Firm awarded a contract will be required to maintain, in full force and effect and at their own expense, insurance policies with companies certified with the California Insurance Commission. The following minimum insurance is required in order for your firm to qualify for participation in any project with the Rancho Santiago Community College District:

1. Comprehensive general and auto liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, bodily injury and property damage liability per occurrence, including:
  - Owned, non-owned and hired vehicles;
  - Blanket contractual;
  - Broad form property damage;
  - Products/completed operations; and
  - Personal injury;
2. Professional liability insurance, including contractual liability, with limits of \$2,000,000 per claim;
3. Workers' Compensation Insurance shall be maintained, in accordance with provisions of the California Labor Code, adequate to protect any person, firm, or corporation employed directly or indirectly in connection with the work of the Consultant from claims under Workers' Compensation Acts which may arise for operations, whether such operations be by any person, firm, or corporation, employed directly or indirectly by the Consultant upon or in connection with the work.

Prior to commencing any contract, the selected firm must provide the District with certificates of insurance that includes the following: the Rancho Santiago Community College District and its Board, Officers and employees, shall be named as additional insured parties on General Liability and Automobile policies. Endorsements must be submitted with the certificate(s).

### **5. SELECTION CRITERIA AND EVALUATION PROCESS**

All Responses will be evaluated as per the selection criteria and evaluation process described below. All Consultants shall be advised and understand the policies applicable to contract award if selected.

#### **5.1. Selection Criteria**

Although not necessarily exhaustive of the criteria to be utilized, the District intends to use the following evaluation criteria in selecting the Consultant for the Project:

- **Responsiveness to the RFQ:** breadth and depth of response, completed Firm Information Form

- **Firm Information:** complete information regarding firm location, ownership, etc. Completed Firm Information Questionnaire (legal history, insurance coverage, safety record, disputes, termination, bankruptcy)
- **Firm Project Experience:** completed the form and demonstrates adequate and relevant experience, community college experience preferred for Project Management and community college experience for Construction Management and K-12 experience accepted for Construction Management, experience with Division of the State Architect (DSA) if applicable, proven experience in meeting schedules and deadlines, adequately addresses items noted on form
- **Project Team and Sub-Consultants:** has provided all team member resumes with appropriate information, project experience noted, licenses noted, qualifications noted
- **Current Workload & Availability:** has adequate resources to support project, firm's support staff, project team and/or sub-consultants
- **Firm Approach & Methodology:** outlines a proposed methodology to be utilized in construction management/project management planning services; and evidence of ability to prioritize project and begin job in a timely fashion
- **Specific Team Member Project Experience:** evaluate team member experience, relevancy for project and scope, totality of team members including sub-consultants identified to work on project
- **Fee:** has provided a proposed fee, provided billing rates for team members and sub-consultants, has competitive rates in comparison to others, completed the Billing Rate Form
- **Budgets/Cost Estimates:** proven experience in accuracy of firm's cost estimates
- Firm located in District or Orange County (for locally-funded projects), filled out the local hire/business form
- Veteran owned firms and/or DVBE firm
- Completed Certification Form
- Completed Statement of Non-Conflict of Interest Form
- Provided Confidential Financial Information (if requested)
- Provided comments on Draft Agreement (if applicable)
- Client Reference Checks: satisfaction of prior/current clients, professional reputation of the firm, past experience working with District.

## 5.2. Evaluation of Responses

Responses will be evaluated by a panel of individuals selected by the District. At the District's discretion, to further assist in evaluation, some, one, or all of the responding firms may be requested to participate in an oral interview. The interview will be used as another opportunity to clarify any issues within a given Response and explore the approaches that may be used to satisfy all District requirements. The District reserves the right to request that some or all of the responding firms consent to being interviewed by selected District personnel and/or representatives and/or submit additional written information.

Based on its evaluation of the Responses that it receives; the District may select a Consultant. The District reserves the right to request that some or all of the respondents submit additional written information and/or that they consent to be interviewed by selected District personnel and/or representatives.

## 5.3. Policies Applicable to Contract Awards

All work to be performed under any awarded contract must conform to all applicable laws and guidelines and all requirements of the District, local jurisdictions as applicable, all other

governmental agencies with jurisdiction, and conform to the requirements set forth by this RFQ.

This Request and any potential future RFQs or RFPs do not commit the District to award a contractual agreement with any vendor or to pay any costs incurred in the preparation of Responses or participation in an interview.

The District reserves the right at its sole discretion to: (i) waive or correct any defect or informality in any response, (ii) withdraw this RFQ, (iii) reissue this RFQ, (iv) send out additional RFQs/RFPs, (v) reject any and/or all RFQs/RFPs, (vi) prior to submission deadline for this RFQ, modify all or any portion of the selection procedures including deadlines for accepting responses, Services to be provided under the RFQ, or the requirements for content or format of the RFQ, (vii) waive irregularities, (viii) procure any services specified in this RFQ by any other means, (ix) determine that no projects will be pursued and/or (x) terminate or change the contracting process articulated in this RFQ because of unforeseen circumstances.

Acceptance by the District of any Responses submitted pursuant to this RFQ shall not constitute any implied intent to enter into an agreement for services.

Responses, including all graphic and narrative materials, shall become the property of the District upon the District's receipt of the Response. The District shall have the right to copy, reproduce, publicize and/or dispose of each Response in any way that the District may choose.

The District reserves the right to negotiate the terms and conditions of any agreement for services that may hereafter be let by the District.

## **6. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS**

The Rancho Santiago Community College District supports a participation goal of at least three percent (3%) of the overall dollar amount expended each year to Disabled Veterans Business Enterprises (DVBE). If Consultant is selected to provide services to the District, Consultant will be required to sign and return a Certification form (copy included with these RFQ/P documents) certifying that they will provide the District with information regarding the use of any DVBE contractors or consultants on the project.

Information about DVBE resources can be found on the Executive Branch's website at <http://www.dgs.ca.gov> or by calling the Office of Small Business and DVBE Certification at 916-375-4940. **Please note that DVBE documentation is included in this RFQ but is not required to be submitted in the Response.** The DVBE documentation will be required if the Consultant is Pre-Qualified and then chosen to provided services as a result of a future RFP process. Please review **Exhibit G – Statement of Intent to Meet DVBE Participation Goal.**

# Exhibit A – Firm Information Form

## Background

\_\_\_\_\_  
Firm Name Address

\_\_\_\_\_  
Yr Est. Phone FAX E-Mail

## **Principals/Officers to Contact:**

\_\_\_\_\_  
Primary Contact Title Phone E-Mail

\_\_\_\_\_  
Secondary Contact Title Phone E-Mail

Is the firm authorized to do business in CA?  Yes  No  
If Yes, on what basis?  CA Corp  CA Business License  Other: \_\_\_\_\_

Any former address or parent company?  Yes  No  
If Yes, please specify: \_\_\_\_\_

Type of Firm:  Sole Owner  Partnership  Corporation  
 Joint Venture  Other: \_\_\_\_\_

DVBE Participant?  Yes  No

Veteran Owned Business?  Yes  No

## Experience

Professional Service Fees (indicate index number corresponding to fees received in each noted year):

2016

2016

2018

2019

2020

Index numbers for Professional Services Fees:	
1. Less than \$50,000	5. \$500,000-\$1M
2. \$50,000-\$100,000	6. \$1M-\$2M
3. \$100,000-\$250,000	7. \$2M-\$5M
4. \$250,000-\$500,000	8. Greater than \$5M

Years of Service

Community College

**Personnel**

Total # of Personnel:

---

Total # of Consultants:

---



## Exhibit B – Firm Information Questionnaire

---

### ANSWER THE FOLLOWING QUESTIONS

1. Is the company or its owners connected with other companies as a subsidiary, parent, affiliate, or holding company?  Yes  No  
If yes, explain on a separate, signed sheet.
2. Does the company have an ongoing relationship or affiliation with a contractor or equipment manufacturer?  Yes  No  
If yes, explain on a separate, signed sheet.
3. Has the company (or any owner) ever defaulted on a contract forcing a surety to suffer a loss?  Yes  No
4. In the past five (5) years, has the company had any project with disputed amounts more than \$50,000 or a project which was terminated by the owner, owner's representative, or other contracting party and which required completion by another party?  Yes  No  
If yes, explain on a separate, signed sheet. State the project name, location, owner/contact person, telephone number, contract value, disputed amount, date, and reason for termination/dispute.
5. Has the company, an affiliate company, or any owner ever declared bankruptcy or been in receivership?  Yes  No  
If yes, explain on a separate, signed sheet.
6. Has the company ever had arbitration on contracts in the past five (5) years?  Yes  No  
If yes, explain on a separate, signed sheet. State the project name, location, owner/contact person, telephone number, contract value, disputed amount, a brief description, and final resolution.
7. Does the company have any outstanding liens or stop notices for labor and/or materials filed against any contracts which have been done or are being done by the company?  Yes  No  
If yes, explain on a separate, signed sheet. State the project name, location, owner/contact person, telephone number, amount of dispute, and brief description of the situation.
8. Has your firm, or an individual from your firm providing services for a project, ever been terminated for convenience or cause from a project, by either school district, College, CCD, public agency, or client?  Yes  No  
If yes, explain on a separate, signed sheet. State the project name, location, owner/contact person, telephone number, and brief description of the situation.

9. Has your firm ever worked with the District in the past 8 years? \_\_\_ Yes \_\_\_ No  
If yes, provide detail on a separate sheet; state the project name, the service that was provided, and the scope of the project work. Who was your company's main day to day representative on the project and who was the District's main day to day point of contact for the District?

THE UNDERSIGNED DECLARES UNDER PENALTY OF PERJURY THAT ALL OF THE INFORMATION SUBMITTED WITH THIS RFQ/RFP IS TRUE AND CORRECT. FAILURE TO PROVIDE BACK UP TO A "YES" ANSWER AND/OR FAILURE TO SIGN THIS DOCUMENT MAY RESULT IN A RESPONSE DISQUALIFICATION.

Signature:	_____	Title:	_____
Print Name:	_____	Date:	_____
	_____		_____

# Exhibit C – Firm Project Experience Form

Minimum of five (5) relevant projects completed within the last eight (8) years. <b><u>Use multiple sheets as necessary.</u></b>	
Firm name:	
Project Name:	
Client Name:	
Location (City/State):	
Client Contact Name:	
Client Contact Title:	
Client Contact Telephone No:	Client Contact Email:
Type of Project: (Renovation, addition, new construction, repair, planning, access compliance, etc.)	
Delivery Method: DBB, DB, LLB, other	
What was the Architectural Service Contract Amount?	\$
Original Total Budget for Construction? \$	Actual Construction cost at end of project? \$
Did your firm provide cost estimates? ( Y / N )	DSA Application #:
At what phases of design did your firm provide cost estimates?	As a result of cost estimates provided, did you have to undertake a value engineering process to meet client’s budget expectations? (Y / N) If “yes”, please provide detail below:
Milestone Project Schedule:	Was the project completed on schedule? (Y / N) If “no”, explain below, including the reasons.

Contractor on the project:	How many CCD's were on the Project?
	A:
	B:
Was DSA approval received per schedule? ( Y / N ) If "no", explain below, including the reason for the delays.	Was DSA Close Out Certification received (Y / N) If "no", explain below, including the reason.
Project Summary/Narrative: (Please provide details of Project, comments and/or clarifications)	

# Exhibit D-1 – Billing Rate Form - Construction Management

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

## Billing Rates

Do rates include travel charges?  Yes

*Note: all rates shall include travel and mileage. These will not be acceptable reimbursable items.*

Job Title	Name of Personnel	Hourly Rate	Daily Rate (max)

\_\_\_\_\_  
Effective Dates of Rates

\_\_\_\_\_  
Signature

**NOTE:** All licensed professionals in responsible charge of the work **MUST** be directly employed by the responding Consultant and **NOT** employed as a Sub-Consultant. Consultant's proposed rates should include and account for all direct labor costs, fringe benefits, insurance, overhead, profit, travel, and all other expenses the Consultant will incur in providing Services. All other Services not included herein shall be negotiated as required.

# Exhibit D-2 – Billing Rate Form Project Management Planning

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

## **Billing Rates**

Do rates include travel charges?  Yes

*Note: all rates shall include travel and mileage. These will not be acceptable reimbursable items.*

Job Title	Name of Personnel	Hourly Rate	Daily Rate (max)

\_\_\_\_\_  
Effective Dates of Rates

\_\_\_\_\_  
Signature

**NOTE:** All licensed professionals in responsible charge of the work MUST be directly employed by the responding Consultant and NOT employed as a Sub-Consultant. Consultant's proposed rates should include and account for all direct labor costs, fringe benefits, insurance, overhead, profit, travel, and all other expenses the Consultant will incur in providing Services. All other Services not included herein shall be negotiated as required.

## **Exhibit E – Certification, Requests for Qualifications**

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I certify that I have read and received a complete set of documents including the instructions for submitting a Response to the attached Request for Qualifications. I further certify that I am submitting one (1) electronic Response containing a complete, single-document PDF version of the Firm's SOQ in response to this request and that I am authorized to commit the Firm to the SOQ submitted.

I consent to Rancho Santiago Community College District contacting references included in this Statement of Qualifications, including but not limited to other school districts listed herein for the purposes of obtaining information about the survey experience.

**FAILURE TO SIGN THIS DOCUMENT MAY RESULT IN A STATEMENT OF QUALIFICATIONS DISQUALIFICATION**

_____ SIGNATURE	_____ TYPED OR PRINTED NAME
_____ TITLE	_____ COMPANY
_____ ADDRESS	_____ CITY, STATE, ZIP
_____ TELEPHONE	_____ FAX
_____ DATE	

If you are a corporation, please provide your corporate seal here.



## Exhibit F – Statement of Non-Conflict of Interest

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The undersigned, on behalf of the consulting Firm set forth below (the “Consultant”), does hereby certify and warrant that if selected, the Consultant, while performing the consulting services required by the Request for Qualifications, shall do so as an independent contractor and not as an officer, agent or employee of the Rancho Santiago Community College District (“the District”).

(1) No officer or agent of the Consultant has been an employee, officer, or agent of the District within the past two (2) years

(2) The Consultant has not been a source of income to pay any employee or officer of the District within the past twelve (12) months

(3) No officer, employee or agent of the District has exercised any executive, supervisory or other similar functions in connection with the Consultant Agreement or shall become directly or indirectly interested in the Consultant Agreement

(4) The Consultant shall receive no compensation and shall repay the District for any compensation received by the Consultant under the Consultant Agreement should the Consultant aid, abet or knowingly participate in violation of this statement; and

(5) During the selection process (from the date the RFQ is issued and ending on the date of the award of the contract), if it is determined that any individual(s) who work(s) and/or represent(s) the Consultant for business purposes communicates, contacts and/or solicits District’s Governing Board (“Board”), selection committee members, any members of Citizens’ Oversight Committee, or with any employee of the District except for clarification and questions as described herein in Section 1.6 in any fashion, such Consultant shall be disqualified from the RFQ selection process and from participating in any future RFQs and/or RFPs. This may also result in the removal of the Vendor, Firm, Contractor and/or Consultant from any established Pre-qualified list, as well as the removal from the “interested vendors” list.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**IF CONSULTANT IS UNABLE TO VERIFY THAT NO CONSULTANT EMPLOYEES ARE ALSO EMPLOYEES, OFFICERS OR AGENTS OF THE DISTRICT, PLEASE READ SECTION BELOW AND PROVIDE ADDITIONAL INFORMATION ON A SEPARATE SHEET.**

(1) Consultants are required to disclose any Consultant’s employee, officer or agent who is also an employee of the District. Please provide this information on a separate sheet.

(2) For all “dual employees” disclosed by a Consultant, the Consultant must provide specific details of the general/routine roles and responsibilities of the “dual employee” for the Consultant and the specific duties and responsibilities of the “dual employee” relating to the RFQ and services required by the RFQ.

(3) For Consultant who discloses that an employee, officer or agent of the Consultant is also a District employee, the District reserves the right to reject any Proposal based on the roles and responsibilities of the “dual employee” violating BP 7004 or Government Code §1126(a).



## Exhibit G – Statement of Intent to Meet DVBE Participation Goals

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The Rancho Santiago Community College District has a participation goal for disabled veteran business enterprises (“DVBE”) of 3 percent, per year.

Set forth below is a list of the anticipated participation of DVBEs which \_\_\_\_\_ (the “Consultant”) intends to use as part of its Agreement for Services, School Facilities Improvement Program (the “Program”). Although it is not specifically required, you are encouraged to include DVBE participation.

Prior to, and as a condition precedent for, final payment under the Agreement for the Program, the Consultant shall provide appropriate documentation to the District identifying the amount paid to DVBEs in conjunction with the Agreement, so that the District can assess its success in meeting the 3 percent goal.

The Consultant anticipates: (a) that \_\_\_\_\_ percent of the total dollar amount awarded to the Consultant shall be paid to DVBEs and (b) using the following DVBE Sub-Consultants:

Names of Sub-consultants:

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## **Exhibit H – Questionnaire Form for Local Hire and Local Business**

The Rancho Santiago Community College District is interested in furthering opportunities for Local Hires and Local Businesses and the Board of Trustees has established a goal of 50% participation of “Local Hires” and 25% participation of “Local Businesses” for various capital construction projects. It is the intent of the District to not only meet these goals, but to exceed them. As used in this Exhibit, “Local Hire” and “Local Business” is defined as follows:

“Local Hire” means an individual who is “domiciled”, as defined in Elections Code section 349(b), in the following zip codes at least seven days prior to commencing work on the Project: 92602, 92606, 92610, 92612, 92614, 92618, 92620, 92626, 92627, 92660, 92675, 92676, 92679, 92688, 92701, 92703, 92704, 92705, 92706, 92707, 92708, 92780, 92782, 92802, 92805, 92806, 92807, 92808, 92840, 92843, 92861, 92862, 92865, 92866, 92867, 92868, 92869, 92883, or 92887. Local Hire shall also mean a “veteran” as defined in Military and Veterans Code section 980, who possesses a current and valid DD Form 214 and will provide work on the Project. Local Hire shall also mean any current or former student that the District determines is or was enrolled as a student at one of the District’s colleges and will provide work on the Project.

“Local Business” means a business serving as a vendor as defined in Business and Professions Code section 7026 or a business supplying construction-related materials that has its principal headquarters or permanently staffed regional office and that has held a business license within the zip codes listed above for Local Hire for a minimum of three months prior to the date the entity submits a bid, contract, or proposal for the Project. A Local Business vendor must also be properly registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5. Local Business shall also mean any business supplying services or supplies for the Project that has its principal headquarters or permanently staffed regional office and that has held a business license within the zip codes listed above for Local Hire for a minimum of three months prior to the date the entity signs a contract or proposal for the Project. Local Business shall also mean any state or nationally certified minority-owned, women-owned, or disabled veteran business that has performed work for the District or other public agency within the zip codes listed above for Local Hire during the past four years. Certification for a minority-owned, women-owned, or disabled veteran business must be provided to the District. Local Business shall also mean a business that participates in an internship program that is currently approved or recognized by the District. The entity may also apply to obtain District approval of its internship program. The internship program must be approved by the District and must be completed by the end of the Project or by the next semester immediately after completion of the Project. Local Business shall also mean any entity that uses apprentices from a District approved apprenticeship program.

The Consultant agrees it will use Local Hires and Local Businesses to the extent possible or if the opportunity arises at any time. The District may request information or documents to confirm participation by a Local Hire or Business and Consultant agrees to comply with any reasonable requests.

Please complete questions below, including additional sheet for each Subconsultant (if applicable):

Company: \_\_\_\_\_

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| 1. Firm is a Minority Business Enterprise (MBE)          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Firm is a Women Business Enterprise (WBE)             | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Firm is a Disabled Veteran Business Enterprise (DVBE) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If "yes" for items 1-3 above, provide a copy of certification.

4. Firm is a Veteran Owned Business  Yes  No

If "yes" to 4, provide DD214 Form/Card

5. This business participates in or provides opportunities for internship programs:  
 Yes  No

If "yes", state type of internship program(s) offered \_\_\_\_\_

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6. List ALL Team Members who are considered a Local Hire. Check the applicable box(es), if any, pertaining to each individual.

	Team Member (First and Last Name)	Zip Code (for Local Residents Only)	Local Resident*	RSCCD Student**	Veteran	Intern
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

\*\* A RSCCD student is an individual who is or was enrolled in one or more classes at any of these campuses (Santa Ana College, Centennial Education Center, Digital Media Center, Orange County Sheriff's Regional Training Academy, Santiago Canyon College or Orange Education Center).

If selected, the Consultant agrees it will use Local Hires and Local Businesses to the extent possible or if the opportunity arises at any time the Consultant is providing services pursuant to this RFQ and the final contract entered into with the District. The District may request information or documents to confirm participation by a Local Hire or Business and Consultant agrees to comply with any reasonable requests.

Company: \_\_\_\_\_

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

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

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

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

# Exhibit I – Construction Management Agreement

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*See attached pages*

Agreement No.  
Board Approval:

<AGREE #>  
<Bd. Approval Date>

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES  
BETWEEN RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT  
AND  
<CONSTRUCTION MANAGER>**

DRAFT

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES  
BETWEEN  
RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT  
AND  
<CONSTRUCTION MANAGER>**

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## AGREEMENT FOR MEASURE CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services (“Agreement”) is made as of the <Day> day of <Month>, 2016, between the **Rancho Santiago Community College District** (“District”) and <Company Name> (“Construction Manager”) (collectively, the “Parties”), for the construction management and administration of construction and/or modernization of <Project Name> (See **Exhibit “F”** for project(s) description. Project scope and/or projects may be amended from time to time pursuant to the mutual written agreement of both parties.).

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

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

### Article 1. DEFINITIONS

- 1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2. **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s). The Architect is a member of the Design Team
  - 1.1.3. **Construction Manager:** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Construction Manager.
  - 1.1.4. **Construction Budget:** The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
  - 1.1.5. **Construction Cost Budget:** The total cost to District of all elements of the Project designed or specified by the Design Team, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Design Team, the Construction Manager, the cost of the land, rights-of-way, financing or other soft costs which are the responsibility of the District.
  - 1.1.6. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.
  - 1.1.7. **Design Team:** The architect(s), engineer(s), and other designer(s) that the District designates as designing all or a portion of the Project, including all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.
  - 1.1.8. **DSA:** The Division of the State Architect.
  - 1.1.9. **Extra Services:** Extra Services are defined in Article 7 and **Exhibit “B.”**
  - 1.1.10. **Fee:** The Construction Manager’s Fee is defined herein, payable as set forth herein and in **Exhibit “D.”**



- 1.1.11. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

**Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

- 2.1. **Scope:** Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project. The parties agree that the Construction Manager's Services described herein are based on a construction manager / general contractor structure on the Project(s). The District reserves the right to change this structure including, without limitation, utilizing a construction manager / multiple-prime structure, a design-build structure, or a lease-leaseback structure, each of which the Parties agree may require the Construction Manager's Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.
- 2.2. **Coordination:** In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Design Team, and the persons responsible for operation of the District's Labor Compliance Program, Community and Student Workforce Project Agreement, Local Hire Board Policy, and Owner Controlled Insurance Program, if applicable. If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language notifying the sub-consultant(s) of the District's Labor Compliance Program, Community and Student Workforce Project Agreement, Local Hire Board Policy, and Owner Controlled Insurance Program, if applicable.
- 2.3. **Construction Manager's Services:** Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence on <Date> and shall be completed no later than <Date> subject to extension for delays attributable to causes not within the Construction Manager's control. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**

**Article 3. CONSTRUCTION MANAGER STAFF**

- 3.1. The Construction Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 3.2. The Construction Manager agrees that the following key people in Construction Manager's firm shall be associated with the Project in the following capacities:

Principal-In-Charge:	
Project Director:	
Construction Manager:	
Asst. Construction Manager:	
Other:	
Other:	

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

- 3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Construction Manager shall within seven (7) days provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.
- 3.5. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.

**Article 4. SCHEDULE OF WORK**

The Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed, and shall prosecute the work diligently as described in **Exhibit "A"** in accordance with the schedule attached as **Exhibit "C."** Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

**Article 5. CONSTRUCTION COST BUDGET**

- 5.1. The Construction Manager shall develop a cost estimate at each design phase, review architect and third party cost estimates, and participate in reconciling the Construction Cost Budget with the Design Team, District's third party estimator, and the District throughout the design process and construction.
- 5.2. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Design Team. The Construction Cost Budget does not include the compensation of the Construction Manager, the Design Team, sub-consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 5.3. Construction Manager shall work cooperatively with the Design Team during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. The Construction Manager shall notify the District if it believes the construction cost of the work by the Design Team will exceed the Construction Cost Budget. The Construction Manager, however, shall not perform or be responsible for any design or architectural services.
- 5.4. Evaluations of the District's Construction Cost Budget, and preliminary and detailed cost estimates prepared by the Construction Manager, represent the Construction Manager's best judgment as a professional familiar with the construction industry.
- 5.5. If the Procurement Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.6. If any of the following events occur:
  - 5.6.1. If the lowest responsive base bid or proposal received is in excess of ten percent (10%) of the Construction Cost Budget, or

- 5.6.2. If the combined total of base bid or proposal and all additive alternates come in fifteen percent (15%) or more under the Construction Cost Budget, or
- 5.6.3. If the Construction Cost Budget increases in phases subsequent to the Design Development Phase due to revisions in the project scope, then the District, in its sole discretion, has one or a combination of the following alternatives:
  - 5.6.3.1. Give the Construction Manager written approval on an agreed adjustment to the Construction Cost Budget.
  - 5.6.3.2. Authorize the Construction Manager to re-negotiate, where appropriate, or re-bid or re-solicit within three (3) months (exclusive of District and other agencies' review time) at no additional cost to the District.
  - 5.6.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party.
  - 5.6.3.4. Instruct the Design Team to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding or re-soliciting, with Construction Manager's performing cost estimating, value engineering, and/or bidding and solicitation support at no additional cost to the District.
- 5.7. The Construction Cost Budget shall be reconciled at the completion of each design phase. No adjustment to the Construction Manager's Fee shall result from any of the events described in Section 5.6 without the prior written approval of the District.

**Article 6. FEE AND METHOD OF PAYMENT**

- 6.1. District shall pay Construction Manager an amount equal to <WRITTEN> dollars (<NUMERICAL>) for all services contracted for under this Agreement and as amended, based on the Fee Schedule attached to **Exhibit "D"**.
- 6.2. District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.3. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error.
- 6.4. The Construction Manager's Fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."** ("Fee")

**Article 7. PAYMENT FOR EXTRA SERVICES**

- 7.1. District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursable expenses not included in Construction Manager's Fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 7.2. A written proposal describing the proposed scope of services and listing the personnel, labor

duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Services.

**Article 8. OWNERSHIP OF DATA**

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

**Article 9. TERMINATION OF AGREEMENT**

- 9.1. If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions that caused the District to terminate the Construction Manager.
- 9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager's if there is a termination for convenience.
- 9.3. The Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within ninety (90) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.
- 9.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.
- 9.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the

Project after suspension, the Construction Manager will take all reasonable efforts to maintain the same Project personnel.

**Article 10. INDEMNITY**

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

**Article 11. FINGERPRINTING**

- 11.1. Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Construction Manager shall not permit any employee to have any contact with District pupils under the age of eighteen (18) until such time as the Construction Manager has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager’s responsibility shall extend to all employees, agents, and employees or agents of its subcontracts regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Criminal Background Investigation Certification (**Exhibit “E”**) shall be provided in writing to the District prior to each individual’s commencement of employment or participation on the Project and prior to permitting contact with any student.
- 11.2. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 11.3. Unacceptable and/or loud language will not be tolerated. “Cat calls” or other derogatory language toward students or public will not be allowed.

**Article 12. RESPONSIBILITIES OF THE DISTRICT**

- 12.1. The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager’s services.

- 12.2. The District shall provide to the Construction Manager complete information regarding the District's requirements for the Project.
- 12.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 12.4. The District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties to recommend or provide same.
- 12.5. The District, its representatives, and consultants shall communicate with the construction contractor either directly or through the Construction Manager.
- 12.6. During the Construction Phase of the Project, the District may require that the construction contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 12.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

**Article 13. LIABILITY OF DISTRICT**

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

**Article 14. INSURANCE**

- 14.1. Construction Manager shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to the DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from

CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whos acts any of them may be liable.

- 14.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
- 14.2.1. **Commercial General Liability.** Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate and automobile liability of insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:
- 14.2.1.1. Owned, non-owned and hired vehicles;
  - 14.2.1.2. Blanket contractual;
  - 14.2.1.3. Broad form property damage;
  - 14.2.1.4. Products/completed operations; and
  - 14.2.1.5. Personal injury.
- 14.2.2. **Workers' Compensation and Employers Liability Insurance.** In accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).
- 14.2.3. **Professional Liability.** Including contractual liability, with limits of TWO MILLION DOLLARS (\$2,000,000) per claim. Such insurance shall be maintained during the terms of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that Consultant subcontracts any portion of the Consultant's duties, Consultant shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and ground for immediate termination.
- 14.3. **Additional Insured.** Article 14, Section 14.2.2 above shall name the DISTRICT and its officers, agents and employees as additional insureds; and shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by the DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to the DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify the DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to the DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, the DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse the DISTRICT upon demand for the cost thereof.
- 14.4. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 14.5. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense

expenses.

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

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

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

14.6.3. For any claims related to or arising out of the Construction Manager's operations on this project, the Construction Manager's insurance coverage shall be primary and any insurance or self-insurance maintained by the Additional Insureds shall be noncontributing with respect to Construction Manager's insurance coverage.

14.6.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

14.6.5. The Construction Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

14.7. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.

14.8. **Verification of Coverage:** Construction Manager shall furnish the District with:

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

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

**Article 15. NONDISCRIMINATION**

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



**Article 16. COVENANT AGAINST CONTINGENT FEES**

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

**Article 17. ENTIRE AGREEMENT/MODIFICATION**

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

**Article 18. NON-ASSIGNMENT OF AGREEMENT**

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

**Article 19. LAW, VENUE**

- 19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**Article 20. ALTERNATIVE DISPUTE RESOLUTION**

All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

**Article 21. 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 22. EMPLOYMENT STATUS**

- 22.1. Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 22.2. Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (and offsetting any amounts already paid by Construction Manager which can be applied as a credit against such liability).
- 22.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**Article 23. WARRANTY OF CONSTRUCTION MANAGER**

- 23.1. Construction Manager warrants that the Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 23.2. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it

will comply with those provisions before commencing the performance of the work of this Agreement.

- 23.3. Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). Since the Construction Manager is performing work as part of an applicable “public works” or “maintenance” project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.
- 23.4. This Project(s) is a public works project as defined in Labor Code section 1720. To the extent applicable, the Construction Manager and all subcontractors performing the work for the Project(s) must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations (“DIR”) and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this Agreement. Failure to comply with these requirements shall be deemed a material breach of this Agreement and grounds for termination for cause. To the extent applicable, the Construction Manager and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

**Article 24. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS**

Construction Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

**Article 25. COMMUNICATIONS / NOTICE**

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

<p><b>District</b>                  Rancho Santiago Community College District                  2323 N. Broadway                  Santa Ana, CA 92706                  Attn: Carri Matsumoto, Assistant Vice                  Chancellor, Facility Planning, District                  Construction &amp; Support Services</p>	<p><b>Construction Manager</b></p>
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The Parties, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Article 26. OTHER PROVISIONS**

- 26.1. The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager’s willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager’s liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share

of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.

- 26.2. Neither the District’s review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager’s failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California community districts at or around the same time and in or around the same geographic area of the District.
- 26.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 26.4. The Construction Manager is precluded from bidding any portion of the work for the construction of the project(s).
- 26.5. Effective April 25, 2016, the Board of Trustees adopted Board Policy 3821 Gift Ban Policy. The Construction Manager shall adhere to Board Policy 3821 as there are strict prohibitions outlined in the policy. For further reference and information please read BP 3821 located found on the RSCCD website at <http://www.rsccd.edu/Trustees/Pages/BP-3821.aspx>.

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

Dated: \_\_\_\_\_, 2021

Dated: \_\_\_\_\_, 2021

**Rancho Santiago Community College District**

**<Construction Manager>**

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

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

Print Name: Adam M. O’Connor

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

Print Title: Interim Vice Chancellor, Business/Fiscal Services

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

COPIES TO:

GENERATING OFFICE  
Rancho Santiago Community College District  
2323 N. Broadway, Suite 112  
Santa Ana, CA 92706  
Carri Matsumoto, Assistant Vice Chancellor  
Facility Planning, District Construction and Support  
Services

PURCHASING DEPARTMENT  
Rancho Santiago Community College District  
2323 N. Broadway, Suite 109  
Santa Ana, CA 92706  
Linda Melendez, Director of Purchasing Services

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

- |    |                       |      |
|----|-----------------------|------|
| 1. | BASIC SERVICES        | A-2  |
| 2. | PRECONSTRUCTION PHASE | A-5  |
| 3. | PRE-PROCUREMENT PHASE | A-6  |
| 4. | PROCUREMENT PHASE     | A-7  |
| 5. | CONSTRUCTION PHASE    | A-7  |
| 6. | PROJECT COMPLETION    | A-10 |
| 7. | FINAL DOCUMENTS       | A-11 |
| 8. | WARRANTY              | A-11 |
| 9. | AUDIT                 | A-11 |

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EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

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

**1. BASIC SERVICES**

- 1.1. **General:** Monitor and advise the District as to all material developments in the Project. Construction Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for the Project. Construction Manager shall be the focal point of all communication to and from construction contractor(s) and shall be copied on all communications between District and its Design Team during Construction Phase.
- 1.2. **Scheduling:** Prepare methods to track and report on construction schedule status for the Project. Construction Manager shall use Microsoft Project software to develop master construction schedules and milestone schedules for the Project, and shall report on same each month to the District. District shall have full access rights to the scheduling software used by Construction Manager.
- 1.3. **Coordination with Design Team, District, and Others:** Construction Manager shall coordinate with the Design Team, District, and other District Consultants on a numbering and indexing system to coordinate and track proposed change orders, change orders, requests for information, etc.
- 1.4. **Communications to Board:** The Construction Manager may be required to attend select District's governing board meetings to provide updates. In addition, the Construction Manager may be required to attend District property committee meetings, Citizen Bond Oversight Committee meetings, COC, or other Project-related meetings within the campus or community.
- 1.5. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.6. Advise the District as to the regulatory agencies or authorities that have jurisdiction over the Project, and as to coordination with and implementation of the requirements of the regulatory agencies or authorities, including without limitation the Division of the State Architect.
- 1.7. Contract for or employ, at Construction Manager's expense, sub-consultant(s) to the extent deemed necessary for Construction Manager's services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement.
- 1.8. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project, including but not limited to: Design Team, third party cost estimator, commissioning agent, geotechnical engineer, environmental engineer, project inspector, and special inspector.
- 1.9. Chair, conduct and take minutes of construction meetings during the course of the projects. Construction Manager shall invite the District and/or its representative to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings.
- 1.10. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of

construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.

- 1.11. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.
- 1.12. Maintain project records (both hard copy and electronic) in accordance with the District's project filing system. All records, including but not limited to: correspondence, constructability reviews, value engineering reports, DSA forms, RFIs, change orders, and payment applications shall be provided to the District on a monthly basis for an accurate reflection of the project files. All files shall be transmitted to the District at the project completion.
- 1.13. Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.
- 1.14. Prepare a bidders list for each bid package for approval by District.
- 1.15. Assist the District in pre-qualifying bidders if prequalification is desired by the District. This service shall include the following:
  - 1.15.1. Preparation and distribution of prequalification questionnaires;
  - 1.15.2. Receiving and analyzing completed questionnaires;
  - 1.15.3. Interviewing possible bidders, bonding agents and financial institutions; and
  - 1.15.4. Preparing recommendations for the District.
- 1.16. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.17. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project, if requested.
- 1.18. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved Contract Documents from the Design Team and the Construction Manager shall arrange for printing, binding, wrapping, and delivery to the bidders. The Construction Manager shall not be responsible for the cost of printing Bid Documents. The Construction Manager shall maintain a list of bidders receiving Contract Documents.
- 1.19. Prepare an estimate of costs for all addenda and submit the estimate to the District for approval. The Construction Cost Budget and other Project costs shall be adjusted as indicated in the Agreement. Construction Manager shall not be entitled to an adjustment of its Fee as a result of any such addenda without the prior written approval of the District.
- 1.20. Provide and maintain a management team on the Project sites during construction.
- 1.21. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.

- 1.22. Comply with any storm water management program that is approved by the State and County and applicable to the Project, at no additional cost to the District.
  - 1.22.1. Ensure that all Project contractor(s), Project sub-contractor(s) and Construction Manager's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 1.23. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 1.24. Provide oversight of construction contractor compliance with the District's Owner Controlled Insurance Program (OCIP), in conjunction with the District's Insurance Agency.

**Note to Editor: If project is utilizing the CSWPA, then the Board Policy 6610 referred to below is not applicable and shall be deleted.**

- 1.25. Provide oversight of construction contractor compliance with the District's Local Hire Board Policy 6610.
- 1.26. Provide oversight of construction contractor compliance with the District's Community and Student Workforce Project Agreement (CSWPA), in conjunction with the District's Labor Compliance Administrator.
- 1.27. Construction Manager must be familiar with the District's Facility Design Standards (FDS) and assist the District in review of drawings for conformance to the FDS.
- 1.28. Construction Manager is NOT responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when required and Construction Manager shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:
  - 1.28.1. Ground contamination or hazardous material analysis.
  - 1.28.2. Any asbestos testing, design or abatement.
  - 1.28.3. Compliance with the CEQA, except that Construction Manager shall provide current information for use in CEQA compliance documents.
  - 1.28.4. Historical significance report.
  - 1.28.5. Soils investigation.
  - 1.28.6. Geotechnical hazard report.



- 1.28.7. Topographic survey, including utility locating services.
- 1.28.8. Other items specifically designated as the District's responsibilities under this Agreement.
- 1.28.9. As-built documentation from previous construction projects.

## 2. PRECONSTRUCTION PHASE

- 2.1. Provide reports and/or analysis, as requested by the District, such as but not limited to: construction type comparison, market trend changes, risk analysis, schedule analysis, etc.
- 2.2. Attend bi-weekly project meetings with District and Design Team.
- 2.3. **Value Engineering.** Provide value engineering at each phase of the design process including: Schematic Design Phase, 100% Design Development Phase, 60% Construction Document Phase, and 100% Construction Document 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 the Design Team. The Construction Manager will prepare a value engineering report that will document the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
  - 2.3.1. The Construction Manager shall organize and conduct a value engineering workshop for the Project.
    - 2.3.1.1. The Construction Manager shall invite the District and Design Team to participate in the workshop.
    - 2.3.1.2. Prior to the value engineering workshop, the Construction Manager and the Design Team will provide all participants with a preliminary list of value engineering items for discussion and order of magnitude estimates of cost both for design and construction.
    - 2.3.1.3. The workshop will consist of an initial Project design review, research of alternative solutions, and evaluations of alternatives. The workshop will conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.
    - 2.3.1.4. The Construction Manager will incorporate the workshop findings into one complete report for submittal to the District and Design Team.
  - 2.3.2. Value engineering is expected to be an ongoing process to determine ways to build a more efficient and economical Project without reducing its quality and meet its goals and objectives.
  - 2.3.3. Construction Manager shall keep a running log of all potential value engineering items and their associated cost savings. Cost savings shall be reconciled throughout the design phase.
- 2.4. **Constructability Reviews.** Perform constructability reviews and site verification of the Project at 100% Schematic Design, 100% Design Development, 60% Construction Documents, and 100%

**Construction Documents.** The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided as written notations on the documents via Bluebeam to the District. The Construction Manager shall also make recommendations to the District with respect to constructability, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work and separate bid trade packages. However, the Construction Manager is not responsible for providing, nor does the Construction Manager control, the Project design or the contents of the design documents. The Construction Manager's actions in reviewing the Project design and design documents and in making recommendations as provided herein are advisory only to the District. The Design Team members are not third party beneficiaries of the Construction Manager's work described in this paragraph and the Design Team members remains solely responsible for the contents of design drawings and design documents.

- 2.5. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with the Design Team and advise and consult with District. Construction Manager shall review and approve construction contractor(s)' schedules, but shall not dictate any construction contractor(s)' means and/or methods of performance.
- 2.6. Develop mockup project construction schedule and evaluate sequencing and logistics including traffic management plan. Construction schedule needs to take the College's schedule into account to ensure activities for construction don't interrupt planned campus activities/events.
- 2.7. Coordinate with District staff, construction contractor(s), and District site staff, and develop a logistics plan(s) including, but not limited to: parking, traffic, path of travel, fencing, and laydown areas for possible inclusion into the bidding documents.
- 2.8. Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 2.9. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 2.10. Attend all planning, programming and master site planning meetings relating to the Project, as requested by the District.
- 2.11. Provide updated cost estimates for the Project at **100% Schematic Design, 100% Design Development, 60% Construction Documents, and 100% Construction Documents Phase** as directed by District; coordinate with the Design Team and reconcile cost estimates with Design Team and District's third party estimator.
- 2.12. Advise District regarding "green building" technology and lifecycle costing.
- 2.13. Assist District in selecting and retaining special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, commissioning agent, surveyors, and testing laboratories, and coordinate their services.

### **3. PRE-PROCUREMENT PHASE**

- 3.1. Update project bid award and construction schedule for the Project.
- 3.2. Construction Manager shall in consultation with District and according to District approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 3.3. Work with the District and Design Team to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.
- 3.4. Work with the Design Team to separate the construction phase for the Project into bid packages.

#### **4. PROCUREMENT PHASE**

- 4.1. Conduct pre-bid / pre-proposal conferences to familiarize construction contractors with the bidding or procurement documents, and any special systems, materials or methods and with Project procedures. Receive questions from bidders or proposers, referring questions to the Design Team and District as required. Coordinate with the Design Team to respond to bidder or proposer questions by addenda.
- 4.2. Prepare bid or proposal analyses and advise District on compliance of bidders or proposers with District requirements and solicitation requirements. Report and recommend to District after review and evaluation. Make recommendations to District for prequalification of bidders and proposers and award of contracts or rejection of bids or proposals.
- 4.3. Conduct pre-award conferences with successful construction contractors.
- 4.4. Schedule and conduct preconstruction meetings; maintain, prepare, and distribute minutes.
- 4.5. Update construction logistics plan(s).
- 4.6. Ensure that construction contractor(s) timely obtain all required permits, inspections, and approvals necessary to complete the Project.

#### **5. CONSTRUCTION PHASE**

- 5.1. Cost Controls: Prepare and implement methods to budget and track all expenditures on the Project.
- 5.2. Administer the construction contracts.
- 5.3. Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, to the satisfaction of the District. Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 5.4. Assist District in resolving issues pertaining to the plans and specifications and the development of District standards. Assist District in review and approval of requests for substitution of materials or any deviation from the plans and specifications that are made by the Design Team or construction contractor(s).

- 5.5. Coordinate work of the construction contractor(s) and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 5.6. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction contractor(s), and the Design Team.
- 5.7. Attend Project job site meetings.
- 5.8. Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. Construction Manager shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, Construction Manager will take appropriate measures to secure compliance, subject to District approval.
- 5.9. Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. Construction Manager shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.
- 5.10. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when construction contractor(s) fails to fulfill contractual requirements.
- 5.11. The Construction Manager may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Construction Manager shall provide to the Design Team and the District copies of these authorizations.
- 5.12. Develop, implement, and coordinate with assistance from the District, the Design Team, and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by construction contractor(s) for progress and final payments for all construction contracts.
- 5.13. The Construction Manager shall review the construction contractor(s)' Safety Program submittals and review and document the implementation of the construction contractor(s)' Safety Program. The Construction Manager shall report any observed deviations from the construction contractor(s)' Safety Program and applicable CalOSHA requirements to the appropriate construction contractor personnel and follow-up with a written safety notice to both the construction contractor and the District. Neither the Construction Manager nor the District shall be responsible for or have any liability for construction contractor(s) failure to provide, comply with or enforce said safety programs.
- 5.14. Record the progress of the Project by a daily log and historical progress of the Project through photographs.

- 5.15. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.
- 5.16. Negotiate construction contractor's proposals and review with the District. Ensure construction contractor's proposals have substantiated back-up and that proposed costs are reasonable. Review costs for time and materials. Prepare change orders and submit a pencil draft to District for review prior to circulating for signatures, with District and Design Team's input as needed, for approval by the District's governing board. Coordinate with Construction contractor(s) and Design Team to provide District change order documentation in standard District format. Assist District to prepare reports for the District's governing board on change orders and the status of all Project contingency funds. Follow the District's board calendar with timelines, deadlines, and approval process.
- 5.17. Maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 5.18. Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 5.19. Provide ongoing, as needed, assistance to the District in oversight and invoice review of special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, commissioning agent, surveyors, and testing laboratories, and coordinate their services.
- 5.20. Assist District in review and approval of uses of any Project contingency fund.
- 5.21. In conjunction with the Inspector and the Design Team, monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the Construction Documents and all DSA requirements. As appropriate, with assistance from the Design Team and the Inspector, make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the construction Contract Documents.
- 5.22. Construction Manager shall ensure that as-built drawings are accurate and are timely submitted by the construction contractor(s).
- 5.23. To protect District against defects in the work of the construction contractor(s), Construction Manager shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
  - 5.23.1. Accepted industry standards;
  - 5.23.2. Applicable laws, rules, or ordinances; and
  - 5.23.3. The design documents and Contract Documents;
  - 5.23.4. Where the work of a construction contractor does not conform as set forth above, Construction Manager shall, with the input of the Design Team:
    - 5.23.4.1. Notify the District of any non-conforming work observed by the Construction

Manager;

5.23.4.2. Reject the non-conforming work; and

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

- 5.24. Maintain logs of requests for information (“RFI”) and complete records of all RFIs received from construction contractor(s), based on information obtained from the Design Team. File RFIs electronically per District’s standard filing procedure.
- 5.25. Establish and implement procedures, in collaboration with the District and the Design Team, for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction contractor(s) to the Design Team for review and approval. Maintain submittal and shop drawing logs.
- 5.26. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 5.27. Prepare and distribute monthly project status reports for the Project, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, status of RFIs, change orders, and submittals.
- 5.28. Maintain at the Project site and, if necessary at the District Facilities office, a current copy of all approved documents, drawings, specifications, addenda, change orders, meeting minutes, RFIs, change order requests, construction change directives, and other modifications and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s). Construction Manager shall file all documents electronically and in hard copy in accordance with the District’s filing procedures. At the completion of the Project, deliver all such records to District. Construction contractor(s) and the Design Team share responsibility to prepare “Record Drawings” and “As-Built” documents.

## **6. PROJECT COMPLETION**

- 6.1. The Construction Manager shall observe, with District’s maintenance personnel, the construction contractor’s check-outs of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the construction contractor(s), ensure District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative in conjunction with the District’s commissioning agent.
- 6.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager shall, in consultation with the District, Design Team, and Inspector, ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents (“punch list work”) and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction contractor(s). The Construction Manager shall coordinate construction contractors’ performance and completion of

punch list work. The Construction Manager shall review the completed punch list work with the District, Design Team, and Inspector. The Construction Manager shall ensure, with input from these entities, that the completed punch list work complies with applicable provisions of the Construction contract(s).

- 6.3. If the construction contractor(s) refuses to make punch list work corrections, Construction Manager shall provide pricing for each punch list item to assist the District in being able to determine the proper amount to back-charge the construction contractor(s).
- 6.4. The Construction Manager shall determine, with the District, Design Team, and Inspector, when the Project or designated portions thereof are complete.
- 6.5. The Construction Manager shall conduct, with the District, Design Team, and Inspector, final inspections of the Project or designated portions thereof. The Construction Manager shall notify District of final completion.
- 6.6. The Construction Manager shall consult with the District, Design Team, and Inspector and shall determine when the Project and the construction contractor's work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the construction contractors.

## **7. FINAL DOCUMENTS**

- 7.1. The Construction Manager shall review, monitor and approve all as built drawings, maintenance and operations (M&O) manuals, warranty/guarantee certificates, and other closeout documents to be sure all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.
- 7.2. The Construction Manager shall use its best efforts and all due diligence to ensure all Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or DSA's approval of the Project."

## **8. WARRANTY**

The Construction Manager shall implement a Warranty Inspection and Warranty Work procedure that all construction contractors are to follow. The procedure shall include a twenty-four (24) month call back period and a final warranty inspection twenty-three (23) months after Project completion to inspect the Project and identify any outstanding warranty work.

## **9. AUDIT**

Construction Manager shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Construction Manager transacted under this Agreement. Construction Manager shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Pursuant to Government Code Section 8546.7, this Agreement shall be subject to examination and audit of the State Auditor as specified in the code. Construction Manager shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the

Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Construction Manager and shall conduct audit(s) during Construction Manager's normal business hours, unless Construction Manager otherwise consents.

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**EXHIBIT "B"**

**CRITERIA AND BILLING FOR EXTRA SERVICES**

**[THESE TASKS WILL BE "EXTRA SERVICES" FOR ANY HOURLY / T&M FORM OF COMPENSATION]**

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District as indicated in the Agreement. The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services:

1. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
2. Providing services made necessary by the default of construction contractor(s), or by major defects or deficiencies in the work of the construction contractor(s), or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the Project involved.
3. The selection, layout, procurement or specification at the District's request of movable furniture, furnishings, equipment or other articles that are not included in the Contract Documents.
4. Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.
5. Preparing to serve or serving as a witness in connection with any public hearing (except for a construction contractor's hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is party thereto.
6. Performing technical inspection and testing.
7. Providing any other services not otherwise included or reasonably inferred by the terms in this Agreement or not customarily furnished in accordance with generally accepted scope of project construction management practice.

EXHIBIT "C"

SCHEDULE OF WORK

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

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**EXHIBIT "D"**

**FEE SCHEDULE**

**Compensation**

1. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**
2. The Fee shall not exceed the amount set forth in the Agreement, including all billed expenses, without advance written approval of the District. The Fee shall be paid as indicated below:

<b>PERCENTAGE OF TOTAL FEE PER PHASE (Subject to change based on the specific project requirements)</b>	
<b>Phase</b>	<b>Phase Amount</b>
Preconstruction Phase	15%
Pre-Procurement Phase	5%
Procurement Phase	10%
Construction Phase	60%
Project Completion Phase (Close Out) - (Divided as indicated below)	10%
Sign Off On Punch List	3%
Receive and Review All M&O Documents	3%
Filing All DSA Required Close Out Documents	2%
Receiving DSA Close Out Certification	2%

**Method of Payment**

1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.
2. Construction Manager shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants, if applicable.
3. Upon receipt and approval of Construction Manager's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

**Hourly Rates**

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

<b><u>Job Title</u></b>	<b><u>Hourly Rate</u></b>
Principal In Charge:	\$ <span style="background-color: yellow;">          </span> .00
Project Director:	\$ <span style="background-color: yellow;">          </span> .00
Construction Manager (s):	\$ <span style="background-color: yellow;">          </span> .00
Assistant Construction Manager	\$ <span style="background-color: yellow;">          </span> .00
Other	
Other	

2. The mark-up on any reimbursable or approved item of Extra Services performed by sub-consultant(s) or

subcontractor(s) shall not exceed five percent (5%).

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**EXHIBIT "E"**

- |    |  |     |
|----|--|-----|
| 1. | ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION                | E-2 |
| 2. | CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION | E-3 |

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**ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION**  
**(Public Contract Code section 3006)**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between **Rancho Santiago Community College District** ("District" or "Owner") and \_\_\_\_\_ ("Construction Manager") ("Contract" or "Project").

I \_\_\_\_\_,  
Name Name of Construction Manager

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract on this project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I \_\_\_\_\_,  
Name Name of Construction Manager

certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I \_\_\_\_\_,  
Name Name of Construction Manager

Have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

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

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

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

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

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

**CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION**

PROJECT/CONTRACT NO.: <PROJECT NAME> between Rancho Santiago Community College District (the "District" or the "Owner") and \_\_\_\_\_ (the "Construction Manager") (the "Contract" or the "Project"). This Project may involve work around or in the vicinity of minor students, pupils, or children ("Minor Pupils"), and therefore Construction Manager is required to submit this form to the District in compliance with Education Code section 45125.1 and other applicable law.

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

- (1) He/she is a representative of the Construction Manager,
- (2) He/she is familiar with the facts herein certified,
- (3) He/she is authorized and qualified to execute this certificate on behalf of Construction Manager; and
- (4) That the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Construction Manager has taken at least one of the following actions with respect to the Project (check all that apply):

\_\_\_\_\_ The Construction Manager has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Construction Manager's employees and all of its subcontractors' employees who may have contact with Minor Pupils at the Project in the course of providing services pursuant to the Contract, and the California Department of Justice ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at: <http://oag.ca.gov/fingerprints/agencies>) that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Construction Manager's employees and of all of its subcontractors' employees who may come in contact with Minor Pupils during the course and scope of the Contract is attached hereto; and/or

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

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

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

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

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

Construction Manager’s responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with Minor Pupils at the Project regardless of whether they are designated as employees or acting as independent contractors of the Construction Manager.

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

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

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

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

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

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**EXHIBIT "F"**

**PROJECT DESCRIPTION**

<INSERT SPECIFIC PROJECT DESCRIPTION>

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EXHIBIT "G"

PROJECT ADDENDUM NO. \_\_\_\_\_ TO  
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Project Addendum No. \_\_\_\_ to Agreement for Measure \_\_\_ Bond Program Construction Management Services ("Addendum") is made as of \_\_\_\_\_, 20\_\_, and forms a part of the Agreement for Construction Management Services between **Rancho Santiago Community College District**, a California community college district ("District") and \_\_\_\_\_ ("Construction Manager") (collectively "Parties") dated on or about \_\_\_\_\_, 20\_\_ ("Agreement"). This Addendum incorporates Services to be performed by Construction Manager for the following project(s) ("Project"):

\_\_\_\_\_ :

The scope of work may include, but is not limited to the following, plus the following assumptions:

- \_\_\_\_\_

This Addendum modifies the Agreement. By signing where indicated below, each party acknowledges and accepts the modifications as indicated in this Addendum. All other terms and conditions of the Agreement shall remain in full force and effect.

1. **Construction Manager Staff**

- 1.1. The Construction Manager has been selected to perform the Services herein because of the skills and expertise of key individuals.
- 1.2. The Construction Manager agrees that the following key people in Construction Manager's firm shall be associated with the Project in the following capacities:

<u>Job Title</u>	<u>Hourly Rate</u>
Principal In Charge:	\$ _____ .00
Project Director:	\$ _____ .00
Construction Manager (s):	\$ _____ .00
Assistant Construction Manager	\$ _____ .00
Other	
Other	

- 1.2.1. The Construction Manager agrees to contract for or employ at Construction Manager's expense, the following consultant(s) to be associated with the Project in the following capacities:

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

- 1.3. The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. In either case, District shall be allowed to interview and approve replacement personnel.

- 1.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall have five (5) days to remove that person from the Project and replace that person with one acceptable to the District. All lead or key personnel for any consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.
- 1.5. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.
- 1.6. Construction Manager shall comply with all provisions of the Education Code and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

**2. Fee And Method Of Payment**

- 2.1. District shall pay Construction Manager for all Services contracted for under this Agreement an amount equal to the following ("Fee"): \_\_\_\_\_.
- 2.2. District shall pay Construction Manager the Fee for all Services performed and pursuant to the provisions of **Exhibit "D."**
- 2.3. Construction Manager shall bill its work under this Agreement in accordance with **Exhibit "D."**
- 2.4. No increase in Fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error or omission.
- 2.5. The Construction Manager's Fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "D."**
- 2.6. Regardless of the structure of Construction Manager's Fee, the Construction Manager's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.

**Exhibit "A," Section I (MEETINGS / SITE VISITS / WORKSHOP)**

Add the following to indicate the number of meetings for each Phase as applicable:

\_\_\_\_\_

**Exhibit "B," Section K (CRITERIA AND BILLING FOR EXTRA SERVICES)**

Replace with the following (as applicable):

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, unless agreed to in writing by the Parties and approved by the District's Board.

[Add additional pages as necessary.]

Exhibit "C" (SCHEDULE OF WORK)

Add the following to indicate the schedule for Construction Manager's performance of the Project:

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

Rancho Santiago Community College District \_\_\_\_\_

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

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

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

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

# Exhibit J – Project Management Planning Agreement

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*See attached pages*

**PROJECT MANAGEMENT AND PLANNING  
CONSULTANT SERVICES AGREEMENT**

This AGREEMENT is made and entered into this DAY, day of MONTH in the year XXXX, between the RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT, hereinafter referred to as (“DISTRICT”), and COMPANY, hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein as a “PARTY” and collectively as the “PARTIES”. This AGREEMENT is made with reference to the following facts:

**WHEREAS**, the DISTRICT requires services and/or advice of a highly specialized and technical nature in connection with certain financial, economic, accounting, consulting and/or administrative matters; and

**WHEREAS**, such services and advice are not available within the DISTRICT, and cannot be performed satisfactorily by DISTRICT employees; and

**WHEREAS**, CONSULTANT possesses the necessary expert knowledge, experience, and ability to perform services not available through DISTRICT personnel; and

**WHEREAS**, CONSULTANT is specially experienced and competent to provide to the DISTRICT certain specialized services and/or advice in one or more of the foregoing areas; and

**WHEREAS**, DISTRICT desires to obtain specialized services and/or advice for **PROJECT MANAGEMENT AND PLANNING CONSULTING SERVICES FOR THE FACILITY PLANNING, DISTRICT CONSTRUCTION AND SUPPORT SERVICES DEPARTMENT**, hereinafter referred to as the “PROJECT”, located in the DISTRICT; and

**WHEREAS**, CONSULTANT has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

**NOW, THEREFORE**, the PARTIES hereto agree that the above recitals are true and correct, and further as follows:

**ARTICLE I**  
**SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT**

1. Services to be provided by the CONSULTANT. The Consultant may be asked to perform any of the duties or activities described below in the **Scope of Work** if working in the capacity as an extension of staff. It is also recognized that in some cases, the Consultant may have to hire a sub-consultant for certain specialized tasks if needed for a specific activity, but this will be approved by the District as needed. The District desires to complete the following Goals in the upcoming year and is seeking a Consultant who can assist in managing and developing the processes for achieving such Goals in a definitive timeframe, including assisting the District in developing the proper RFQs and RFPs to hire additional consultants to achieve these goals if

necessary. It will be the Consultant's responsibilities to oversee these activities and provide recommendations so that the District can achieve such. It is not the District's intent that the Consultant, will have to develop all of these deliverables or documents independently. The Consultant shall work as an extension of staff to manage these tasks so that they are achieved.

2. Contract Term. The term of this AGREEMENT shall begin <<start date>> and shall end <<end date>>, in accordance with the schedule as stated in **EXHIBIT "A"**. The PARTIES agree should all Services be completed by CONSULTANT and accepted, in writing, by DISTRICT prior to the end date stated within this Paragraph, the AGREEMENT shall automatically terminate.

## **ARTICLE II** **CONSULTANT'S SERVICES AND RESPONSIBILITIES**

1. Planning/Pre-design Phase duties may include:
  - Gain familiarity with project needs, budget, and timing.
  - Confirm scope and program requirements, including compliance with Title V requirements.
  - Conduct meetings with site staff and design team to refine detailed scope and program, including compliance with District design specifications and Material and Construction Standards.
  - Review proposals received from design consultants for scope and reasonableness to provide recommendations to the District.
  - Review proposals received from firms for preconstruction phase for scope and reasonableness to provide recommendations to the District.
  - Review level of effort and associated costs for reasonableness and appropriate quantity.
  - Interact with design consultant as needed to obtain appropriate scope and level of effort.
  - Interact with construction consultant as needed to obtain appropriate scope and level of effort.
  - Set up a decision-making framework to ensure timely District decisions.
  - Ensure that project is properly set up in tracking software which will include initial project schedule and budget.
  - Review invoices for reasonableness, correctness, and appropriate charges.
  - Provide monthly status reports in prescribed format.
  - Attend weekly project meetings.
  - Participate in and maintain minutes of critical pre-design phase meetings.
  - Participate in the site acquisition process and/or environmental due diligence site planning as determined by the District.
  - Interpret and apply California Environmental Quality Act (CEQA) and State Department of Education guidelines. Assist with filing CEQA documents with appropriate State and County agencies.
  - Provide assistance to initiate and manage the development of a District wide Storm Water Management Plan.
  - Provide assistance to start the process for the development of District wide Standards for Construction Materials, Furnishings and Equipment. This includes a strategy of approach,

identification of areas to standardize, and to complete standards that the District can continue to update over time.

- Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed.
- Participate in other meetings as required.
- Perform additional tasks associated with successful project management.

2. Design Phase duties may include:

- Monitor design phase schedule and progress throughout all phases.
- Review design phase submittals and recommend approval.
- Monitor project budget to ensure compliance with the District's project budget.
- Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
- Provide assistance with undertaken of the prequalification process for contractors and needs assistance in management and review of the qualifications.
- Ensure that project is properly maintained in tracking software.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide weekly status reports in prescribed format.
- Attend weekly program meetings.
- Participate in and maintain minutes of critical design phase meetings.
- Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other District employees, and/or others as needed
- Participate in other meetings as required.
- Assist in bidding and award process.
- Participate in pre-bid meetings.
- Facilitate the functioning of an integrated project delivery team.
- Additional tasks associated with successful project management.

3. Construction Phase duties may include:

- Ensure that contract is properly constructed and executed and issue notice to proceed.
- Proactively manage change on the project.
- Review and approve contractor's change order requests for entitlement and cost.
- Manage project contingencies and allowances.
- Monitor project budget to ensure compliance with the District's project budget.
- Monitor construction schedule and report variances.
- Monitor progress of design team to ensure submittal of required DSA documents and retrieve verification.
- Ensure that project is properly maintained in tracking software.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide daily status reports in prescribed format.
- Attend weekly program meetings.
- Participate in and maintain minutes of critical construction phase meetings.
- Maintain project documentation in compliance with program standards.
- Facilitate the functioning of an integrated project delivery team.



- Additional tasks associated with successful project management.
4. Closeout phase duties may include:
- Assist with final punch list and final inspections.
  - Assist in review and transfer of the final warranty/guarantee.
  - Assist in review and turnover of project as-built documents.
  - Monitor progress of design team in submitting required DSA closeout documentation and retrieve verification.
  - Assist in review and transfer of all required maintenance and operation manuals.
  - Assistance with and/or coordinate moving activities and occupancy.
  - Coordinate and ensure that required training on systems and materials takes place.
  - Coordinate and monitor completion of commissioning process.
  - Review final invoices.
  - Review closeout documents.
  - Reconcile expenditures and budget.
  - Assist in the finalization of any outstanding contracts and claims.
  - Ensure that all contract deliverables have been completed and submitted to the District.
  - Additional tasks associated with successful project management.
5. Program planning duties may include:
- Refine, develop, coordinate, and establish a system of management for the implementation of a comprehensive District wide Systems Condition Index management plan coordinated with the campuses and integrated into FUSION utilizing a variety of data sources from FUSION, the campuses, existing plans and reports, and the Building Condition Assessment recently provided by the Foundation in 2014. The Goal is to have a comprehensive strategy for planning on-going routine maintenance projects at various sites that can be institutionally followed and coordinated between the District Office and the college, including a plan for assessing, developing and managing Scheduled Maintenance projects. Evaluate the criteria to be utilized and propose a system of management for the 5 year on-going plan that is updated annually. Work to identify the process and implement such by working with the District, College and others to understand and facilitate the execution of the plan.
  - Assist District in the development and maintenance of district standards, overseeing the process, identifying items to standardize, work with colleges to facilitate development of standards.
  - Assist in developing standards for a systems condition index for preventative/scheduled maintenance purposes.
  - Assist in contract development and standardization of forms and templates for the district use, including any Request for Qualifications or Proposals that may still be needed to further develop projects.
  - Preparation, distribution, tracking, reviewing and awarding of any RFQ and/or RFP needed.
  - Management and development of Prop 39 or other energy and sustainable projects to comply with CCCIOU requirements and District's sustainability plan goals (see

<http://rscdd.edu/Discover-RSCCD/sustainable-rscdd-committee/Pages/default.aspx> for the complete sustainability plan).

- Assist the District with securing funding for various projects.
  - Assist with the preparation of reports for various agencies and coordination of applications needed on behalf of the District or other documentation that may be needed.
  - Assist to resolve complaints and/or seek to resolve and mitigate issues that may arise on projects on behalf of the District with a variety of entities, consultants, contractors or others that may be needed occasionally on projects.
6. Duties throughout the project may include:
- Provide administrative support as required.
  - Provide estimating services as required.
  - Provide scheduling services as required.
  - On-going review and/or processing of invoices to ensure timely payment as required.
  - Review of contracts to ensure proper execution of scope of services related to the project as required.
  - Provide specialized technical support as required.
  - Miscellaneous duties related to effective and successful project management as required.
7. Move Services Project Management:
- Providing assistance in all aspects of planning, scheduling, coordinating and execution of the physical relocation of personnel, faculty, staff, including, furniture and equipment or other physical assets.
  - Interacting with building users, project managers, faculty, college staff, district employees, other users, and project team members involved with moves and necessary relocations to implement construction projects or related to other capital facility projects.
  - Development of a Move Plan for each relocation or move that is anticipated as per the District.
  - Coordinate the details and planning aspects of the move from original locations to the complete set-up at the destination.
  - Manage and oversee movers on the day of the scheduled moves as necessary.
  - Assemble and Manage Project Team to outline Project Requirements (Kickoff meeting).
  - Develop a detailed implementation schedule, project budget and communications plan.
  - Coordinate with the Furniture Supplier insuring space efficiency.
  - Make recommendations with respect to existing furnishings, relocation and installation of equipment, and move phase consolidation.
  - Provide inventory of said furnishings.
  - Assess and determine the amount of moving supplies (i.e. boxes) needed for the move.
  - Working with Purchasing and other District personnel to coordinate asset management of furniture and equipment in keeping with the District's policies and procedures.
  - Coordinating and supervising all aspects of interior workshop set-up, tear down, move/relocation, equipment and furniture requests as needed.
  - Work and coordinate with equipment installers.
  - Schedule and facilitate pre-move meetings with various stakeholders.

- Work and assist District Purchasing and other District personnel with the procurement process of actual moving services (i.e. supplies and transportation) to ensure proper and adequate resources are provided to ensure a smooth move.
- Implementation of Move Plan.
- Move administration including pre-move conferencing, approvals of vendor contractor plans, pricing and schedules, facilitation of team and project staff meetings.
- Project coordination and communication (signage, Department Coordination, project notes, request tracking, etc.).
- Hold meetings (with frequency to be determined with various stakeholders).
- Track project expenditures against budget; review and verify contractor vendor requests for payment.

### **ARTICLE III – TERMINATION: SUSPENSION**

1. Termination for Default. Either the DISTRICT or CONSULTANT may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other party in its performance of a material obligation hereunder and such default in performance is not caused by the party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the party receiving the written termination notice shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the DISTRICT's right to terminate this Agreement pursuant to the foregoing, the DISTRICT may terminate this Agreement upon written notice to CONSULTANT if: (i) CONSULTANT becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by CONSULTANT or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CONSULTANT or any of CONSULTANT's property on account of CONSULTANT's insolvency; or (ii) if CONSULTANT disregards applicable laws, codes, ordinances, rules or regulations. If DISTRICT exercises the right of termination hereunder, the Contract Price due the CONSULTANT, if any, shall be based upon Basic Services, authorized Additional Services, and allowable expenses incurred or provided prior the effective date of the DISTRICT's termination of this Agreement, reduced by the DISTRICT's prior payments of the Contract Price and losses, damages, or other costs sustained by the DISTRICT arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due the CONSULTANT, if any, shall be made by DISTRICT only after completion of the Post-Construction Phase of the Project. CONSULTANT shall remain responsible and liable to DISTRICT for all losses, damages, or other costs sustained by DISTRICT arising out of termination pursuant to the foregoing or otherwise arising out of CONSULTANT's default hereunder, to the extent that such losses, damages or other costs exceed any amount due CONSULTANT hereunder for Basic Services, authorized Additional Services, and Expenses.

2. DISTRICT's Termination for Convenience. The DISTRICT may, at any time, upon seven (7) days advance written notice to CONSULTANT terminate this Agreement or the Work of the Project for the DISTRICT's convenience and without fault, neglect, or default on the part of CONSULTANT. In such event, the Agreement shall be deemed terminated seven (7) days

after the date of the DISTRICT's written notice to CONSULTANT or such other time as the DISTRICT and CONSULTANT may mutually agreed upon. In such event, the DISTRICT shall make payment of the Contract Price to CONSULTANT for services provided through the date of termination plus actual costs incurred by CONSULTANT directly attributable to such termination.

3. CONSULTANT Obligations upon Termination. Upon the DISTRICT's exercise of the right of termination under Article III, Paragraph 1 or 2 of this Agreement, the CONSULTANT shall take action as directed by the DISTRICT relative to its on-going administration of construction services of the Project. If requested by the DISTRICT, the CONSULTANT shall within ten (10) days of such request, assemble and deliver to the DISTRICT all Documents, work product, instruments of service, and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the CONSULTANT under this Agreement. The CONSULTANT shall deliver the originals of all Documents, work product, instruments of service, and other items of a tangible nature requested by the DISTRICT pursuant to the preceding sentence; provided, however, that the CONSULTANT may, at its sole cost and expense, make reproductions of the originals delivered to the DISTRICT.

4. DISTRICT's Right to Suspend. The DISTRICT may, in its discretion, suspend all or any part of the construction of the Project or the CONSULTANT's services under this Agreement; provided, however, that if the DISTRICT shall suspend construction of the Project or CONSULTANT's services under this Agreement for a period of sixty (60) consecutive days or more and such suspension is not caused by the CONSULTANT's default or the acts or omissions of CONSULTANT or its CONSULTANTS, upon lifting of such suspension, the Contract Price may be adjusted to reflect actual costs and expenses incurred by CONSULTANT, if any, as a direct result of the suspension and resumption of the Project construction or CONSULTANT's services under this Agreement.

5. CONSULTANT Suspension of Services. If the DISTRICT shall fail to make payment of an undisputed invoice when due CONSULTANT hereunder, CONSULTANT may, upon seven (7) days advance written notice to the DISTRICT, suspend further performance of services relating to the Project hereunder until such undisputed payment is received. In such event, CONSULTANT shall have no liability for any delays or additional costs of construction of the Project due to, or arising out of, such suspension.

#### **ARTICLE IV – DISPUTES**

1. Continuation of CONSULTANT Services. Except in the event of the DISTRICT's failure to make payment of an undisputed invoice due CONSULTANT for the Project, notwithstanding any disputes between DISTRICT and CONSULTANT hereunder or in connection with the Project, CONSULTANT and DISTRICT shall each continue to perform their respective obligations hereunder; including the obligation of the CONSULTANT to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

2. Mandatory Mediation. All claims, disputes and other matters in controversy between the CONSULTANT and the DISTRICT arising out of or pertaining to this Agreement,

excepting therefrom claims for indemnity, shall be submitted for resolution by non-binding mediation conducted under the auspices of the JAMS or other mutually agreeable dispute resolution service and their respective governing Construction Mediation Rules in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the DISTRICT or the CONSULTANT commencing arbitration proceedings pursuant to Paragraph 3 below.

3. Arbitration. All claims, disputes or other matters in controversy between CONSULTANT and DISTRICT arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth in Paragraph 2 above shall be settled and resolved by binding arbitration before one (1) retired judge conducted under the auspices of the JAMS or other mutually agreeable dispute resolution service. Any arbitration hereunder shall be conducted in the JAMS' Regional Office or other ADR service's office closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the DISTRICT and the CONSULTANT and shall be supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any written arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. The DISTRICT and CONSULTANT hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the award if, after review of the award, the Court determines either that the award is not supported by substantial evidence or that it is based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. Furthermore, if any claim or dispute is asserted by the Project Architect, Construction Manager if any, the Contractor and/or the DISTRICT relating to the Project and arising in whole or in part out of this Agreement, the services provided by or through the CONSULTANT hereunder or the Instruments of Service prepared by or through the CONSULTANT, CONSULTANT and DISTRICT agree that any arbitration proceedings initiated between CONSULTANT and DISTRICT hereunder shall, without the need for an order of the Court, be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute by and between the aforementioned parties, regardless of the dispute resolution service selected.

4. Compliance with Government Code §900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the CONSULTANT's submission of claims to the DISTRICT as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a "claim" for money or damages under Government Code §900 et seq. The CONSULTANT's strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the CONSULTANT's initiation of the binding arbitration procedures under Article IV, Paragraph 3, above.

5. Limitation on Arbitrator's Authority. Notwithstanding any other provision of this Article, the Superior Court for the State of California for the County of Orange, shall have sole

and exclusive jurisdiction, and an arbitrator shall have no authority, to hear and/or determine: (i) a challenge to the institution or maintenance of a proceeding in arbitration of a claim on the grounds that the claim is barred by the applicable statute of limitations, (ii) the claim is barred by a provision of the California Tort Claims Act, (iii) claimant has failed to satisfy any and all conditions precedent to arbitration, (iv) the right to compel arbitration has been waived by the petitioner, (v) grounds exist for the revocation of the arbitration agreement, and/or (vi) there is the prospect that a ruling in arbitration would conflict with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

6. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE III OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

#### **ARTICLE V** **REPORTS AND/OR OTHER DOCUMENTS**

1. Any DSA documents, reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter the "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days. Failure to comply with the requirements in this ARTICLE shall be deemed a material breach of this AGREEMENT.

#### **ARTICLE VI** **ACCOUNTING RECORDS OF THE CONSULTANT**

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONSULTANT, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

#### **ARTICLE VII** **COMPENSATION TO THE CONSULTANT**

1. The DISTRICT shall compensate the CONSULTANT as follows:
  - a. The DISTRICT agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information, inclusive of reimbursable expenses, for performing the basic

services required by this AGREEMENT subject to the limitations set forth herein this Article VII, Section 1(a). In no event shall the CONSULTANT's compensation exceed **DOLLAR AMOUNT WRITTEN OUT and 00/100 (\$XXX,XXX.00)** for performing all the basic services detailed in Article II. CONSULTANT shall invoice costs monthly for the services provided pursuant to this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. All costs must be supported by an invoice, receipt, or other acceptable documentation.

b. Invoices requesting payment for Additional Services performed in accordance with Article VIII below must reflect the compensation approved by the DISTRICT and include a copy of the DISTRICT's written authorization. The DISTRICT's prior written authorization is an express condition precedent to any payment by the DISTRICT for Additional Services and no claim by the CONSULTANT for additional compensation related to Additional Services shall be valid absent such prior written approval by the DISTRICT to proceed with such Additional Services as required by Article VIII.

### **ARTICLE VIII** **ADDITIONAL CONSULTANT SERVICES**

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any additional services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all additional services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such additional services. CONSULTANT shall not be entitled to any compensation for performing additional services that are not previously approved by the DISTRICT in writing. Additional services shall include:

a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents.

b. Preparing reports and other documentation and supporting data, and providing other services in connection with project modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT.

c. If the DISTRICT requests additional shifts to complete the services articulated in Article II where the requests for additional shifts does not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT. The CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT.

d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

**ARTICLE IX**  
**INDEMNITY AND INSURANCE**

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONSULTANT's employees or CONSULTANT's subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

b. General Liability: Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONSULTANT or the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent Architects who are directly employed by the DISTRICT;

c. Professional Liability: Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONSULTANT, or any person, firm or corporation employed by the CONSULTANT, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the services performed by CONSULTANT in accordance with this AGREEMENT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

d. The CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of Article IX, Sections 1(a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof. With regard to the CONSULTANT's obligation to indemnify for acts of professional negligence as set forth in Article IX, Section 1(c) above, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings.

e. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE IX, SECTION 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE § 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT MAY BE ATTACHED TO THIS AGREEMENT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.



f. ANY ATTEMPT TO LIMIT THE CONSULTANT'S LIABILITY TO THE DISTRICT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONSULTANT.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) and automobile liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of \$2,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d. Article IX, Section 2(b) above shall name the DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by the DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to the DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify the DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to the DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, the DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for

the account of CONSULTANT, and in such event CONSULTANT shall reimburse the DISTRICT upon demand for the cost thereof.

## **ARTICLE X** **MISCELLANEOUS**

### 1. Key Personnel.

a. CONSULTANT shall not change any of the key personnel listed in **Exhibit “A”** without prior written notice to, and written approval by, District, unless said personnel cease to be employed by CONSULTANT. In either case, District shall be allowed to interview and approve replacement personnel.

b. If any CONSULTANT personnel fail to perform to the satisfaction of the District or fully comply with the terms of this Agreement, then upon five days’ written notice by the District the CONSULTANT shall have five (5) days to remove that person from the project and replace that person with personnel acceptable to the District. All lead or key personnel for any CONSULTANT must be also be designated by the CONSULTANT and shall be subject to the District’s right to interview and approve replacement personnel. In either case, District shall be allowed to interview and approve replacement personnel.

c. CONSULTANT has been selected to perform the work herein because of the skills and expertise of key individuals. Services under this AGREEMENT shall be performed only by competent personnel under this supervision of and/or in the employment of the CONSULTANT. CONSULTANT shall conform to DISTRICT’s reasonable requests regarding assignment of personnel. All personnel, including those assigned at DISTRICT’s request, shall be supervised by CONSULTANT.

d. CONSULTANT shall not change any of the key personnel without prior written approval by the DISTRICT, unless said personnel cease to be employed by CONSULTANT. In either case, DISTRICT shall be allowed to interview and approve replacement personnel. CONSULTANT agrees that reassignment of any of the listed personnel during the AGREEMENT period shall only be with other professional personnel who have equivalent experience and shall require prior consultation and written approval by the DISTRICT. Any costs associated with reassignment of personnel shall be borne exclusively by CONSULTANT and CONSULTANT shall not charge the DISTRICT for the cost of training or “bringing up to speed” replacement personnel.

2. Conflict of Interest. CONSULTANT represent that the CONSULTANT have no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by CONSULTANT. In the event a conflict arises during the performance of this Agreement, said person shall be immediately removed from the Project and replaced with personnel acceptable to the District.

3. Independent Contractor. CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor to the DISTRICT. This Agreement and the CONSULTANT's services hereunder shall not be deemed to be or result in creation of the relationships of: (i) employer/employee; (ii) principal/agent; (iii) partnership; (iv) common enterprise or (v) joint venture. The means and methods utilized by the CONSULTANT to complete services and other CONSULTANT obligations under this Agreement shall be in the sole discretion of the CONSULTANT provided such means and methods are generally consistent with industry practices and applicable standards of care. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees are not officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature provided to employees of the DISTRICT and/or to which DISTRICT's employees are entitled, including, but not limited to, State Unemployment Compensation benefits, Worker's Compensation benefits, retirement benefits, vacation/sick leaves and other similar employee benefits. CONSULTANT assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the services to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages to the CONSULTANT's employees and all federal, state, local taxes and other similar impositions relating to payments of the DISTRICT to the CONSULTANT under this Agreement and/or CONSULTANT's payment to CONSULTANT employees completing or providing services under this Agreement, including unemployment insurance, social security contributions and payroll/income taxes. This Agreement and the CONSULTANT's services hereunder shall not preclude the CONSULTANT contracting with others during the Term of this Agreement, provided that such other contracts do not result in a conflict of interest, result in disclosure of Confidential Information or otherwise violate a term or condition of this Agreement.

4. No third Party Beneficiaries. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

5. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

6. Governing Law. This AGREEMENT shall be governed by the laws of the State of California.

7. Entire Agreement. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

THIS AGREEMENT SHALL NOT INCLUDE OR INCORPORATE THE TERMS OF ANY GENERAL CONDITIONS, CONDITIONS, MASTER AGREEMENT OR ANY OTHER BOILERPLATE TERMS OR FORM DOCUMENTS PREPARED BY THE CONSULTANT. THE ATTACHMENT OF ANY SUCH DOCUMENT TO THIS AGREEMENT SHALL NOT BE INTERPRETED OR CONSTRUED TO INCORPORATE SUCH TERMS INTO THIS AGREEMENT UNLESS THE DISTRICT APPROVES OF SUCH INCORPORATION IN A SEPARATE WRITING SIGNED BY THE DISTRICT. ANY REFERENCE TO SUCH BOILERPLATE TERMS AND CONDITIONS IN THE PROPOSAL OR QUOTE SUBMITTED BY THE CONSULTANT SHALL BE NULL AND VOID AND HAVE NO EFFECT UPON THIS AGREEMENT. PROPOSALS, QUOTES, STATEMENT OF QUALIFICATIONS AND OTHER SIMILAR DOCUMENTS PREPARED BY THE CONSULTANT MAY BE INCORPORATED INTO THIS AGREEMENT BUT SUCH INCORPORATION SHALL BE STRICTLY LIMITED TO THOSE PARTS DESCRIBING THE CONSULTANT'S SCOPE OF WORK, RATE AND PRICE SCHEDULE AND QUALIFICATIONS.

8. Time. Time is of the essence with respect to all provisions of this AGREEMENT.
9. Attorney's Fees and Costs. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.
10. This AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.
11. Uncertainties/Ambiguities. This AGREEMENT shall be liberally construed to effectuate the intention of the PARTIES with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to any word, phrase or provision of this AGREEMENT, neither this AGREEMENT nor any uncertainty or ambiguity herein will be construed or resolved against either PARTY (including the PARTY primarily responsible for drafting and preparation of this AGREEMENT), under any rule of construction or otherwise, it being expressly understood and agreed that the PARTIES have participated equally or have had equal opportunity to participate in the drafting hereof.
12. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.
13. Confidentiality: The CONSULTANT shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this AGREEMENT.
14. Severability: If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.

15. Gift Ban: Effective April 25, 2016, the Board of Trustees adopted Board Policy 3821 Gift Ban Policy. The Consultant shall adhere to Board Policy 3821 as there are strict prohibitions outlined in the policy. For further reference and information please read BP 3821 located on the RSCCD website at <http://www.rsccd.edu/Trustees/Pages/BP-3821.aspx>.

16. Use of Drones: Effective August 13, 2018, the Board of Trustees adopted Administrative Regulation 3580 Use of Unmanned Aircraft Systems. The Consultant shall adhere to Administrative Regulation 3580 as there are strict prohibitions outlined regarding the use of drones. For further reference and information please read AR 3580 located on the RSCCD website at <http://www.rsccd.edu/Trustees/Pages/AR-3581.aspx>

17. Notices: All notices or demands to be given under this AGREEMENT by either PARTY to the other shall be in writing and given either by: (a) personal service; or (b) by U.S. Mail, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either PARTY may be changed by written notice given in accordance with the notice provisions of this Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:

Rancho Santiago Community College District  
Attn: Carri Matsumoto, Assistant Vice Chancellor  
Facility Planning, District Construction & Support Services  
2323 North Broadway, Suite 112  
Santa Ana, CA 92703  
Telephone: (714) 480-7510

To the CONSULTANT:

<<Name of Contractor>>  
Attn: <<Name>>  
<<Title>>  
<<Address>>  
<<City, State, Zip>>  
Telephone:

18. Tobacco Prohibited: any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any DISTRICT property.

19. Profanity Prohibited. Profanity on any DISTRICT property is prohibited, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment.

20. Appropriate dress is mandatory. Therefore, tank tops, cut-offs and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated above in Paragraph 16.

21. Education Code Section 45125.1: During the entire term of this AGREEMENT, CONSULTANT, unless specifically exempted in writing by the DISTRICT, shall fully comply with the provisions of Education Code section 45125.1 ("Fingerprinting Requirements"), when the DISTRICT determines, in its sole discretion, that the CONSULTANT may have contact with Rancho Santiago Community College students or other K-12 pupils in the performance of services under this AGREEMENT. If the CONSULTANT is required to meet the Fingerprinting

Requirements, the CONSULTANT must certify in writing to the DISTRICT that neither the employer nor its employees, who must be fingerprinted, have been convicted of a violent or serious felony as defined in Education Code section 45122.1. Unless specifically exempted in writing by the DISTRICT, the CONSULTANT must complete and submit to the DISTRICT a Fingerprint Certification form, in the DISTRICT'S required format, prior to CONSULTANT or any of the CONSULTANT'S employees performing work on the Project or coming into contact with DISTRICT students or other K-12 pupils. CONSULTANT further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements as determined by the DISTRICT.

22. Parking. CONSULTANT shall be responsible for purchasing applicable parking passes from Cashier's Office or Parking Ticket Kiosk when the need arises to visit any of the campuses.

23. Images: If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.

#### **ARTICLE XI – ENTIRE AGREEMENT**

1. All of the AGREEMENT between the PARTIES is included herein, and no warranties expressed or implied, representations, promises, or statements have been made by either PARTY unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the AGREEMENT.

2. Neither amendments to nor modifications of this AGREEMENT shall be effective unless signed by officials of the CONSULTANT and the DISTRICT having authority equal to or greater than that of the officials signing this AGREEMENT. The DISTRICT and the CONSULTANT hereby agree to the full performance of the covenants contained herein.

***(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)***

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

**COMPANY**

**RANCHO SANTIAGO COMMUNITY COLLEGE  
DISTRICT OF ORANGE COUNTY**

By \_\_\_\_\_

NAME

*President*

By \_\_\_\_\_

Adam M. O' Connor

*Interim Vice Chancellor Business Operations/Fiscal  
Services*

District Operations Center

Date \_\_\_\_\_

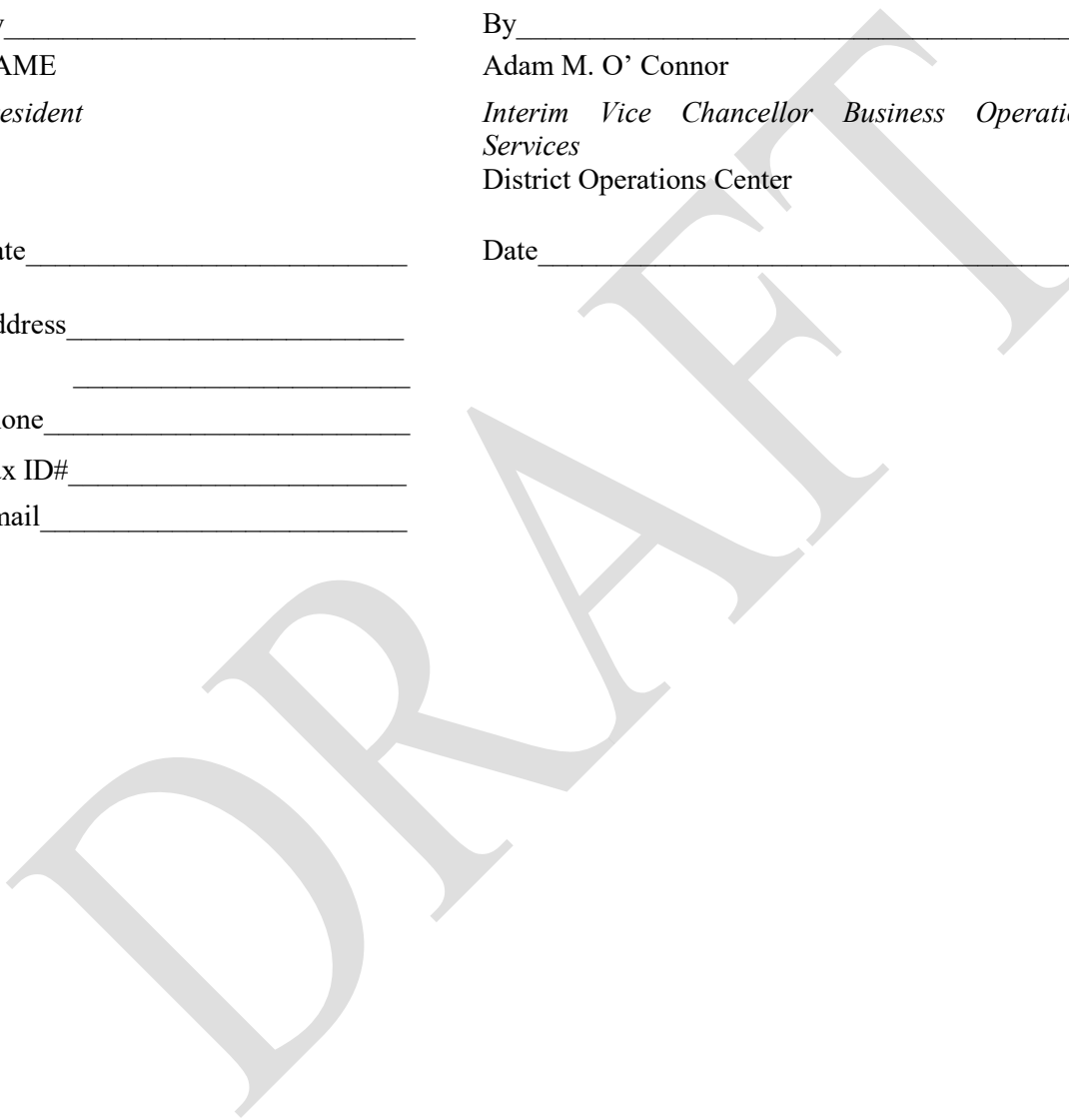
Date \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Tax ID# \_\_\_\_\_

Email \_\_\_\_\_



**EXHIBIT “B” – HOURLY RATES**

**NOTE TO EDITOR: ALL PROJECTS MUST HAVE HOURLY RATES INCLUDED, REGARDLESS OF FEE TYPE. ALSO INCLUDE SUB-CONSULTANT RATES IF THERE ARE ANY SUB-CONSULTANTS.**

The rates set forth in this EXHIBIT “B” shall be valid and not increased during the life of this AGREEMENT.

<b>Position:</b>	<b>Name of Personnel:</b>	<b>Hourly Rate:</b>

Any changes to personnel shall be in accordance per **Article IX, section 16 and 17** of this Agreement.

Any overtime, weekend, or holiday work must be pre-approved and authorized by the District in advance prior to commencement of such work and must be provided in writing.



**EXHIBIT “C” – STATEMENT OF INTENT TO MEET DVBE PARTICIPATION GOALS**

The Rancho Santiago Community College District has a participation goal for disabled veteran business enterprises (“DVBE”) of 3 percent per year. Although it is not specifically required, you are encouraged to include DVBE a enterprises as part of the Services under this AGREEMENT. The undersigned, on behalf of \_\_\_\_\_ (“Consultant”), certifies the following:

- Consultant **is** a certified Disabled Veteran Business Enterprise
- Consultant is **not** a certified Disabled Veteran Business Enterprise
- Consultant will include a certified Disabled Veteran Business Enterprise as part of its Services to the District.
- Consultant will not include a Certified Disabled Business Enterprise as part of its Services to the District. If this box is checked, please explain why:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_