

# ORANGE UNIFIED SCHOOL DISTRICT



## REQUEST FOR QUALIFICATIONS AND PROPOSALS

### CONSTRUCTION MANAGEMENT SERVICES MEASURE S GENERAL OBLIGATION BOND PROGRAM

RFQ/P No. 161123-01

*Qualifications and Proposals Due No Later Than:  
December 15, 2016 – 4:00 p.m.*

**Submissions and Information Contact:**

Ms. Jana Mills,  
Modernization Contracts Manager  
Orange Unified School District  
Purchasing Department  
726 W. Collins Avenue  
Orange, CA 92867  
Phone: (714) 628-4440  
Fax: (714) 532-8054  
E-Mail: [jmills@orangeusd.org](mailto:jmills@orangeusd.org)

**ARC is the District Authorized Distributor of this RFQ/P Document**

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

**REVISED NOTICE TO CORRECT GENERAL PROJECT INFORMATION**

**REQUEST FOR QUALIFICATIONS AND PROPOSALS**

**RFQ/P No. 161123-01**

**Construction Management Services  
Measure S General Obligation Bond Program**

**Qualifications and Proposals Due No Later Than: December 15, 2016, 4:00 p.m.**

NOTICE IS HEREBY GIVEN that the Orange Unified School District, County of Orange, California, ("District"), acting by and through its Governing Board, is requesting qualifications and proposals from interested firms for Construction Management Services related to the District's Measure S General Obligation Bond Program and other school construction projects as needed. It is the intention of the District to identify a high quality firm(s) that can provide full service Construction Management Services for the facilities improvement projects.

The due date and time for the receipt of sealed qualifications and proposals is up to, but **not later than 4:00 p.m. on December 15, 2016**, at the District Purchasing Department, 726 West Collins Avenue, Orange, California, 92867.

**NON-MANDATORY PRE-PROPOSAL CONFERENCES** will be held at the Orange Unified School District, Warehouse, 722 W. Collins Avenue, Orange, CA 92867, on the following dates to provide interested parties with information regarding the District's Bond Program, projects, and construction management services. The same information will be discussed by the District at both non-mandatory pre-proposal conferences:

**First Non-Mandatory Pre-Proposal Conference: 9:00 a.m. on November 30, 2016**  
**Second Non-Mandatory Pre-Proposal Conference: 9:00 a.m. on December 7, 2016**

Note: The District Warehouse is located at the rear of the Collins site, which also is the bus and maintenance facility. Parking is available on the site adjacent to the Warehouse. Location Map included as an Exhibit in the RFQ/P.

**Project Documents will be available beginning** November 23, 2016, **online with ARC**, 345 Clinton Street, Costa Mesa, CA 92626, Phone: (714) 424-8525, Fax: (714) 424-8526. To order project documents from ARC as a download, CD, or hardcopy/paper, visit [www.e-arc.com/ca/costamesa](http://www.e-arc.com/ca/costamesa), click on Public Planroom, search for District projects in the dropdown list by selecting "Orange Unified School District," then select this project by the listed project number and title, or call ARC and request the Planwell Department for orders. Downloads are available at no charge. Hardcopy/paper or CD cost will be available with project information. The costs for all Project Documents are non-refundable. Any mailing costs are direct with reprographic company. General Project Document information will also be posted on the District's website at [http://www.orangeusd.org/support\\_svcs](http://www.orangeusd.org/support_svcs)

Please direct any inquiries or questions to the attention of Ms. Jana Mills, Purchasing and Contracts Manager, Purchasing Department, via telephone: (714) 628-4440, fax: (714) 532-8054, or e-mail: [jmills@orangeusd.org](mailto:jmills@orangeusd.org). General information regarding the District is available via [www.orangeusd.org](http://www.orangeusd.org).

The right is reserved by the District to reject any or all qualifications and proposals, to waive any irregularities or informalities not affected by law, to evaluate the qualifications and proposals submitted and to award the contract(s) according to the qualification(s) and proposal(s) which best serves the interests of said District.

Publication: Orange County Register

Publication Date: November 23, 2016

Publication Dates with Revised Notice: November 30, 2016 and December 7, 2016

Note: This Notice (below) Revised for November 30, 2016 and December 7, 2016 Publications and included on previous page

## REQUEST FOR QUALIFICATIONS AND PROPOSALS

RFQ/P No. 161123-01

### Construction Management Services Canyon High School Measure S General Obligation Bond Program

**Qualifications and Proposals Due No Later Than: December 15, 2016, 4:00 p.m.**

NOTICE IS HEREBY GIVEN that the Orange Unified School District, County of Orange, California, ("District"), acting by and through its Governing Board, is requesting qualifications and proposals from interested firms for Construction Management Services construction services related to the District's Measure S General Obligation Bond Program and other school construction projects as needed. It is the intention of the District to identify a high quality firm that can provide full service Construction Management Services for the Canyon High School facilities improvement projects.

The due date and time for the receipt of sealed qualifications and proposals is up to, but **not later than 4:00 p.m. on December 15, 2016**, at the District Purchasing Department, 726 West Collins Avenue, Orange, California, 92867.

A **NON-MANDATORY PRE-PROPOSAL CONFERENCE** will be held 9:00 a.m. on November 30, 2016, at the Orange Unified School District, Warehouse, 722 W. Collins Avenue, Orange, CA 92867. The District Warehouse is located at the rear of the Collins site, which also is the bus and maintenance facility. Parking is available on the site adjacent to the Warehouse. Location Map included as an Exhibit in the RFQ/P.

**Project Documents will be available beginning** November 23, 2016, **online with ARC**, 345 Clinton Street, Costa Mesa, CA 92626, Phone: (714) 424-8525, Fax: (714) 424-8526. To order project documents from ARC as a download, CD, or hardcopy/paper, visit [www.e-arc.com/ca/costamesa](http://www.e-arc.com/ca/costamesa), click on Public Planroom, search for District projects in the dropdown list by selecting "Orange Unified School District," then select this project by the listed project number and title, or call ARC and request the Planwell Department for orders. Downloads are available at no charge. Hardcopy/paper or CD cost will be available with project information. The costs for all Project Documents are non-refundable. Any mailing costs are direct with reprographic company. General Project Document information will also be posted on the District's website at [http://www.orangeusd.org/support\\_svcs](http://www.orangeusd.org/support_svcs)

Please direct any inquiries or questions to the attention of Ms. Jana Mills, Purchasing and Contracts Manager, Purchasing Department, via telephone: (714) 628-4440, fax: (714) 532-8054, or e-mail: [jmills@orangeusd.org](mailto:jmills@orangeusd.org). General information regarding the District is available via [www.orangeusd.org](http://www.orangeusd.org).

The right is reserved by the District to reject any or all qualifications and proposals, to waive any irregularities or informalities not affected by law, to evaluate the qualifications and proposals submitted and to award the contract(s) according to the qualification(s) and proposal(s) which best serves the interests of said District.

Publication: Orange County Register  
Publication Dates: November 23 and 30, 2016

# REQUEST FOR QUALIFICATIONS (“RFQ/P”) FOR CONSTRUCTION MANAGEMENT

## PART 1: GENERAL INFORMATION

### 1.1. ABOUT THE DISTRICT

Orange Unified School District (“OUSD”) is a public school district headquartered in Orange, California. Orange USD serves the cities of Orange and Villa Park, the unincorporated land of Silverado, and parts of Anaheim, Garden Grove, Santa Ana, and an unpopulated area of Yorba Linda. Its student enrollment during the 2014/2015 school year was 27,266. The District operates 26 elementary, 5 middle (including 2 Charter schools), 4 high schools, a continuation high school, a K-8 math and science magnet school and two special schools. Nineteen of its forty-two schools have been recognized as California Distinguished Schools.

The Orange Unified School District (“District”) encompasses 108 square miles.

In 1953, the citizens of the area voted to form a “unified” school district, combining the original five elementary districts with the high school district into one unified district, now known as the Orange Unified School District.

Our student families, businesses, and community members are encouraged to regularly view our website at [www.orangeusd.org](http://www.orangeusd.org) for news and updates related to the District’s High School Facilities Master Plan, all our schools, as well as District updates.

Additionally, information regarding advertised RFP’s, RFQ’s, IFB’s (“Invitation for Bid”), online vendor registration to participate in informal quotations, and how to do business with the District, can be obtained by visiting the District’s website at [http://www.orangeusd.org/support\\_svcs/index.asp](http://www.orangeusd.org/support_svcs/index.asp).

### 1.2. MEASURE S GENERAL OBLIGATION BOND

The Orange Unified School District was successful in passing Measure S General Obligation Bond during the November 2016 election. Measure S will allow the district to fund modernization, new construction, replacement of portables, and/or other capital projects to ensure that students attending Orange Unified School District schools are housed in safe, healthy, and quality learning environments.

The District’s Architects have developed conceptual drawings and renderings of potential future projects. The District has a Facilities Needs assessment that was completed in May of 2013 for the High School Campuses and an overall assessment of all schools was completed in 2003. All information will be made available to the approved firms for the Bond Program. The District does not have schematic design or construction documents at this time. Additional information regarding the District’s Facilities Master Plan and Bond Program may be obtained by visiting the District’s website at [www.orangeusd.org](http://www.orangeusd.org). Proposers are also invited to submit questions about the Bond Program at the District’s pre-proposal conference(s) for this RFQ/P.

On November 17, 2016, the District awarded a contract for Program Management of Measure S, and as a result has a need to solicit firms to provide Construction Management Services for Measure S facilities improvements inclusive of assigned high school project(s) and other projects as assigned.

### 1.3. SUMMARY OF RFQ/P

#### 1.3.1 Objective.

The District's intent and objective of this Request for Qualifications and Proposals ("RFQ/P") is to competitively solicit qualified professionals to provide Services as outlined in the scope of services and generally described in this RFQ/P.

The selected firm(s) shall serve as Construction Manager (CM) for the assigned high school Measure S projects or projects as assigned by the District, in accordance with the terms and conditions of the District's Agreement. Sample Agreement included as Exhibit "3". The objective of this RFQ/P is for the District to identify and select Construction Management firm(s) that would collaboratively and integrally provide services as outlined under "Basic Construction Management Services" and assist one of four (4) Architectural or Engineering design professional firms (A/E) as assigned by the District. The selected CM firm(s) and identified staff are required to demonstrate strong construction knowledge and background in construction; be capable of providing leadership to the entire design and construction team; to work in close partnership with the district staff; to oversee/manage/control schedules and costs during the term of the Agreement. Strong organization, documentation and communication skills are required to be considered for selection.

CM firms previously awarded contracts by the District for facilities improvements at assigned high schools may continue to provide services identified in the District's solicitations, inclusive of all phases of the Work, by utilization of the Master Agreement and mutually agreed upon fee schedule.

The selected firm(s) will assist the District in all phases of the projects, as needed by the District.

The District, at its sole discretion, intends to select and retain the following:

1. Firm(s) to serve as a Construction Manager per an identified school or projects to manage activities, provide field level management at the sites, and report to District staff as assigned.

The District intends on selecting firm(s) that best meets the District's needs and reserves the right to make any determination in the best interests of the District. No minimum amount of Work is guaranteed. Proposers should refer to "Basic Construction Management Services" regarding proposed Work.

#### 1.4. Submittals shall be in accordance with the "Format for Proposal Submission" as set forth in Section 3.00, below, and must be submitted to the attention of:

Ms. Jana Mills,  
Purchasing and Contracts Manager  
Orange Unified School District  
Purchasing Department  
726 W. Collins Avenue \*  
Orange, CA 92867  
E-Mail: [jmills@orangeusd.org](mailto:jmills@orangeusd.org)

Phone: (714) 628-4440 Fax: (714) 532-8054

\* *Sealed Submittals Location Map Included as Exhibit 2*

Submission received after the aforementioned deadline date and time, also shown in Article 1.15. – Tentative Schedule will not be accepted. Faxed and electronic submission will not be accepted. Each

proposal shall be treated as confidential until this deadline, after which time each proposal shall become a matter of public record.

- 1.5. The original Statement of Qualifications (“SOQ”) shall be submitted and signed in blue ink. Submittals shall be signed by an authorized individual or officer of the firm submitting the proposal.
- 1.6. Submittals may be withdrawn by the firm submitting the proposal at any time prior to the deadline for submission of qualifications and proposals set forth in the RFQ/P Tentative Schedule, Article 1.15. Proposals may not be withdrawn after such deadline.
- 1.7. In order to control information disseminated regarding this RFQ/P, organizations interested in submitting proposals are directed **NOT** to make personal contact with members of the Governing Board or District Administration, with the exception of the individual listed below. This includes unauthorized visits to District educational facilities.

Ms. Jana Mills,  
Purchasing and Contracts Manager  
Orange Unified School District  
Purchasing Department  
726 W. Collins Avenue  
Orange, CA 92867  
E-Mail: [jmills@orangeusd.org](mailto:jmills@orangeusd.org)  
Phone: (714) 628-4440 Fax: (714) 532-8054

- 1.8. Request for information (“RFI”) questions regarding this RFQ/P should be set forth in writing and sent via e-mail to only [jmills@orangeusd.org](mailto:jmills@orangeusd.org) subject line of each email should be specified as “Request for Information – RFQ/P No. 161123-01: Construction Management Services.”
- 1.9. No person other than the aforementioned is authorized to receive questions relating to this RFQ/P. The District shall have no obligation to respond to questions sent to any other person or entity. In its discretion, the District may disregard the response of any firm that, in connection with this RFQ/P, contacts any other District representative including, without limitation, any member of the District’s Board, Assistant Superintendents, Directors, Administrators, Consultants, Managers or any other District personnel.
- 1.10. In order for the District to make an informed decision regarding selecting a consultant among responsible and responsive candidates, your proposal must address the elements as outlined in “Part 3” (below) demonstrating that all requirements are met or exceeded.
- 1.11. Proposers are solely responsible to satisfy themselves as to the suitability of any estimates, projections, budgets, design concepts, technical criteria, reports, surveys, test data, and other information provided by the District and nothing contained in the RFQ/P Documents, or in any other information provided by the District, shall be construed as implying the creation or existence of any warranty, express or implied, on the part of the District with respect to the completeness, accuracy, or sufficiency thereof. Statements and other information contained in the RFQ/P Documents indicating the size, scope, or types of facilities that are included in the Bond Program projects are for the convenience of the Proposers to familiarize them with the general nature of the facilities development under a Bond Program and should not be interpreted as necessarily indicative of the scope of facilities planning, design, or construction for which Proposers will be required to provide project and construction management services under the District Agreement, which may be greater or lesser than that which is indicated by such statements or information.
- 1.12. Indemnification. To the fullest extent permitted by law as the result of an Agreement related to this RFQ/P, Construction Manager agrees to indemnify, defend and hold harmless, District, Board of Education, and each of their members, officers, employees, agents, insurers and volunteers (“Indemnitee(s)”), through legal counsel selected by the District, from any and all Losses, to the extent arising out of or relating to any of the following:

Negligent performance or nonperformance by Construction Manager or its Subconsultants;

Negligent activities of Construction Manager or its Subconsultants on the Site or on other District properties;

The payment or nonpayment by Construction Manager of anyone with whom Construction Manager has entered into a contract to furnish Work for a Campus Project; or

Any personal injury or property damage to third persons arising from negligent or intentional acts or omissions by Construction Manager or its Subconsultants.

Nothing contained herein shall be construed as obligating Construction Manager to indemnify any Indemnitee for Losses resulting from the Indemnitee's sole or active negligence or willful misconduct. Nothing in the Contract Documents shall be construed to give rise to any expressed or implied right in favor of Construction Manager for indemnity or contribution from District.

1.13. Non-Collusion Declaration. Proposers shall submit the District's Non-Collusion Declaration with their SOQ. This form is attached as Exhibit 1."

#### 1.14. TENTATIVE TIMELINE

The anticipated schedule for completion of this RFQ/P is shown below. Dates are subject to change:

Milestone	Date
RFQ/P Advertised	November 23 and 30, 2016, December 7, 2016
RFQ/P Posted to ARC's Website	November 23, 2016
Non-Mandatory Pre-Submittal Conferences	November 30, 2016 at 9:00 a.m. And December 7, 2016 at 9:00 a.m.
Proposer Deadline for Questions/Clarifications	December 9, 2016
Qualifications and Proposals Due	December 15, 2016, No Later Than 4:00 p.m.
Interviews/Presentations	January 3 - 6, 2017
Notice of Intent to Award to Selected Firm(s)	January 11, 2017
Award of Contract by Authorization of the Board of Education	January 19, 2017
Notice of Award and Contract Issuance to Firm(s)	January 24, 2017

#### LATE PROPOSALS AND PROPOSALS SUBMITTED BY FACSIMILE WILL NOT BE ACCEPTED

Proposals must be typewritten, concise, straightforward, and must address each requirement and question.

The District reserves the right to negotiate modifications with any firm as may be required to serve the best interests of the District, and to negotiate the final contract with the most qualified candidate.

All proposals will become the property of the District. Information in Proposals will become public property and subject to disclosure laws. The District reserves the right to make use of any information or ideas in the proposals. All proposals will be maintained as confidential working papers until officially placed on the School Board meeting agenda.

The District reserves the right to reject any and all proposals and to waive any informality in any proposal received. No obligation, either expressed or implied, exists on the part of the District to make an award or to pay any costs incurred in the preparations or submission of a proposal. All costs

associated with the preparation or submission of proposals for this RFQ/P is solely the responsibility of the candidates.

### 1.15. NON-MANDATORY PRE-PROPOSAL CONFERENCES

Two Non-Mandatory Pre-Proposal Conferences are scheduled for:

**FIRST CONFERENCE DATE AND TIME:** November 30, 2016, at 9:00 a.m.  
**SECOND CONFERENCE DATE AND TIME:** December 7, 2016, at 9:00 a.m.

**LOCATION:** Orange Unified School District  
District Warehouse\*  
722 W. Collins Avenue  
Orange, CA 92867

\* A District Warehouse site map for conferences is included as "Exhibit 2." Entrance to the District Warehouse is located on Collins Avenue, which also is the bus and maintenance facility. The District Warehouse is located at the rear of the Collins site. Parking is available on the site adjacent to the Warehouse.

The purpose of the two conferences is to acquaint prospective firms with the unique requirements of the District and the scope of the anticipated Projects. The same information will be discussed by the District at both non-mandatory pre-proposal conferences.

The District reserves the right to schedule additional mandatory or non-mandatory conferences upon advance written notice.

Accommodations for persons with disabilities will be provided if requested in writing at least three (3) business days in advance of a pre-proposal conferences.

### 1.16. NO PUBLIC OPENING

Proposals will not be opened publicly, however a list of the names and companies submitting qualification and proposal packages will be available within a reasonable time after the submittal deadline.

Proposals will be made public and may be inspected one day following the District's issuance of Notice(s) of Intent to Award. An appointment with the District contact is required due to the volume of documents that may be involved in the request and staffing availability.

## PART 2: SCOPE OF WORK

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

### 2.1 GENERAL SUMMARY OF CONSTRUCTION MANAGER'S BASIC SERVICES

The Basic Services to be performed under this Agreement by Construction Manager are generally described below on a summary level by scope category, and more specifically by phase of delivery of services outlined below.

#### A. Construction Management.

Provide construction management services during pre-construction, bid and award, construction, close-out and post-construction phases, as described herein and in the Master Agreement, including further development of the District's Master Plans. Construction management, oversight, a



coordination of all subconsultants, engineers, architects, vendors and suppliers' Work.

B. Reports.

Construction management services shall include, upon the District's request if District so chooses, progress reporting at Board of Education meeting, in the format described as follows: Prepare reports (to be provided in writing and electronically) to the District, according to an approved format developed by the Construction Manager. If required by District, this summary report must include:

1. Project Status Reports for each project, including highlights/accomplishments since the previous Status Report;
2. Project Schedules for each project including an update of actual performance;
3. Budget, Actual, and Forecast to Complete if applicable.

C. Coordination.

Construction management services shall include coordination of all work with campus personnel (including affected District Site staff where necessary), District facilities staff, public agencies and utilities that are necessarily involved in the planning and execution of the Work.

D. Status Meetings.

Meet as requested with District staff and other necessary individuals to coordinate all phases of each Campus Project. Chair meetings, prepare meeting minutes, and distribute meeting minutes to attendees. Meet monthly with District Representative to provide a summary of the status of progress on Campus Projects. Upon District request and as much as a monthly basis, present a status update to the Board of Trustees at a regularly scheduled public meeting of the Board.

E. Schedule Management.

Develop, review, and maintain for each Campus Project independently. Prepare a proposed "baseline" schedule for each of the Campus Projects for review and approval by District. Report progress against the approved baseline schedule for coordination, tracking, reporting, and recording purposes.

F. Inspection Services.

Monitor the status of the inspection of the Work and the maintenance of appropriate inspection reports and inspection logs relating to the Work staff. Self-Perform inspections of facilities as needed.

G. Document Control.

Implement a document control and master file archives system for each Campus Project. This activity is limited to the files and documents created by the Construction Manager and not to any of the pre-existing documents generated by its predecessors.

H. Cost Estimating.

Provide Cost estimating services to update data produced in 2013 Master Plan. Review all Cost Estimated produced by Architects and other consultants and provide recommendations and alternate pricing for the District as requested. Provide estimates for recently designed projects based on information available at the time of the Work including a preliminary Schedule of Values.

The District's Program will include review and update of District Standards for design and construction, as required for the Bond Program.

I. Schedule.

Manage the schedule for all activities related to the Work. Create estimated schedules in Primavera or equal for the Master Planned Projects.

## 2.2. PRE-CONSTRUCTION SERVICES

Construction Manager shall perform the following services from the issuance of the Authorization to Proceed until the commencement of Work. Throughout this RFQ/P the Term “Pre-Construction” is used interchangeably with the Term “Programming”.

### A. Project Prioritization.

Assist the District in identifying and prioritizing Campus Projects, including determining which tasks may be performed through single or multiple Contractors, based on District and campus areas of need. Review and analyze existing prioritization information and make recommendations.

### B. Campus Project Cost Estimates, Budget.

In conjunction with the District and the District’s Architect, review current Budget of the Construction Cost for each Campus Project. Review and evaluate the current costing information for each Campus Project and supplement information as needed. Review and update current project budgets for each Campus Project based on the Architect’s and Consultants information and estimates. Construction Manager MUST be EXPERIENCED and capable of providing constructability and cost estimating using conceptual documentation.

### C. Consultants and Specialty Consultants.

Construction Manager is to make recommendations to the District to procure and manage specialty consultants as needed by the District. These will include but are not limited to: Soils and Structural Engineers, Ground Penetrating Radar Technicians, Surveyors, Testing and Inspection Firms, Structural Engineers, Architects, Civil Engineers, Mechanical, Electrical, and Plumbing Engineers. Procurement will also include developing a scope of work for said Consultants.

### D. Design, Constructability, and Value Engineering Review.

For each Campus Project, perform a thorough evaluation of existing Documents for accuracy and completeness and advise District on Design Costs, cost-effective design alternatives, materials, building systems, equipment and methods of delivery. Advise on long-term maintenance and energy savings issues as well as health and safety implications. Construction Manager will be required to perform Constructability Reviews with whatever information becomes available during the Term.

### E. Construction Manager is to assist the design team with the interim housing plan. Assist the District to ensure Site has a current and accurate as-built plan and it is in digital format. Verify utility point of connection coordination and service locations with Architects Consultants. Verify ADA requirements and assist the Architect as directed by the District.

### F. Communications.

Maintain and track communications among Campus Project participants. Firm should be experienced in public speaking and available to present to community groups, staff, Cabinet and the Board of Education.

## 2.3 CONSTRUCTION

For each Campus Project, Construction Manager shall perform the following services from the award of Construction Contract(s) to Contractors to Final Completion of all Construction Contract(s).

### A. Pre-Construction Conference. Conduct pre-construction conference prior to Contractor mobilization with Project Team, relevant public agencies and utilities. Review plans, scheduling, General Conditions, compliances, staging, security, reporting procedures, Site rules, and other key elements.

- B. Site Construction Management, Coordination, and Inspection. Maintain sufficient personnel as set forth in the Staffing Plan developed by the District and Construction Manager and equipment for Site monitoring and coordination of construction activities, as the District's agent. Ensure regular coordination and communication among Construction Manager, District staff, Contractors, and other relevant personnel. Monitor the Contractor's Schedule, and direct, manage, and coordinate the construction process, and coordinate the inspection and documentation of all the Work.
- C. Schedule Maintenance. Maintain and monitor master schedule to ensure all Work, submittals, and reviews are accomplished. Update schedule as necessary and distribute to appropriate Project Team Members.
- D. Contract Compliance Supervision. Monitor construction activities to ensure compliance with Contract Documents, Project Costs, Specifications, and Drawings, budgets, schedules, and/or need for Change Orders. Advise District on options to address failure by a Contractor, Subcontractor (of any Tier), or Subconsultant (of any Tier) to complete their respective duties by established deadlines.
- E. Information and Submittals. Log, process, and expedite Contractor, Subcontractor (of any tier), Design Consultant, and Subconsultant(s) (of any tier) requests for information and submittals. Analyze and evaluate time and cost impacts of suggested modifications and make recommendations to District.
- F. Change Order Management. Investigate, estimate, negotiate, recommend, and process Change Order requests and claims for additional compensation or time extensions, with immediate notification to District of such requests and claims, and related cost overruns.
- G. Testing, Inspection and Special Services. Monitor the performance of the overall testing inspections and special services for a Campus Project. Required tests and inspections are developed by the Architect of Record for a Campus Project in conjunction with the Division of State Architect (DSA) and are reflected in the Campus Project Specifications and/or the DSA Test and Inspection Sheets.
- H. Safety Program. Review each safety program to ensure compliance with Contract Document requirements and monitor the Contractor's implementation of Site Safety Program and ensure that accidents are investigated and reported. The Contractor is responsible for developing and implementing a site safety program at each Campus Project Site.
- I. Document Control and Recordkeeping. Maintain files for Campus Projects utilizing Construction Manager's filing structure and document control system.
- J. Progress Monitoring and Reporting. Maintain daily log of Work and conditions. Conduct and record weekly Site progress meetings, and adhere to reporting requirements.
- K. Progress Payments. Manage the monthly Application For Payment (AFP) of Contractor(s), confirm submission of appropriate waivers, insurance certificates and other required documents, and recommend approval on AFPs.
- L. Cost Accounting and Payments. Maintain records of actual costs and Change Orders, monitor Contractor cost compliances, and submit Contractor's progress payment requests to District.
- M. As-Builts. Regularly review Contractor(s)'s As-Builts for general accuracy and completeness and ensure that the Contractor provides the final set of As-Built drawings to the District in accordance with the Contractor's Project close-out obligations.

- N. Claims Assistance. Prior to Acceptance of a Campus Project, assist with Claims resolution by gathering findings of fact, evaluating findings and strategies, and making recommendations to District.
- O. Initial Start-Up, Punch Lists and Building Inspections. Monitor testing, balancing and start-up of utilities, equipment and operational systems, schedule job walks and building inspections, and assist Design Consultant(s), where applicable, in preparing and managing punch lists for incomplete Work or Defective Work.
- P. Operations and Maintenance Manuals and Warranties. Assemble manuals, warranties and certificates for equipment and building systems provided by the Contractor and verify that the same are applicable to the items actually installed.
- Q. Cleanup of Sites. Monitor Contractor's Site cleanup obligations and ensure Contractor complies with said obligations.
- R. Closeout Documentation. Coordinate completion, issuance and Contractor's submission of all closeout documents to District including, but not limited to As-Builts, lien waivers and releases, operations and maintenance manuals and warranties, permit inspections, and certificates and notices of completion, occupancy and Acceptance.
- S. Final Project Report and Payment. Recommend and prepare the final payment for Contractor(s). Provide a final report to District that includes a financial summary of Construction Costs, Change Orders, costs of construction management and other services, and direct purchase items; a construction summary with schedule review; and a final acceptance summary of signed receipts from District staff of all closeout documents, furnishings fixtures and equipment.

## 2.4 POST-CONSTRUCTION

For each Campus Project, Construction Manager shall perform the following services from the Final Completion of all Construction Contract(s) until the end of the Basic Term.

- A. Installation, Relocation, and Move-In. Assist with coordination of delivery and installation of furniture, furnishings, fixtures, and equipment.
- B. Training and Warranties. Coordinate all training for building engineering and District staff. Ensure extended warranties are identified with contact names and warranty descriptions.
- C. User Complaints. Respond to initial post-occupancy complaints about missing or malfunctioning equipment or building components, within duration of Construction Manager's engagement by the District under the Agreement.

## PART 3: FORMAT FOR PROPOSAL SUBMISSION

### A. GENERAL INSTRUCTIONS

Previously awarded CM firms are not required to resubmit qualifications and proposals.

All proposals are to be submitted in compliance with the format set forth below and in the order as outlined to facilitate evaluation by the District of the candidate's ability to meet or exceed the specified requirements under the heading "Part 2: Scope of Work."

The SOQ shall be presented in a three ring binder (*not spiral bound*), bound 8-1/2 inch by 11-inch (vertical) format. Submit **one original (clearly marked), plus five (5) bound copies along with**

**one electronic version in PDF** of your proposal (flash drive or CD). All submittals shall be tab delineated and assembled in order. All submittals shall become the property of the District and will not be returned.

**Total pages for qualifications listed under this Part 3 shall not exceed 20 pages as detailed below:**

1. Submission is limited to 20 pages, double-sided, No Font smaller than 11, Times New Roman Font, 1.0 line spacing minimum \*excluding Table of Contents, Resumes and Financial Information.\*
  2. Resumes of Key Staff are limited to 5 pages total double-sided.
- Financial information has no page limit and will be in a sealed envelope.
  - Table of Contents pages as needed. No page limit.
  - **PROPOSERS SHALL ACKNOWLEDGE RECEIPT OF ALL ADDENDA ISSUED AGAINST THIS RFQ/P WITH THEIR SOQ.**

Failure of a Proposer to receive and RFQ/P Addendum shall not: (1) relieve the Proposer from any obligation to comply with the requirements thereof; (2) relieve the Proposer from any obligation or conditions set forth in its Proposal; (3) entitle the Proposer to an extension of the RFQ/P Schedule; and (4) be considered as grounds for permitting the Proposer to modify its Proposal in a manner not expressly authorized by the RFQ/P Documents.

**B. FORMAT REQUIREMENTS:**

The sequence to be followed is as follows:

1. Table of Contents
  - a. Total pages as needed. Do not include in total page count for submittal to District.
2. Title Page (include in total page count)
  - a. Name of Firm
  - b. Project Title
  - c. Date Submitted
  - d. If the firm is a Joint Venture, please explain the reasons for the association, what this partnership will offer Orange Unified School District, other projects undertaken by the team (including contact names and phone numbers), and describe the business relationship (percentage of ownership, lead venture partner, etc.).
3. General Information
  - a. Name, address, telephone, and e-mail address of the firm; along with name and email for contact persons.
  - b. License number, type of license, State of license or registration:
    1. Legal form of firm (i.e. corporation, partnership, etc.). Please state the year your firm or organization was established
    2. Number and names of principals in the firm
    3. Number of employees
  - c. Provide a short resume of your firm's principals, (Please limit to one page).

- d. Short resume of key personnel to be assigned to this project, including proposed position. Refer to Part 3, Article C.2 for typical positions; however, also list your firm's proposed positions/titles if they differ. (Please limit to one page per person).

Each resume must address the following:

1. Project-specific responsibilities and description of work to be performed
  2. Estimated percentage of the individual's time that will be devoted to the project
  3. Specific qualifications
  4. Years with the firm and years with other firms
  5. Individual's involvement and role on firm's specific projects reported in item 4 below.
  6. Number of projects of similar nature performed by subject of resume
  7. Position held and responsibilities on work of similar nature
  8. Education, licenses held, etc.
4. Provide information to show that your proposed team has suitable resources available to ensure satisfactory completion of the work and describe the method used and company policy to properly address increase of workload.
5. Experience in school modernization projects (California School K-12) in the last ten (10) years (must provide a minimum of two (2) completed school individual projects with a construction value of \$75 million or higher) for which your firm or its senior personnel provided Construction Contract Administration. Firms interested in submitting proposals should have recent, extensive experience, with an understanding of the State of California school facility funding and building program as administered by the Office of Public School Construction (OPSC) and the Division of State Architect (DSA). List name and role of each of proposed key staff from item 2 above that worked on each reported project.
6. Describe your experience with California public education construction programs and relevant public school modernization and new construction projects. Include the scope of programs, description of services provided, caliber and quantity of staffing associated with the programs, and size of program budgets. The District intends to primarily utilize the Design-Bid-Build approach to some or all of these projects. Provide information regarding your firm's experience with such a deliver method. For each program referenced, provide the name of the District and provide the district's key contact person and telephone number. Provide a Comprehensive Narrative of the CM services rendered. The narrative should include the following for each referenced project:
- a. Project name, type, program, and location.
  - b. Scope of project and delivery method.
  - c. Did the project complete on time?
  - d. Construction costs (include design, construction and administration).
  - e. Provide the dollar amount of all Change orders or construction cost adjustments, including changes in scope.
  - f. Sub-consultants that worked with the firm.
7. Provide a list of client references, names, addresses, and e-mail addresses of all contact persons with respect to projects which your firm or its senior personnel has worked on

within the last five (5) years, and any other references you wish to provide who may provide information to the District regarding your firm's qualifications. List the project's owner and contractors for each reference. Please be advised that some references will be contacted.

8. Please indicate the CM experience your firm has and briefly describe how your firm would plan to work with the District with respect to the following: Include a brief discussion of your approach and tools you would use for the various work elements:
  - a. Estimating Services
  - b. Value Engineering and Constructability Reviews
  - c. Management of Environmental Consultants
  - d. Monitoring of accurate project design and construction schedules
  - e. Please list any experience/projects with the District's architectural firms of: gkkworks, Harley Ellis Deveraux, Lionakis, LPA, Inc.,
9. Each Proposer shall submit a summary of assets and liabilities on the basis of available financial statements (audited or reviewed – not compiled) as of the close of its 2014/2015 fiscal year or more recent if available.

➤ **Financial Statements should be submitted in a separate sealed envelope, with the Proposer's submittals, and marked confidential "Financial Statement." The District handles Proposer Financial Statements with confidentiality. THERE IS NO PAGE LIMIT FOR REQUIRED FINANCIAL STATEMENTS.**
10. Insurance Coverage. Each submittal must include a copy of the Proposer's Certificate of Insurance. This may be marked confidential (if determined necessary by Proposer) and included with the "original" (wet signature) proposal. The firm or organization shall be required to carry the following insurance:
  - a. Comprehensive General Liability Insurance, with a minimum limit of two million dollars (\$2,000,000) per occurrence minimum aggregate limit of four million dollars (\$4,000,000) for bodily injury and property damage, and shall include coverage for contractual liability, products liability and completed operations liability. The District shall also be named as an additional insured under such policy of insurance.
  - b. Comprehensive Automobile Liability Insurance, including owned, non-owned, and hired vehicles with minimum limit of one million dollars (\$1,000,000) per occurrence.
  - c. Workers' Compensation and Employer Liability, statutory limit.
  - d. In addition, the District at its own discretion may require a firm or organization to carry Professional Liability Insurance with a minimum limit of one million dollars (\$1,000,000) per occurrence. The deductible on such policy shall not to exceed \$25,000 each claim. If the professional liability coverage is written on a claims made basis, the coverage shall continue for a minimum of three (3) years following completion of the project.

**Note:** All insurance must be issued by an insurance provider by an admitted carrier (licensed to do business in the State of California), carrying a rating of not less than A- VII in the most current A. M. Best's Insurance Guide - Property Casualty or otherwise acceptable to Owner.
11. Provide a complete list of construction related litigation within the past five (5) years involving your firm. Include the names of the participants and a contact person and phone number. Indicate whether your firm or any predecessor firm has filed for

protection under the United States bankruptcy code within the last seven (7) years. If so, provide the name of the court where filed, the case title, and the disposition of the case. Proposals failing to provide the requested information of lawsuits of litigation or claim will be considered non-responsive and will not be evaluated.

12. Submit District Non-Collusion Declaration, by authorized signatory of your firm. This form is included in this RFQ/P as "Exhibit 1."

**C. BUDGETARY ESTIMATE FOR FEE PROPOSALS:**

- **Fee Proposals should be submitted in a separate sealed envelope, with the Proposer's submittals and marked "Fee Proposal."**

Fee Proposal:

**1. Fee Proposal – Construction Management Services:**  
**Assumptions:**

Delivery Method: AGENCY CM / Design Bid Build with PM by others  
 Site: Assigned District High School  
 Project Value: \$55 Million USD Hard Construction Cost  
 Project: Modernize Three (3) Classroom Buildings & Construct Two (2) New Classroom Buildings

**Services**

Comprehensive Construction Management % \_\_\_\_\_  
 (% of Hard Construction Costs)

2. <u>Hourly Labor Rates (Staffing Table)*</u>	<u>Full Time</u>	<u>Part Time</u>
a. Project Manager	\$ _____	\$ _____
b. Site Superintendent	\$ _____	\$ _____
c. Project Engineer	\$ _____	\$ _____
d. Project Controls	\$ _____	\$ _____
e. Administrative	\$ _____	\$ _____

**\*Hourly Rates are inclusive of Direct Labor, Overhead, Burden, Fringes & Profit**

**PART 4: EVALUATION PROCESS**

**A. DISTRICT EVALUATION / SELECTION PROCESS**

It is the District's intent to select firm(s) that best demonstrates competence and professional qualifications to perform described services outlined in this RFQ/P. From the firms who provide a



Statement of Qualifications and Proposal to the District, upon the first phase of evaluations, the District may, at its discretion, interview some or all of those firms for a recommendation of award of contract to the District's Governing Board of Education. The District will notify and coordinate interview time all with shortlisted firms invited to interview, followed by negotiations. Refer to the District's Tentative Schedule for anticipated dates scheduled for interviews.

CM firms previously awarded contracts by the District for facilities improvements at assigned high schools may continue to provide services identified in the District's solicitations, inclusive of all phases of the Work, by utilization of the Master Agreement and mutually agreed upon fee schedule.

The right is reserved by the District to reject any or all qualifications and proposals, to waive any irregularities or informalities not affected by law, to evaluate the qualifications and proposals submitted and to award the contract according to the qualifications and proposal which best serves the interests of said District.

**END OF RFQ/P**  
**(Exhibit List and Exhibits Below)**

**EXHIBITS**

The RFQ/P Exhibits listed below are available following this page:

**EXHIBIT 1:** NON-COLLUSION DECLARATION

**EXHIBIT 2:** DISTRICT LOCATION MAP FOR NON- MANDATORY PRE-PROPOSAL CONFERENCES AT DISTRICT WAREHOUSE

**AND**

DISTRICT LOCATION MAP FOR SUBMITTAL OF PROPOSER PACKAGES AT PURCHASING DEPARTMENT

**EXHIBIT 3:** SAMPLE AGREEMENT

**END OF EXHIBIT LIST**

**EXHIBIT NO. 1**

**NON-COLLUSION DECLARATION**

THE UNDERSIGNED DECLARES:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party or proposer ("Proposer") submitting the proposal ("Proposal") that is being submitted with this declaration.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ (date), at \_\_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
(NAME OF PROPOSER)

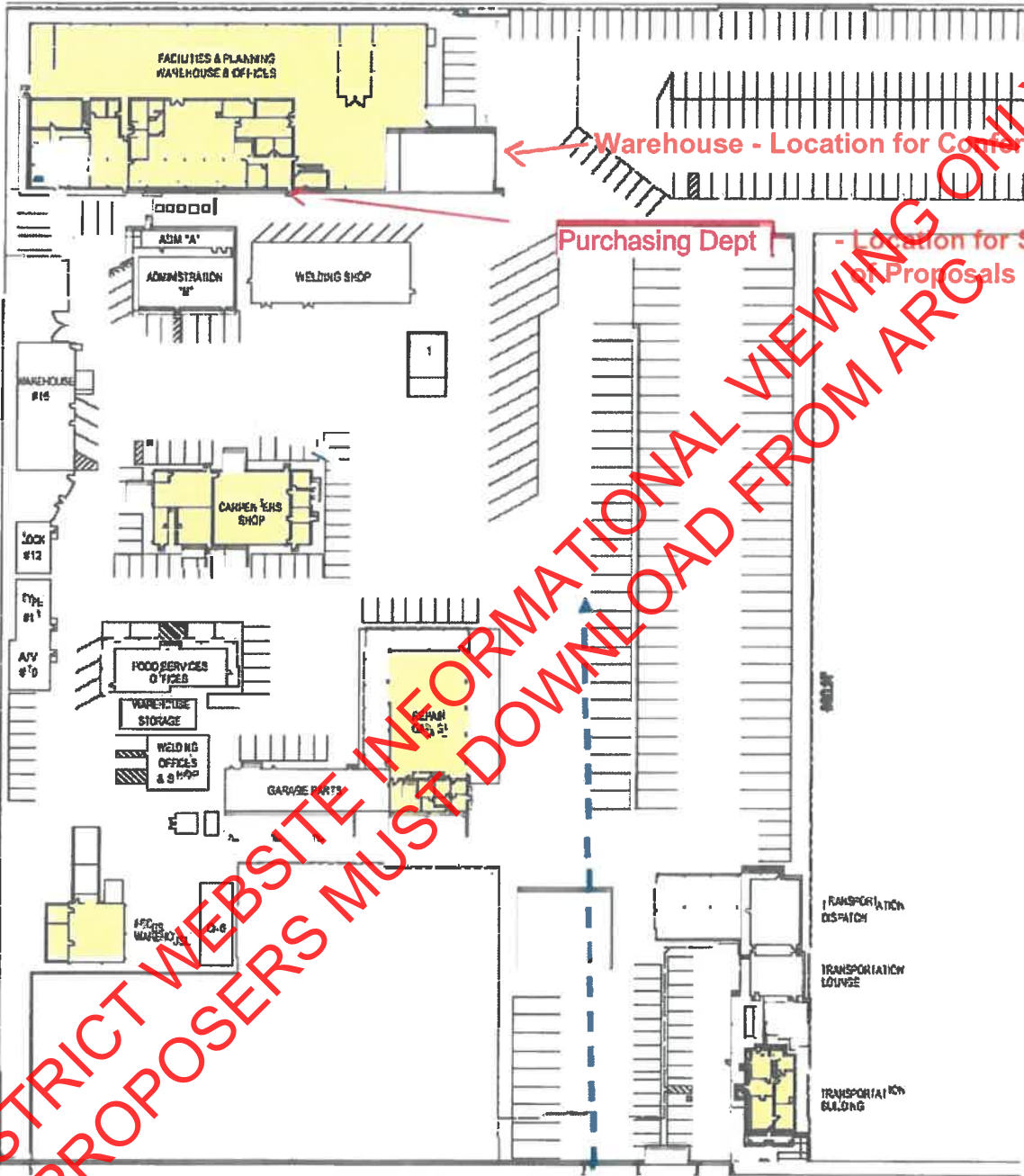
\_\_\_\_\_  
Signature of Proposer (Individual or Firm's Officer)

\_\_\_\_\_  
Typed Name of Person Signing

\_\_\_\_\_  
Office or Title



### ORANGE UNIFIED SCHOOL DISTRICT District School Bus and Maintenance Yard



Warehouse - Location for Conferences  
Purchasing Dept - Location for Submittal of Proposals

C O L L I N S   A V E .

**Directions to the Purchasing Department**  
726 West Collins Ave.  
Orange, CA 92867  
(714) 628-4500  
(on Collins Ave. between Glassell Ave. / Batavia St.)

# ORANGE UNIFIED SCHOOL DISTRICT



## MASTER AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This CONSTRUCTION MANAGEMENT AGREEMENT (“Agreement”) is entered into on this **XXth day of MONTH 2017**, between the **ORANGE UNIFIED SCHOOL DISTRICT** (“District”) and **INSERT**, (“Construction Manager” or “CM”) for construction management services.

### RECITALS

A. The District is a K-12 school district that operates in the County of Orange, California.

B. The Construction Manager is a corporation licensed to do business in California. The Construction Manager represents it has the background, knowledge, experience, licenses and expertise necessary to provide the services set forth in this Agreement.

C. Following the completion of a request for qualifications and proposal process, the District and Construction Manager desire to enter into an agreement for the Construction Manager to provide the District with professional services consisting of pre-construction phase work, followed by optional project and construction management services in connection with future general obligation bond measure funded projects, and any and all District assigned projects involving existing school facilities and new construction collectively “Campus Projects”).

D. It is the intention of the parties that the Construction Manager provides comprehensive project and construction management services for the pre-construction phase of this Agreement, under the supervision of the District’s Superintendent or designee that will enable the Campus Projects to be completed and constructed. Further services and phases may be incorporated by mutual agreement and execution of an Agreement Amendment outlining any additional scope of work and services.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

## ARTICLE 1

### 1.1. DEFINITIONS

- 1.1.1. Acceptance. The point after Final Completion when Contractor has fully performed all of the requirements of the Contract Documents and the Work of a Campus Project is certified as complete and accepted by the District in writing.
- 1.1.2. Addendum, Addenda. Written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued prior to the receipt of the Contractor's Bid for a Campus Project, which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections to said Bid Documents.
- 1.1.3. Additional Services. Services requested and Board approved by District in writing pursuant to Paragraph 4.1.3, prior to their being performed by Construction Manager and that do not arise, in whole or in part, from the fault, negligence or breach of this Agreement by Construction Manager and which are not included within the scope of Basic Services described in Article 2 and Exhibit A. Such Additional Services shall be compensated on an Hourly Rate Basis, see Exhibit B.
- 1.1.4. Applicable Laws. All federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Project, Work, Site, District, or Construction Manager, including ordinances, rules and regulations enacted by the District.
- 1.1.5. Application for Payment. An itemized application for payment prepared and submitted by Construction Manager for review and approval by District, with supporting documentation required by this Agreement.
- 1.1.6. Architect. The Architect of Record for a Campus Project.
- 1.1.7. As-Builts. The documents prepared by Contractor, and reviewed and approved by Inspector of Record, Architect of Record and the Construction Manager, showing the condition of the Work of a Campus Project as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown in the Contract Documents' diagrams. This term does not apply to existing District as-built documents that reflect the conditions existing prior to the commencement of Work on any Campus Project under this Agreement.
- 1.1.8. As-Planned Progress. The planned progress of the work by a Contractor pursuant to its as-planned construction schedule for a Campus Project.

- 1.1.9. Authorization to Proceed. Written and Board approved notice given by District to Construction Manager to begin performing the Basic Services.
- 1.1.10. Basic Services. All services specified in Article 2 and Exhibit A of this Agreement.
- 1.1.11. Basic Term. The term of this Agreement as defined in Section 4.3 of this Agreement.
- 1.1.12. Bid. A Contractor's written bid proposal submitted to the District for a Campus Project in response to District's Notice Inviting Bids.
- 1.1.13. Bid Documents. The following collection of documents prepared and issued for the purpose of soliciting Bids for construction of Work : (i) Notice Inviting Bids; (ii) Instructions to Bidders; (iii) Blank Bid Form; (iv) Construction Contract between the District and the Contractor; (v) General Conditions; (vi) Specifications; (vii) Plans and Drawings; (viii) Addenda; and (ix) reports, addenda supplements, attachments, modifications and exhibits attached to the documents listed in Clauses (i) through (viii), above.
- 1.1.14. Board of Education. The governing board of the District.
- 1.1.15. Campus Project. The individual works of improvement, modernization or new construction comprising the Project that are to be separately designed, bid and constructed under contracts between District and Design Consultants or Contractors.
- 1.1.16. Change Order. A written instrument signed by District, Construction Manager and by Contractor, describing an adjustment in a Construction Contract Sum or Construction Contract schedule, or both, pertaining to a deletion, addition or change to the Contractor's scope of Work.
- 1.1.17. Claim. A written demand or assertion by District, Construction Manager or any other member of the Project Team seeking as a matter of right, an interpretation of contract, payment of money, recovery of damages, or other relief. A Claim does not include the following: (i) penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency; (ii) tort claims for personal injury or death; (iii) false claims liability under California Government Code Section 12650, et seq.; (iv) defects in the Work first discovered by District after Final Payment by District to Contractor; (v) stop notices; and (vi) the right of District to specific performance or injunctive relief to compel performance.
- 1.1.18. Claims Dispute Resolution Process. The process of resolution of Claims as set forth in Article 9 of this Agreement.

- 1.1.19. Construction Contract. A written contract executed between District and a Contractor for construction of a portion or all of the Work of one or more Campus Project(s).
- 1.1.20. Construction Costs. The total cost of constructing a Campus Project, excluding the following: (i) the cost of professional services to be rendered by Design Consultants, Specialty Consultants, or Construction Manager; (ii) land acquisition costs; (iii) finance costs; (iv) District's administrative costs; and (v) legal fees and related legal costs.
- 1.1.21. Contract Documents. Without limitation, the following collection of documents that are anticipated to be designated as the Contract Documents governing a Contractor's performance of the Work of a Campus Project: (i) The Notice Inviting Pre-Qualification Statements (if applicable), Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable); (ii) executed Construction Contract between District and Contractor; (iii) Notice Inviting Bids; (iv) Instructions to Bidders; (v) Bid Addenda; (vi) Contractor's Bid; (vii) General Conditions; (viii) Specifications; (ix) Performance and Payment Bonds; (x) insurance forms; (xi) Plans and Drawings; (xii) Modifications; (xiii) reports listed in the Bid Documents; (xiv) Change Orders; (xv) Field Directives and (xvi) supplements, attachments and exhibits attached to the items listed in Clauses (i) through (xv), above.
- 1.1.22. Contract Sum. The total amount of compensation stated in a Construction Contract that is payable to a Contractor.
- 1.1.23. Contract Time. The total number of Days set forth in a Construction Contract within which Final Completion of the Work of a Campus Project must be achieved by Contractor, including approved extensions of time permitted under the terms of the governing Contract Documents.
- 1.1.24. Contractor. An individual or firm under contract with District to perform any Work on one or more Campus Project(s).
- 1.1.25. Day. Whether capitalized or not, unless otherwise specifically provided, a calendar day, including weekend days and legal holidays.
- 1.1.26. Defective Work. Work that does not fulfill the requirements of the Contract Documents or Construction Contract.
- 1.1.27. Deliverables. The written work product, consisting of reports, summaries, projections, budgets, schedules, plans, programs, procedures and minutes required to be prepared and submitted by Construction Manager to the District under the terms of this Agreement.
- 1.1.28. Deliverables Schedule. The schedule setting forth the applicable contractual time periods and deadlines at which Construction Manager is

required to perform its Basic Services, including, without limitation, the production of its Deliverables.

- 1.1.29. Design Consultant. An individual or firm under contract with District to provide design, architectural, engineering and/or design administration services for a Campus Project.
- 1.1.30. Design Costs. The costs to District for conceptual, schematic design development, construction documents and construction administration services required for completed design, engineering, administration and management of a Campus Project by Design Consultants and Specialty Consultants.
- 1.1.31. Design Documents. All plans, drawings, tracings, specifications, programs, reports, calculations, models and other material containing designs, specifications or engineering information prepared by Design Consultants and Specialty Consultants including, without limitation, computer aided design materials, electronic data files, files and paper copies.
- 1.1.32. District Representative. The Superintendent, or as designated by the Board of Education.
- 1.1.33. Drawings. The graphic and pictorial portions of the Contract Documents prepared by a Design Consultant and other Specialty Consultants showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."
- 1.1.34. Environmental Law. Any applicable federal, state or local laws, ordinances or regulations relating to the environment, health and safety, Hazardous Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Site, including soil, groundwater and indoor and ambient air conditions, and the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901-6992k), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1307), the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601-2692), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 15 U.S.C. §§ 2681-2692 and also 42 U.S.C. §§ 4851-4856, the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Indoor Radon Abatement Act, 15 U.S.C. §§ 2661-2671, and the Safe Drinking Water Act



Amendments of 1996, Pub L. No. 104-182, 110 Stat. 1613 (1996) and all similar federal, state and local statutes and regulations.

- 1.1.35. Field Directive. A written instrument signed by Construction Manager and District that requests performance of Work by Contractor in one of the following categories: (i) over which there is a dispute as to whether the Work is or is not extra work; or (ii) involving extra work which Construction Manager and the District request be performed without a unilateral Change Order adjustment to the Contract Sum or Contract Time and before agreement on all terms of a Change Order to the Construction Contract.
- 1.1.36. Final Completion. With respect to the Work under a single Construction Contract, the point at which all conditions set forth in the Contract Documents for Final Completion of the Work, including post-construction services specified in Section 2.5, have been, and continue to be, fully satisfied.
- 1.1.37. Force Majeure Circumstances. Unavoidable circumstances beyond the reasonable control of Construction Manager, including but not limited to Acts of God, strikes, lockouts, labor disputes, inability to obtain labor or materials or reasonable substitutes, therefore, governmental restrictions, regulations and controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, that interfere with Construction Manager's ability to complete its Services utilizing the resources authorized by the Staffing Plan or that prevent Construction Manager from satisfying the requirements of the Deliverables Schedule or complying with its other obligations under this Agreement.
- 1.1.38. General Conditions. That portion of the Contract Documents between District and a Contractor titled "General Conditions."
- 1.1.39. Hazardous Substance. Any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste" or words of similar import under any Environmental Law, including but not limited to the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally.
- 1.1.40. Interest Rate. The lesser of: (i) the "prime rate" reported in the Wall Street Journal from time to time; or (ii) the maximum rate permitted under California law for prejudgment interest.
- 1.1.41. Key Personnel. Those individuals listed in Exhibit D to this Agreement, and any additions or replacements thereto approved by District.

- 1.1.42. Loss, Losses. Any and all losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorney fees, court costs, or consequential damages.
- 1.1.43. Milestone Payment Schedule. The Schedule of Basic Services Milestone Tasks listed in Exhibit B to this Agreement.
- 1.1.44. Plans. See "Drawings."
- 1.1.45. Project Budget. The District's written statement of funds available to pay for Project Costs of a Campus Project, or collection of Campus Projects.
- 1.1.46. Project Construction Budget. That portion of the Project Budget that sets forth the District's budget for Construction Costs for a Campus Project or collection of Campus Projects.
- 1.1.47. Project Costs. The total of all Design Costs, Construction Costs, Specialty Consultants Costs, costs, and fees of Construction Manager and other related costs (such as, but not limited to, personnel relocation and temporary facilities costs, fixtures, furniture and equipment (if required)) for a Campus Project or collection of Campus Projects, excluding: (i) land acquisition costs; (ii) finance costs; (iii) District administrative costs; or (iv) legal fees and court costs.
- 1.1.48. Construction Manager Representative. TBD by District, or his/her replacement, identified to act on behalf of Construction Manager with the authority set forth in Paragraph 1.4.1 of this Agreement.
- 1.1.49. Project Team. District Representative, Construction Manager Representative, Key Personnel as needed, Specialty Consultant(s), Design Consultant(s), Contractor(s), Subconsultant(s), Sub-subconsultant(s), and other firms or individuals retained by District or others with District approval participating in the planning, programming, design or construction of a Campus Project.
- 1.1.50. Safety Program. A written plan for the prevention of, and treatment for, injuries to and illnesses of persons performing Work on a Campus Project and District employees, students, and visitors who come on or near a Site, directly or indirectly resulting from the Work. The Safety Program also includes a written plan for the prevention and handling of damage to personal or real property directly or indirectly resulting from the Work.
- 1.1.51. Site. The term "Site" refers to: (i) the District school sites and such additional parcels as may be purchased by District during the Basic Term on which Work is required to be performed under the Contract Documents; (ii) all areas adjacent to such parcels that may be used by Contractor or its Subconsultants for staging, storage, parking or temporary offices; and (iii) all land areas, both private and public, adjacent to such

parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

- 1.1.52. Specialty Consultant. The professionals, other than Construction Manager, of any Tier, retained by a Design Consultant or District to provide professional services for any Campus Project, including master planners, programming consultants, soils and geotechnical engineers, environmental consultants, Hazardous Substance consultants, infrastructure consultants, landscape designers, inspectors and testing services.
- 1.1.53. Specifications. The portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work, and performance of related services.
- 1.1.54. Staffing Plan. Construction Manager's plan showing the numbers of individuals anticipated to expend in performance of the Agreement.
- 1.1.55. Statement of Dispute. A written description of a dispute regarding a Claim required to be submitted as part of the Claims Dispute Resolution Process.
- 1.1.56. Subconsultant. A person or firm that has a contract with Construction Manager to perform a portion of the services covered by this Agreement.
- 1.1.57. Subcontractor. A person or firm that has a contract with a Contractor to perform a portion of the Work, including without limitation, subcontractors, sub-subcontractors, and suppliers and vendors, of every Tier.
- 1.1.58. Submittals. Shop drawings, samples, exemplars, models, product data and other similar submittals required to be submitted by Contractor under the Contract Documents.
- 1.1.59. Tier. The contractual level of a Subconsultant with respect to Construction Manager, a Consultant with respect to the Design Consultant retaining such Consultant or a Subcontractor with respect to a Contractor. For example, a "first-tier" Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on.
- 1.1.60. Work. All labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for Contractor to perform its obligations and complete a Campus Project (or a collection of Campus Projects under a single Construction Contract to a single Contractor), including any changes, additions or deletions approved by District, in accordance with the Contract Documents and all Applicable Laws.

## **1.2. SCOPE OF SERVICES**

Construction Manager shall provide all services, if needed, as specified in Article 2 and Exhibit A.

## **1.3. PERFORMANCE STANDARDS**

1.3.1. Standard of Care. Construction Manager shall perform all services under this Agreement in a manner consistent with the standard of care, competence, skill, and knowledge under California law applicable to those who specialize in providing Project and Construction Management services for projects of the type, scope and complexity of the Campus Projects.

1.3.2. Relationship. Construction Manager serves as District's agent and fiduciary in performing services under this Agreement. Construction Manager shall, in this capacity, maintain confidences and provide professional services in a manner consistent with District's economic, educational and governmental best interests.

## **1.4. AUTHORITY OF THE CONSTRUCTION MANAGER**

Construction Manager's authority to act on behalf of District is limited to the scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or any Contract Documents, Construction Manager does not have the express or implied authority to obligate District to any expenditure of money or extension of contractual time periods, or to any adjustment to the price or time of performance of any contract between District and its Contractors, Specialty Consultants or Design Consultants, including binding approval of Change Orders.

1.4.1. Construction Manager Representative. The Construction Manager shall designate a "Project Representative" who shall have the authority to act on behalf of the Construction Manager in respect to all matters that are the subject of this Agreement, including the power and authority to enter into agreements or modifications to agreements that contractually bind Construction Manager.

1.4.2. Construction Manager's Employees. All persons employed by Construction Manager shall be the employees of Construction Manager and not of District. Construction Manager shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to all employees working for Construction Manager.

## **1.5. KEY PERSONNEL**

1.5.1. Additions, Removals, Replacements.

- 1.5.1.1. Additions. It is contemplated that from time to time individuals will be added to the list of Key Personnel as necessary and appropriate to the stage of planning, programming, designing and constructing of the Project. Construction Manager shall make staffing additions at its discretion and shall notify the District of such changes in writing within seven (7) days of such addition. Construction Manager's staffing additions shall not serve to replace or substitute for services provided by existing Key Personnel.
- 1.5.1.2. Removals. If the District, in good faith, is dissatisfied with the services rendered by any Key Personnel, Construction Manager, within a reasonable time after receipt of written demand from the District setting forth the basis of its dissatisfaction and request for replacement, shall promptly provide a substitute person acceptable to the District as discussed below.
- 1.5.1.3. Replacements. If any Key Personnel ceases employment with Construction Manager or is requested to be removed by District pursuant to Paragraph 1.5.1.2 above, then Construction Manager shall promptly notify District of a proposed substitute person of at least equal qualifications to perform the same functions and is approved by District, which approval may be granted or withheld in its reasonable discretion. Construction Manager shall bear, at its own expense and without reimbursement by District, all costs associated with replacing, for any reason, any Key Personnel.

## 1.6. SUBCONSULTANTS

Construction Manager may, with prior approval by District, not to be unreasonably withheld, enter into written contracts with Subconsultants to perform portions of the services provided for in this Agreement. Construction Manager's request for hiring of a Subconsultant shall be submitted in a writing that describes the scope of work to be contracted, the name of the proposed Subconsultant and the total price and/or hourly rates for the Subconsultant's services. Subconsultants' services shall not be considered Additional Services unless they satisfy the requirements under Section 4.2. The fees or costs associated with Subconsultants' services shall not be included in the amount of project expenditures, if any, from which Construction Manager's compensation is calculated. Only the District's approval of the Subconsultant in writing shall be effective to convey the District's approval. District shall use its best efforts to approve or disapprove proposed Subconsultants within seven (7) days of Construction Manager's request. Subconsultants identified by name in the Staffing Plan shall be deemed approved by the District. Construction Manager shall remain solely responsible to District for the quality and performance of all Subconsultants' services. Construction Manager may, upon advance written notice to District, terminate and replace the services of any Subconsultant. Every subcontract or agreement of any kind entered into between Construction Manager and Subconsultant (or between any Subconsultant and other independent contractor consultants) shall contain appropriate language whereby

Subconsultant, without creating any contractual obligation on the part of the District to the Subconsultant or anyone working under contract to Subconsultant, accepts and agrees to be bound by all applicable provisions of this Agreement and agrees to include in its contracts with its Subconsultants a contingent assignment of the contract to District, or its designee, effective only upon written acceptance by District or its designee.

## **1.7. OWNERSHIP OF DOCUMENTS**

All Design Documents and all documents that are prepared, reproduced or caused to be prepared by Construction Manager or its Subconsultants, of any Tier, in furtherance of their obligations under this Agreement shall be and remain the sole property of District. Without limitation to the foregoing, District shall hold, and Construction Manager shall be deemed to have irrevocably assigned to District, in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights to such documents. The District hereby grants to Construction Manager and its Subconsultants a license, revocable at will of District, to use and copy such documents during the term of this Agreement for the sole purpose of performing the Work required under this Agreement. At any time upon reasonable request by the District and/or upon the earlier of termination of this Agreement or completion of performance of this Agreement, Construction Manager and its Subconsultants, of every Tier, shall, deliver all of the originals of such documents prepared in the course of their performance of this Agreement to District.

## **ARTICLE 2 BASIC SERVICES**

### **2.1. GENERAL SUMMARY OF CONSTRUCTION MANAGER'S BASIC SERVICES**

The Basic Services delineated in the Agreement Recitals to be performed under this Agreement by Construction Manager are described below on a summary level by scope category, and more specifically by phase of delivery of services in Sections 2.2 to 2.5.

2.1.1. Construction Management. Provide construction management services during all phases (i.e., planning, pre-construction, bidding and award of contracts, construction, post-construction) of each Campus Project. Construction management services will include management, oversight, and coordination of all Contractors', Subconsultants', vendors' and suppliers' Work, in connection with, and in the performance of, the delivery of the Campus Projects.

2.1.1.1. Reports. Construction management services shall include, upon the District's request if District so chooses, progress reporting at Board of Education meetings, in the format described as follows: Prepare reports (to be provided in writing and electronically) to the District, according to an approved format developed by the Construction Manager. If required by District, this summary report must include:

- a) Project Status Reports for each project, including highlights/accomplishments since the previous Status Report;
- b) Project Schedules for each project including an update of actual performance;
- c) Budget, Actual, Forecast to Complete, Budget Available Balances for each Project.

2.1.1.2. Coordination. Construction management services shall include coordination of all work with campus personnel (including affected District Site staff where necessary), District facilities staff, public agencies and utilities that are necessarily involved in the planning and execution of the Campus Projects. These services do not include the coordination of services that are not included within Basic Services or the performance or provision of legal services on behalf of the District.

2.1.2. Status Meetings. Meet weekly with District staff and other necessary individuals to coordinate all phases of each Campus Project. Chair meetings, prepare meeting minutes, and distribute meeting minutes to attendees. Meet monthly with District Representative to provide a summary of the status of progress on Campus Projects. Upon District request and as much as a monthly basis, present a status update to the Board of Education at a regularly scheduled public meeting of the Board. Such presentations shall contain material from the reports described in Section 2.1.1.1, including but not limited to highlights/accomplishments, potential and actual cost savings. Attend as requested by the District meetings of the Citizens' Oversight Committee and provide monthly progress report or interim progress reports as requested. The contents and details contained within such reports must be defined and agreed upon by Construction Manager.

2.1.3. Schedule Management. Develop, review, and maintain for each Campus Project independently. Prepare a proposed "baseline" schedule for each of the Campus Projects for review and approval by District. Report progress against the approved baseline schedule for coordination, tracking, reporting, and recording purposes.

2.1.4. Inspection Services. Monitor the status of the inspection of the Work and the maintenance of appropriate inspection reports and inspection logs relating to the Work staff. Construction Manager, with input from the District, shall manage the selection of any necessary independent inspectors, including Division of State Architect inspectors. Construction Manager shall have no obligation to personally inspect the Work. To the extent that Construction Manager becomes or is made aware of any Work that does not conform to the Specifications or Drawings, communicate

said defective conditions to District and the appropriate independent inspectors retained by District to perform inspections on the Campus Project. Construction Manager shall not have responsibility or liability for the quality or completeness of the inspections, inspection reports and/or inspection logs.

- 2.1.5. Document Control. Implement a document control and master file archives system for each Campus Project. This activity is limited to the files and documents created by the Construction Manager and not to any of the pre-existing documents generated by its predecessors.
- 2.1.6. Cost Estimating. Monitor the cost estimating services provided by consultants/general contractors, and provide recommendations where applicable for the reduction of costs of design, construction and maintenance. If the Construction Manager is requested to provide among other things, feasibility analysis, and use of alternative approaches to building systems, project delivery and procurement of these services are deemed Additional Services.
- 2.1.7. Schedule. Manage a process for (i) evaluation of Contractor's schedules and schedule updates, including the preparation of independent critical path schedules and short-term ("look ahead") schedules, (ii) receiving and evaluating requests for time extensions and claims for compensation for delay, and (iii) evaluating As-Planned to As-Built progress to assure that the District is fully advised on issues that could affect timely completion of a Campus Project.

## **2.2. PRE-CONSTRUCTION**

- 2.2.1. For each Campus Project, as deemed necessary by Construction Manager, Construction Manager shall perform the following services from the issuance of the Authorization to Proceed until the commencement of Work by Contractor(s).
- 2.2.2. Project Prioritization. If requested, assist District in identifying and prioritizing Campus Projects, including determining which tasks may be performed through single or multiple Contractors, based on availability of funds and District and campus areas of need.
- 2.2.3. Campus Project Cost Estimates, Budget. In conjunction with the District and the District's Architect, review Initial Budget of the Construction Cost for each Campus Project developed by the Campus Project Architect. Review and evaluate the detailed cost estimate for each Campus Project developed by the Campus Project Architect. Review and update current project budgets for each Campus Project based on the Architect's approved detailed cost estimate.
- 2.2.4. Screening of Design Consultants and Specialty Consultants. Subject to the District's written direction for each Campus Project, chair, manage,



and participate in the prescreening and interview of Design Consultants (e.g., Architects and Engineers) and Specialty Consultants (e.g., DSA Inspectors, Testing). Provide written recommendations concerning selection of Design Consultants and Specialty Consultants. This task may and will be subject to the requirement and acceptance of the transfer of design responsibility of original design from the original AOR to the new AOR.

- 2.2.5. Design, Constructability, and Value Engineering Review. For each Campus Project, perform a general evaluation of Design Documents for accuracy and completeness and advise District on Design Costs, cost-effective design alternatives, materials, building systems, equipment and methods of delivery. Advise on long-term maintenance and energy savings issues as well as health and safety implications. In performing these services the Construction Manager does not assume responsibility for the adequacy of the design of a Campus Project.
- 2.2.6. Communications. Maintain and track communications among Campus Project participants.

### **2.3. BIDDING AND AWARD OF CONTRACTS**

For each Campus Project, if necessary, Construction Manager shall perform the following services from the issuance of the Authorization to Proceed through the award of Construction Contract(s).

- 2.3.1. Pre-Qualification of Prime Contractors. Provide pre-qualification requirements, conduct contractor outreach, surveys and assessments, assist with reference checks, report on bidders' acceptability, and prepare written evaluations and recommendations.
- 2.3.2. Bid Preparation. Review Drawings and Specifications and work with District staff, including Design Consultant(s) as necessary, to prepare Bid Documents. Recommend bundling of Bids where appropriate. Assist District staff in properly advertising request for Bids. Provide information uniformly to bidders, conduct pre-bid conference and pre-bid job walks. Monitor Campus Project Architect's responses to bidder questions and issuance of Addenda and assist in the preparation of Addenda as necessary.
- 2.3.3. Bid Review. Review Bids for price proposals, conformance to requirements, adequacy of bid bonds, accuracy of quantities, rates and unit prices, and time and schedule impacts. Make recommendations for awards and evaluate bid protests.
- 2.3.4. Awards. Review performance and material labor bonds for compliance with District requirements and Applicable Law. Arrange pre-award conference, as appropriate. Coordinate preparation and execution of Contract Documents.

## 2.4. CONSTRUCTION

For each Campus Project, Construction Manager shall perform the following services from the award of Construction Contract(s) to Contractors to Final Completion of all Construction Contract(s).

- 2.4.1. Pre-Construction Conference. Conduct pre-construction conference prior to Contractor mobilization with Project Team, relevant public agencies and utilities. Review plans, scheduling, General Conditions, compliances, staging, security, reporting procedures, Site rules, and other key elements.
- 2.4.2. Site Construction Management, Coordination, and Inspection. Maintain sufficient personnel as set forth in the Staffing Plan developed by the District and Construction Manager and equipment for Site monitoring and coordination of construction activities, as the District's agent. Ensure regular coordination and communication among Construction Manager, District staff, Contractors, and other relevant personnel. Monitor the Contractor's Schedule, and direct, manage, and coordinate the construction process, and coordinate the inspection and documentation of all the Work.
- 2.4.3. Permits, Bonds, Insurance. Monitor Contractor's efforts to obtain all required permits, bonds and insurance coverages required for a Campus Project.
- 2.4.4. Schedule Maintenance. Maintain and monitor master schedule to ensure all Work, submittals, and reviews are accomplished. Update schedule as necessary and distribute to appropriate Project Team Members.
- 2.4.5. Contract Compliance Supervision. Monitor construction activities to ensure compliance with Contract Documents, Project Costs, Specifications, and Drawings, budgets, schedules, and/or need for Change Orders. Advise District on options to address failure by a Contractor, Subcontractor (of any Tier), or Subconsultant (of any Tier) to complete their respective duties by established deadlines.
- 2.4.6. Information and Submittals. Log, process, and expedite Contractor, Subcontractor (of any tier), Design Consultant, and Subconsultant(s) (of any tier) requests for information and submittals. Analyze and evaluate time and cost impacts of suggested modifications and make recommendations to District.
- 2.4.7. Change Order Management. Investigate, estimate, negotiate, recommend, and process Change Order requests and claims for additional compensation or time extensions, with immediate notification to District of such requests and claims, and related cost overruns. On a monthly basis, prepare tabulated Change Order monitoring and impact reports describing work, cost and progress. Make recommendations to District for District's final decisions on each Change Order.

- 2.4.8. Testing, Inspection and Special Services. Monitor the performance of the overall testing inspections and special services for a Campus Project. Required tests and inspections are developed by the Architect of Record for a Campus Project in conjunction with the Division of State Architect (DSA) and are reflected in the Campus Project Specifications and/or the DSA Test and Inspection Sheets. It is the Inspector of Record's responsibility to coordinate and schedule the testing or inspection activities. Special services such as site surveys and geotechnical services are defined by the Campus Project Architect of Record or its Subconsultants.
- 2.4.9. Safety Program. Review each safety program to ensure compliance with Contract Document requirements and monitor the Contractor's implementation of Site Safety Program and ensure that accidents are investigated and reported. The Contractor is responsible for developing and implementing a site safety program at each Campus Project Site.
- 2.4.10. Document Control and Recordkeeping. Maintain files for Campus Projects utilizing Construction Manager's filing structure and document control system. Said files shall include all files on Construction Contracts, submittals, design, engineering, construction, Change Orders, test reports, inspections reports, regulations, and other records.
- 2.4.11. Progress Monitoring and Reporting. Maintain daily log of Work and conditions. Conduct and record weekly Site progress meetings, and adhere to reporting requirements of Section 2.1.1.1.
- 2.4.12. Progress Payments. Manage the monthly Application For Payment (AFP) of Contractor(s), confirm submission of appropriate waivers, insurance certificates and other required documents, and recommend approval on AFPs.
- 2.4.13. Cost Accounting and Payments. Maintain records of actual costs and Change Orders, monitor Contractor cost compliances, and submit Contractor's progress payment requests to District.
- 2.4.14. As-Builts. Regularly review Contractor(s)'s As-Builts for general accuracy and completeness and ensure that the Contractor provides the final set of As-Built drawings to the District in accordance with the Contractor's Project close-out obligations.
- 2.4.15. Claims Assistance. Prior to Acceptance of a Campus Project, assist with Claims resolution by gathering findings of fact, evaluating findings and strategies, and making recommendations to District.
- 2.4.16. Initial Start-Up, Punch Lists and Building Inspections. Monitor testing, balancing and start-up of utilities, equipment and operational systems, schedule job walks and building inspections, and assist Design

Consultant(s), where applicable, in preparing and managing punch lists for incomplete Work or Defective Work.

- 2.4.17. Operations and Maintenance Manuals and Warranties. Assemble manuals, warranties and certificates for equipment and building systems provided by the Contractor and verify that the same are applicable to the items actually installed.
- 2.4.18. Cleanup of Sites. Monitor Contractor's Site cleanup obligations and ensure Contractor complies with said obligations.
- 2.4.19. Closeout Documentation. Coordinate completion, issuance and Contractor's submission of all closeout documents to District including, but not limited to As-Builts, lien waivers and releases, operations and maintenance manuals and warranties, permit inspections, and certificates and notices of completion, occupancy and Acceptance.
- 2.4.20. Final Project Report and Payment. Recommend and prepare the final payment for Contractor(s). Provide a final report to District that includes a financial summary of Construction Costs, Change Orders, costs of construction management and other services, and direct purchase items; a construction summary with schedule review; and a final acceptance summary of signed receipts from District staff of all closeout documents, furnishings fixtures and equipment.

## **2.5. POST-CONSTRUCTION**

For each Campus Project, Construction Manager shall perform the following services from the Final Completion of all Construction Contract(s) until the end of the Basic Term.

- 2.5.1. Installation, Relocation, and Move-In. Assist with coordination of delivery and installation of furniture, furnishings, fixtures, and equipment.
- 2.5.2. Training and Warranties. Coordinate all training for building engineering and District staff. Ensure extended warranties are identified with contact names and warranty descriptions.
- 2.5.3. User Complaints. Respond to initial post-occupancy complaints about missing or malfunctioning equipment or building components, within duration of Construction Manager's engagement by the District under the Agreement.

## **ARTICLE 3 DISTRICT RIGHTS AND RESPONSIBILITIES**

### **3.1. PROJECT BUILDING PROGRAMS, BUDGETS, SCHEDULES**

District shall provide all financial information, including but not limited to budget goals, objectives and constraints, which is necessary for Construction Manager to develop Project budget.

Budgets for the Campus Projects. District reserves the right to modify the Project Budgets, Master Schedule, Project Schedules or other requirements or designs for the Campus Projects, for any reason, by written notice to Construction Manager. Construction Manager shall at all times perform its obligations under this Agreement in a manner that is consistent with the Project Building Programs, Project Budgets, Master Schedule, Project Schedules and other Project requirements, as modified from time to time by District. Construction Manager shall be allowed to request adjustment in resources and such request shall not be unreasonably withheld.

### **3.2. PROJECT INFORMATION**

District shall furnish available information concerning the Project, including surveys, soil reports, subsurface investigations, existing improvements, descriptions of legal limitations, utility plans, existing as-builts and other information. All such information shall be furnished at the District's expense. District does not warrant, expressly or impliedly, the accuracy, suitability or completeness of such information or of any data, opinions or recommendations contained therein. However, in performing the Basic Services set forth in this Agreement, Construction Manager shall be entitled to rely on such information provided to Construction Manager by the District until such time as Construction Manager has determined that such information is inaccurate, at which time Construction Manager shall inform District of its determination.

The District Representative shall act on the District's behalf with respect to the Campus Projects. Construction Manager shall act pursuant to the direction of the District Representative.

If the District observes or otherwise becomes aware of any fault or defect in the Work, or nonconformance with the Plans or Specifications, or nonconformance with the District's Security requirements, the District shall give reasonable notice thereof to Construction Manager.

### **3.3. DISTRICT**

District's Representative shall promptly render upon written request by Construction Manager decisions or approvals required under this Agreement. No failure by District to render any decision or approval shall excuse Construction Manager from fully and timely performing under this Agreement unless Construction Manager has notified District in writing, at least ten (10) days before such decision or approval is required, stating:

- a) A description of the decision or approval required;
- b) The date by which such decision or approval is required so as to not delay the Deliverables Schedule; and

- c) A statement that the Deliverables Schedule will or may be delayed if the decision or approval is not received by the stated date.

District shall coordinate the services of any Campus Project team members for whom Construction Manager has no responsibility with the services provided by Construction Manager.

To facilitate coordination between Construction Manager and District staff, District shall communicate to its staff involved with the Campus Projects the Construction Manager's scope of work, including the Construction Manager's rights and obligations under this Agreement.

District hereby delegates responsibility to Construction Manager to act as the District's agent to manage and oversee Contractor's Work on Campus Projects and that District shall support Construction Manager's administration of the Contractor's Work. Absent exigent circumstances, District shall include Construction Manager in any communications or meetings with Contractor relating to Contractor's performance on Campus Projects. In those cases involving exigent circumstances, whereby District communicates independently with Contractor, it shall promptly notify Construction Manager of such communications.

#### **ARTICLE 4 COMPENSATION, TIME OF PERFORMANCE**

##### **4.1. BASIC SERVICES COMPENSATION**

4.1.1. Contract Price. The District shall pay Construction Manager a not-to-exceed contract price, which shall be stated in each project performed under a Work Authorization issued and Board approved by the District during the Basic Term of the Agreement.

4.1.2. Allowable Fees. The allowable fees upon which the Contract Price is determined are based on either:

- A. A percentage of the Construction Costs, without the Construction Manager's fee, according to Exhibit C, or;
- B. The allowable lump sum fee for a specific project that is determined based on the project's scope and phase in the Work Authorization issued for that project.
- C. The allowable maximum fee, based on time and materials for a specific project based on the District's needs and Work Authorization issued for services.

4.1.2.1. Work Authorizations: Each Project to be performed by Construction Manager shall be enumerated in a Work Authorization. Such Work Authorization shall set forth the

specific scope of work, current phase of Project, any special conditions for that Project, and whether the work is defined as Basic Services or Additional Services.

4.1.3. Additional Services: No additional services shall be compensated but upon approval by the Board of Education. If the Board approves Construction Manager to perform or provide Additional Services described below, Construction Manager shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule attached hereto as Exhibit B - Hourly Rate Schedule. Construction Manager shall obtain in advance the District's approval of the nature and extent of actual costs reasonably and necessarily incurred by Construction Manager in providing such additional services without mark-up or multiple.

4.1.3.1. The services described herein are not included in the Basic Scope of Construction Manager's services hereunder. If the District requests any of the Additional Services described herein, Construction Manager shall be compensated for the same in accordance with the provisions of the Agreement relating to Additional Services. Unless the District shall notify Construction Manager in writing authorizing Additional Services, Construction Manager shall not proceed to provide such Additional Services. The following constitute Additional Services:

- a) Services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
- b) Evaluation of excessive claims submitted by Contractors.
- c) Services in connection with any arbitration or other legal proceeding arising out of the Project, except to the extent that Project Manager is a party to such proceeding.
- d) Services relative to future systems, facilities or equipment not included within the scope of the Project.
- e) Recruiting or training maintenance personnel.
- f) Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.
- g) Any other service not expressly included within the Basic Scope of Services hereunder.

4.1.4. District Payments:

- 4.1.4.1. Allocation of Contract Price. The District's payment of the Contract Price for Basic Services for a Work Authorization shall be allocated amongst the phases of the Project defined in Exhibit C and the Work Authorization, if/as applicable to the Project. Basic Services are to be billed at the completion of each phase with the exception of the Construction phase, which is to be billed at specified milestones (see Exhibit C).
- 4.1.4.2. Payment for Additional Services. District shall pay Construction Manager for authorized Additional Services monthly in arrears.
- 4.1.4.3. Project Management Billings to District. During the course of providing Basic Services, Construction Manager shall submit invoices based on Project progress (see Exhibit C) to the District for payment of the Contract Price for Basic Services. All billings for Additional Services and those for Basic Services, as requested by the District, shall be itemized, and separate invoices shall be submitted for each Work Authorization.
- 4.1.4.4. District Payments to Construction Manager. Within thirty (30) days of receipt of Construction Manager's properly submitted billing invoices for work as described in the Scope of Services, District will make payment to Construction Manager of undisputed amounts due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due Construction Manager hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Architect or the Contractor(s). The District may, however, withhold or deduct from amounts otherwise due Construction Manager hereunder if Construction Manager shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Construction Manager has fully cured its failure of performance, less costs, damages or losses sustained by the District as a result of such failure of performance of a material obligation hereunder.

## **4.2. ADDITIONAL SERVICES**

- 4.2.1. Additional Services. Construction Manager shall be only entitled to additional compensation for Additional Services approved by the Board of Education, in writing, as described herein. Additional Services shall include, but not be limited to, any forensic and/or analysis of previous work, services and deliverables performed by prior district consultants, contractors and vendors, to the extent necessary for claims and claims prosecution.



- 4.2.2. Compensation. Construction Manager's compensation for Additional Services shall be at the Hourly Rate for Services set forth in Exhibit B hereto.
- 4.2.3. Notice. Construction Manager shall notify District in writing within Seven (7) Days after it receives any direction or request that Construction Manager believes constitutes a request for the performance of Additional Services. The District shall promptly respond to Construction Manager's request for performance of Additional Services. Construction Manager shall not perform any services it believes to be Additional Services until either it has received confirmation from the District that such services are Additional Services, or until the District has directed it to perform such services under Section 4.3.3.
- 4.2.4. Disputes. If a dispute arises as to whether any service required constitutes an Additional Service or a Basic Service, Construction Manager will nevertheless promptly perform such services, if directed to do so by District in writing. Neither District's request, Construction Manager's performance, nor the acceptance of such disputed services by District will constitute or be deemed to be a waiver on the part of District or Construction Manager of their respective rights concerning the appropriate classification of the services rendered.

### **4.3. BASIC TERM**

- 4.3.1. Basic Term. The Basic Term shall commence on the date specified in the Authorization to Proceed and shall end when the District has Accepted all Campus Projects or upon the early termination of this Agreement as set forth in Article 7, whichever occurs earlier. Construction Manager's obligations under this Agreement shall survive and continue uninterrupted after expiration of the Basic Term to the extent necessary to achieve complete and satisfactory performance of its obligations under this Agreement.

## **ARTICLE 5 PAYMENTS**

### **5.1. APPLICATIONS FOR PAYMENT**

- 5.1.1. Payment Applications. Construction Manager shall submit an Application for Payment to the District upon completion of a phase or milestone per Exhibit C and the Work Authorization, setting forth in detail:
- a) Compensation for Services earned pursuant to Section 4.1 for Services performed;
  - b) Any authorized Additional Services rendered; and

- c) Authorized Reimbursable Expenses incurred (at Construction Manager's direct cost) and paid since the previous payment.

5.1.2. Accompanying Verification for Additional Services. Requests for compensation for Additional Services shall be accompanied by:

- a) Detailed time summaries for Additional Services (segregated according to hours expended on Additional Services) that are broken down by time keeper, task and time expended and copies of time sheets; and
- b) Invoices, receipts and other documentation related to said Additional Services.

## **5.2. PAYMENT BY DISTRICT**

Payments of undisputed sums due shall be made by District monthly within thirty (30) Days after receipt by the District of a proper and timely Application for Payment.

## **5.3. PAYMENT DISPUTES**

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by District to Construction Manager under this Agreement, District shall have the discretion to either:

- a) Make all or part of such disputed payment to Construction Manager without prejudice to District's right to contest the amount so paid; or
- b) Withhold all or a portion of such disputed payment.

Should District withhold all or a portion of any payment invoiced by Construction Manager, District shall so notify Construction Manager in writing of the reasons therefore. Within ten days of receipt of such notice from District, Construction Manager shall submit to District an explanation or justification of the amounts in dispute. District shall, within ten days of receipt of Construction Manager's explanation or justification, either pay the disputed amounts or provide Construction Manager a written explanation of its continuing objection. If District continues to object, the amount in dispute shall be treated by Construction Manager as a Claim and resolved in accordance with Article 9.

If District elects to pay a disputed amount and it is subsequently determined that District overpaid Construction Manager, Construction Manager shall refund to District the amount of such payment plus accrued interest computed at the Interest Rate from the date of such overpayment until refunded.

## **ARTICLE 6 CONSTRUCTION MANAGER'S RECORDS AND FILES**

## 6.1. RECORDS

- 6.1.1. Maintenance of Project Books and Records. Construction Manager shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by District to verify the scope or charges for any services provided under this Agreement. Construction Manager shall maintain such records in sufficient detail to permit District, District's independent auditors, or their designee to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Project for a period of three (3) years after the later of the end of the Basic Term or final payment to Construction Manager.
- 6.1.2. Audit of Records. District, District's independent auditors, or their designee, upon reasonable notice shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Construction Manager's performance of this Agreement, including the time spent by personnel in the performance of services on the Campus Projects. Such right to audit shall include inspection at all reasonable times at Construction Manager's offices or facilities. In addition, Construction Manager shall, at no cost or expense to District, furnish facilities and cooperate fully with the audit. Upon request, Construction Manager shall provide reproducible copies of books, records and other documents that are applicable to this Agreement for reproduction by the District or its designee at the District's cost.
- 6.1.3. Audit Reimbursement. To the extent that an audit by District or District's independent auditors disclose excess charges inaccurately or improperly attributed to this Project by Construction Manager, Construction Manager must agree to explain and support the charges. Only upon a mutual agreement between District and Construction Manager, will the Construction Manager remit the amount of the overpayment to District upon a reasonable demand.
- 6.1.4. Privileged Communications. Construction Manager acknowledges that any communication between Construction Manager and District's attorneys, or work which is received from or performed at the request of District's attorneys, are work product and communications shall be protected by the attorney-client and attorney work product privileges and shall be maintained in confidence by Construction Manager except as authorized in writing by District's counsel, or its authorized designee.

## **ARTICLE 7 EARLY TERMINATION OF AGREEMENT**

### **7.1. TERMINATION BY DISTRICT**

7.1.1. For Cause. If District determines that Construction Manager has failed to perform in accordance with the terms and conditions of this Agreement, District may terminate all or part of the Agreement for cause. This termination shall be effective if Construction Manager does not cure its failure to perform within thirty (30) Days or, if the failure to perform cannot be cured within thirty Days, if Construction Manager does not commence to cure within thirty Days, after receipt of a written notice of intention to terminate from District specifying the failure in performance. If a termination for cause does occur, District will have the right to withhold contested monies otherwise payable to Construction Manager until Final Completion of all Campus Projects. If District incurs additional costs, expenses or other damages due to the failure of Construction Manager to properly perform pursuant to this Agreement, these costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted; the balance will be paid to Construction Manager upon Final Completion of all Campus Projects. If the costs, expenses or other damages incurred by District exceed the amounts withheld, Construction Manager shall be liable to District for the difference. The provisions of this Section are in addition to, and not a limitation upon, any other rights and remedies of District under law or in equity.

7.1.2. For Convenience. District may terminate or suspend performance of this Agreement for convenience and without cause at an time upon thirty (30) Days written notice to Construction Manager, in which case District will pay Construction Manager for all Services and authorized Additional Services performed, and all authorized Reimbursable Expenses incurred (at Construction Manager's direct cost) and paid, under and in accordance with this Agreement up to and including the date of termination, as well as reasonable costs of termination and demobilization as approved by the District. Such payment shall be Construction Manager's sole and exclusive compensation and District shall have no liability to Construction Manager for any other compensation or damages, including but not limited to anticipated profit, prospective losses or consequential damages, of any kind. District shall not be required by this Section to pay disputed sums before Construction Manager has invoked its remedies under Article 9.

### **7.2. TERMINATION BY CONSTRUCTION MANAGER**

For Cause. Construction Manager may terminate this Agreement under any of the following conditions:

- a) If District fails to make any undisputed payment to Construction Manager when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after written notice to District of such default and of Construction Manager's intent to terminate;
- b) If the District fails to enforce its obligation to require District staff to cooperate with and support the Construction Manager in the performance of its obligations under this Agreement; or
- c) If the Project is abandoned by District for more than one hundred twenty consecutive (120) Days, upon thirty (30) Days' notice to District, provided District does not reactivate the Project within such thirty Day period. If the Project is reactivated and this Agreement is still in full force and effect, District shall equitably adjust Construction Manager's compensation to provide for reasonable expenses incurred by Construction Manager which are directly attributable to the interruption and resumption of service.

7.2.1. Payment for Services. In the event of a termination of this Agreement by Construction Manager in accordance with Section 7.2, District shall pay Construction Manager an amount for its Services, Additional Services and Reimbursable Expenses (at Construction Manager's direct cost) calculated in accordance with Section 7.1.2. Such payment shall be Construction Manager's sole and exclusive compensation and District shall have no further liability or obligation to Construction Manager for any other compensation or damages, including, without limitation, anticipated profit, prospective losses or consequential damages, of any kind. District shall not be required by this Section to pay disputed sums before Construction Manager has invoked its remedies under Article 9.

### **7.3. FORCE MAJEURE**

Any prevention, delay or stoppage due to Force Majeure Circumstances shall excuse the performance by either party for a period equal to any such prevention, delay or stoppage, except the obligations imposed pursuant to this Agreement with regard to payment by District (unless expressly excused). If the Force Majeure Circumstances persist for more than one hundred consecutive Days, District may at its option terminate the Agreement upon written notice to Construction Manager.

## **ARTICLE 8 INDEMNIFICATION AND INSURANCE**

### **8.1. INDEMNIFICATION**

8.1.1. Construction Manager Indemnification. To the fullest extent permitted by law, Construction Manager agrees to indemnify, defend and hold harmless, District, Board of Education, and each of their members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)"),

through legal counsel selected by the District, from any and all Losses, to the extent arising out of or relating to any of the following:

- a) Negligent performance or nonperformance of this Agreement by Construction Manager or its Subconsultants;
- b) Negligent activities of Construction Manager or its Subconsultants on the Site or on other District properties;
- c) The payment or nonpayment by Construction Manager of anyone with whom Construction Manager has entered into a contract to furnish Work for a Campus Project; or
- d) Any personal injury or property damage to third persons arising from negligent or intentional acts or omissions by Construction Manager or its Subconsultants.

Nothing contained herein shall be construed as obligating Construction Manager to indemnify any Indemnitee for Losses resulting from the Indemnitee's sole or active negligence or willful misconduct. Nothing in the Contract Documents shall be construed to give rise to any expressed or implied right in favor of Construction Manager for indemnity or contribution from District.

8.1.2. District Indemnification. To the fullest extent permitted by law, District agrees to indemnify, defend and hold harmless, Construction Manager, its officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel selected by Construction Manager, from any and all Losses, to the extent arising out of or relating to any of the following:

- a) The District's negligent performance or nonperformance of this Agreement;
- b) Any personal injury or property damage to third persons arising from negligent or intentional acts or omissions by District.

Nothing contained herein shall be construed as obligating District to indemnify Construction Manager for Losses resulting from the Construction Manager's sole or active negligence or willful misconduct.

## **8.2. INSURANCE**

8.2.1. Basic Insurance Requirements. Prior to commencing Work, Construction Manager and each of its Subconsultants shall procure and maintain insurance at Construction Manager's own cost and expense for the duration of the Basic Term against Losses or claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or services hereunder by Construction Manager, its agents, representatives, employees, or Subcontractors.

8.2.1.1. Without affecting the indemnity provided in Section 8.1, Construction Manager shall secure before commencement of the Work and maintain throughout the Basic Term the types and amounts of insurance specified in Section 8.2. Other provisions of this Agreement may require Construction Manager to maintain a policy or type of insurance coverage beyond the end of the Basic Term.

8.2.1.2. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:6, unless otherwise approved by District.

8.2.1.3. Each insurance policy required by Section 8.2 shall be endorsed to state that coverage shall not be canceled except after thirty Days prior written notice by certified mail return receipt requested, has been given to District in accordance with the notice provisions of this Agreement.

8.2.2. Minimum Limits of Insurance. Construction Manager and each of its Subconsultants shall obtain insurance of the types and in the amounts described below:

8.2.2.1. Commercial General Liability Insurance (CGL) with a limit of not less than one million dollars per occurrence/one million dollars in the annual aggregate.

8.2.2.2. Business Automobile Liability Insurance with a limit of not less than one million dollars per accident.

8.2.2.3. Professional Liability (Errors and Omissions) Insurance with a limit not less than one million dollars per occurrence/one million dollars in the annual aggregate.

8.2.2.4. Workers' Compensation Insurance as required by the State of California.

8.2.2.5. Employer's Liability Insurance in the amount of one million dollars per accident for bodily injury or disease.

8.2.3. Minimum Scope of Insurance.

8.2.3.1. CGL insurance shall be written and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.

8.2.3.2. Business Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles).

8.2.3.3. If the Professional Liability Insurance policy is written on a claim made basis, it shall be maintained continuously for a period of no less than three years after Final Completion of the Project. The “retro date” must be shown and must be before the date of this Agreement or before the date of issuance of the Authorization to Proceed, whichever date is earlier.

8.2.4. Deductibles and Self-Insured Retentions. Any self-insured retentions in excess of fifty thousand dollars must be declared to and approved by District. At the option of District, the insurer shall reduce or eliminate such self-insured retentions as respect District, its officers, officials, employees or volunteers; or Construction Manager shall provide a financial guarantee satisfactory to District guaranteeing payment of Losses and related investigation, claim administration and defense expenses.

8.2.5. Other Insurance Provisions. The Commercial General Liability and Business Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

8.2.5.1. District, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured, and with respect to liability arising out of services or operations performed by or on behalf of Construction Manager including materials, parts or equipment furnished in connection with such Work or operations, under the CGL policy. District and other additional insureds mentioned in the Paragraph shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.

8.2.5.2. For any claims related to this Project or any Campus Project, insurance coverage shall be primary as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by District, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.

8.2.5.3. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.



- 8.2.6. Waiver of Subrogation. For Commercial General Liability, Workers' Compensation, and Employer's Liability insurance, the insurer shall agree, in writing, to waive all rights of subrogation against District, its officers, officials, employees, and volunteers for Losses arising from activities and operations of insured in the performance of services under this Agreement.
- 8.2.7. Lapse in Coverage. If Construction Manager or any Subconsultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. District, at its sole option, may terminate this Agreement and obtain damages from Construction Manager resulting from said breach. Alternatively, District may purchase such coverage (but has no obligation to do so), and without further notice to Construction Manager, District may deduct from sums due to Construction Manager any premium costs advanced by District for such insurance.
- 8.2.8. Verification of Insurance. Construction Manager shall furnish District with original certificates and amendatory endorsements effecting coverage required by Section 8.2. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on the District's forms. All certificates and endorsements are to be received and approved by District before Work commences. District reserves the right to review complete original or certified copies of all required insurance policies at any time, including endorsements affecting the coverage required by these specifications.
- 8.2.9. Subconsultants. Construction Manager shall include all Subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each Subconsultant. All coverages for Subconsultants shall be subject to all of the requirements stated in Section 8.2.

## **ARTICLE 9 DISPUTE RESOLUTION**

### **9.1. RESOLUTION OF CLAIMS**

Claims shall be resolved by the parties in accordance with the provisions of this Article in lieu of any and all rights under the law that either party have its rights adjudged by a trial court or jury. All Claims shall be subject to the Claims Resolution Process set forth in this Article, which shall be the exclusive recourse of Construction Manager and District for determination and resolution of Claims.

### **9.2. RESOLUTION OF OTHER DISPUTES**

Disputes between District and Construction Manager that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Orange, and shall not be subject to the Claims Dispute Resolution Process.

### 9.3. SUBMISSION OF CLAIM

- 9.3.1. By Construction Manager. Construction Manager's right to commence the Claims Dispute Resolution Process shall arise upon District's written response denying all or part of a Claim. Construction Manager shall submit a written Statement of Dispute to District within fourteen (14) Days after District rejects all or a portion of Construction Manager's Claim. Failure by Construction Manager to timely submit its Statement of Dispute shall result in the decision by District on the Claim becoming final and binding. Construction Manager's Statement of Dispute shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of Construction Manager under this Agreement. Such Statement of Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claim relating to an adjustment of the Construction Manager's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each delay on Construction Manager's time for performance. Adequate supporting data to a Statement of Dispute submitted by Construction Manager invoking Construction Manager's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data or documents as required to demonstrate the grounds for, and precise amount of, the Claim.
- 9.3.2. By District. District's right to commence the Claims Dispute Resolution Process shall arise at any time following District's actual discovery of the circumstances giving rise to the Claim. Nothing contained herein shall preclude District from asserting Claims in response to a Claim asserted by Construction Manager. A Statement of Claim submitted by District shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by District as a result of such events and all supporting data or document as required to demonstrate the grounds for, and precise amount of the claim.

### 9.4. CLAIMS DISPUTE RESOLUTION PROCESS

The parties shall utilize each of the following steps in the Claims Dispute Resolution Process in the sequence in which they appear below. Each party shall participate fully and in good faith in each step in the Claims Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the Claims Dispute Resolution Process.

- 9.4.1. Direct Negotiations. Designated representatives of District and Construction Manager shall meet as soon as possible (but not later than ten Days after receipt of the Statement of Dispute) in a good faith effort to resolve the Claim. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the

Claim or defenses being asserted by such party, and with full authority to resolve the Claim, subject only to District's right and obligation to obtain Board of Education approval of any agreed settlement or resolution. If the Claim involves a claim by a Subconsultant against Construction Manager that is in turn being asserted by Construction Manager against District, then such Subconsultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

9.4.2. Mediation. If the Claim remains unresolved after direct negotiations pursuant to Section 9.4.1, the parties shall submit the Claim to non-binding mediation before a mutually acceptable third party mediator.

9.4.2.1. Qualifications of Mediator. The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five years of experience in public works construction contract law, and in mediating public works construction disputes.

9.4.2.2. Submission to Mediation and Selection of Mediator. The party initiating mediation of a Claim shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within fifteen Days after the receipt of such written notice, then the parties shall submit the matter to the Orange County Superior Court for selection of a mediator in accordance with this Agreement and Applicable Law.

9.4.2.3. Mediation Process. The mediation shall be conducted at a District office. The costs of mediation shall be shared equally by both parties. The mediator shall provide an independent assessment on the merits of the dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

## **9.5. NON-WAIVER**

Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of either party, including but not limited to any defense based on the assertion that the rights of Construction Manager that are the basis of a Claim were previously waived by Construction Manager due to failure to comply with the Agreement, including, without limitation, Construction Manager's failure to

comply with any time periods for providing notice of requests for adjustments of the Staffing Plan or Deliverables Schedule or for submission of Claims or supporting documentation of Claims.

## **ARTICLE 10 GENERAL CONDITIONS**

### **10.1. NON-DISCRIMINATION IN EMPLOYMENT**

10.1.1. Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability in accordance with requirements of Applicable Laws. Construction Manager shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

- a) Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.
- b) Selection for training, including apprenticeship.

10.1.2. Construction Manager agrees to post in conspicuous places in each of Construction Manager's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of Section 10.1 and any other notice required by Applicable Laws.

10.1.3. Construction Manager shall, in all solicitations or advertisements for employees placed by or on behalf of Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability, in accordance with requirements of Applicable Laws.

10.1.4. Construction Manager shall send to each labor union or representative co-workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Construction Manager's commitments under Section 10.1.

10.1.5. Construction Manager certifies and agrees that it will deal with its Subconsultants, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability in accordance with the requirements of Applicable Laws.

10.1.6. In accordance with Applicable Laws, Construction Manager shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of Section 10.1. Construction Manager shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of Section 10.1.

10.1.7. If the District finds that any of the provisions of this Section have been violated, such violation shall constitute a material breach of this Agreement upon which District may cancel, terminate or suspend this Agreement. While District reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Construction Manager has violated State or Federal anti-discrimination laws shall constitute a finding by District that Construction Manager has violated the provisions of this Section.

## 10.2. NOTICES

All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when received in any of the following ways:

- a) on the date delivered if delivered personally;
- b) on the third business day after the deposit thereof in the United States mail by certified or registered mail, postage prepaid, and addressed as hereinafter provided; and
- c) on the date sent if sent by facsimile transmission; and

10.2.1. Notice Recipients. All notices, demands or requests shall include the Project name and the number of this Agreement and be addressed to the parties as follows:

**To District at:**

Orange Unified District  
Attn: Assistant Superintendent of Business/CBO  
1401 North Handy Street  
Orange CA 92867

**With an additional copy to:**

District Counsel

**To Construction Manager at:**

INSERT

Attn: Mxxxxx

Title

Address

City, State, Zip Code

**With an additional copy to:**

CM Counsel

**10.3. HAZARDOUS SUBSTANCES**

If Construction Manager becomes aware that a Hazardous Substance is on Site, or on campus related to the Project, the Construction Manager shall immediately direct the responsible Contractor to take the appropriate action to mitigate the unsafe condition. Further, the Construction Manager will document such actions in accordance with the Safety Program.

**10.4. CONFLICTS OF INTEREST**

Construction Manager shall not accept any employment or representation during the Basic Term of this Agreement which will or may likely make Construction Manager “financially interested” (as provided in California Government Code Sections 1090 and 87100) in any decision made by the District on any matter in connection with which Construction Manager has been retained pursuant to this Agreement.

**10.5. PERMITS AND LICENSES**

Construction Manager, at its sole expense, shall obtain and maintain during the term of this Agreement, all business and professional permits, licenses and certificates which are required for its performance of its services on the Project.

**10.6. FEDERAL GRANTS**

In the event of a federal grant or other federal financing participation in the funding of this Project, Construction Manager shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under this Agreement. Construction Manager shall comply with all applicable federal agency requirements including those pertaining to work hours, overtime compensation, non-discrimination, contingent fees, etc.

**10.7. WAIVER**

Provisions of this Agreement may be waived by District or Construction Manager only in writing signed by the Superintendent or Construction Manager’s President stating expressly that it is intended as a waiver of specified provisions of the Agreement. A

waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

#### **10.8. THIRD PARTIES**

10.8.1. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

10.8.2. If District receives any claim relating to this Agreement or Work performed under this Agreement by any person other than Construction Manager, District shall notify Construction Manager of such claim within ten (10) Days. Construction Manager shall reimburse District for the reasonable costs incurred by District to provide such notice.

#### **10.9. EXTENT OF AGREEMENT**

This Agreement represents the entire Agreement between District and Construction Manager for furnishing of Campus Project management services and supersedes all prior negotiations, representations or agreements, either written or oral, except as otherwise expressly provided. This Agreement may be amended only by written instrument signed by authorized representatives of both District and Construction Manager, which has been formally approved or ratified by the Board of Education.

#### **10.10. SEVERABILITY**

In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.

#### **10.11. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon District and Construction Manager and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any Claim hereunder, may be assigned by Construction Manager without the prior written consent and approval of District which may be granted or withheld in District's sole discretion.

#### **10.12. CONFIDENTIALITY**

Construction Manager shall treat all information and data furnished to it by District or any other Project Team member or otherwise obtained or prepared by Construction Manager concerning the Project, as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Construction Manager's performance of this Agreement or any governmental filings or applications. Construction Manager's obligations of confidentiality shall not apply to:

- a) Information which was in or subsequently enters the public domain through no fault of Construction Manager;

- b) Information that was in the possession of Construction Manager prior to disclosure by the District; or
- c) Information that is disclosed to Construction Manager by a third party under no obligation of confidentiality to the District.

Construction Manager shall not engage in or permit any public references or statements to the Project, District or Construction Manager's services hereunder, including referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld at the District's discretion. Construction Manager shall instruct all of its employees of this obligation and shall use its best efforts to ensure full compliance with this Section. The provisions of this Section shall survive termination of this Agreement, in perpetuity.

#### **10.13. ENDORSEMENT**

Nothing in this Agreement shall be construed as conferring on any party the right to use the other party's name as an endorsement of any product or service to advertise, promote, or otherwise market any product or service without the prior written consent of the other party. Nothing in this Agreement shall be construed as an endorsement of any commercial product or service by District, its officers, or employees.

#### **10.14. NUISANCE**

Construction Manager shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

#### **10.15. INDEPENDENT CONTRACTOR**

Construction Manager is and shall at all times remain as to the District a wholly independent contractor. Neither the District nor any of its agents shall have control over the conduct of Construction Manager or any of Construction Manager's officers, agents or employees, except as herein set forth. Construction Manager shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the District.

#### **10.16. COMPLIANCE WITH APPLICABLE LAWS**

Construction Manager shall, at all times in its performance of its obligations under this Agreement, comply with all Applicable Laws.

#### **10.17. TIME OF ESSENCE**

All time limits set forth in this Agreement pertaining to Construction Manager's performance of any obligation to District or for the benefit of a Campus Project are of the essence to this Agreement.



**10.18. ASSIGNMENT OF CLAIMS**

In entering into this Agreement, Construction Manager offers and agrees to assign to District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time that District tenders final payment to Construction Manager, without further acknowledgment by the parties.

**10.19. GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of California. For all purposes, the parties shall be considered to have performed their respective obligations under this Agreement in the County of Orange.

**10.20. PLURAL, SINGULAR**

Definitions of terms that are phrased in the singular shall be deemed to include the plural, and vice versa, where appropriate to the circumstances.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement. on the day and year first above written

**ORANGE UNIFIED DISTRICT**

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

Claudio (Joe) Sorrera,  
Assistant Superintendent Business Services/CBO

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

APPROVED AS TO FORM:

\_\_\_\_\_

ATTEST:

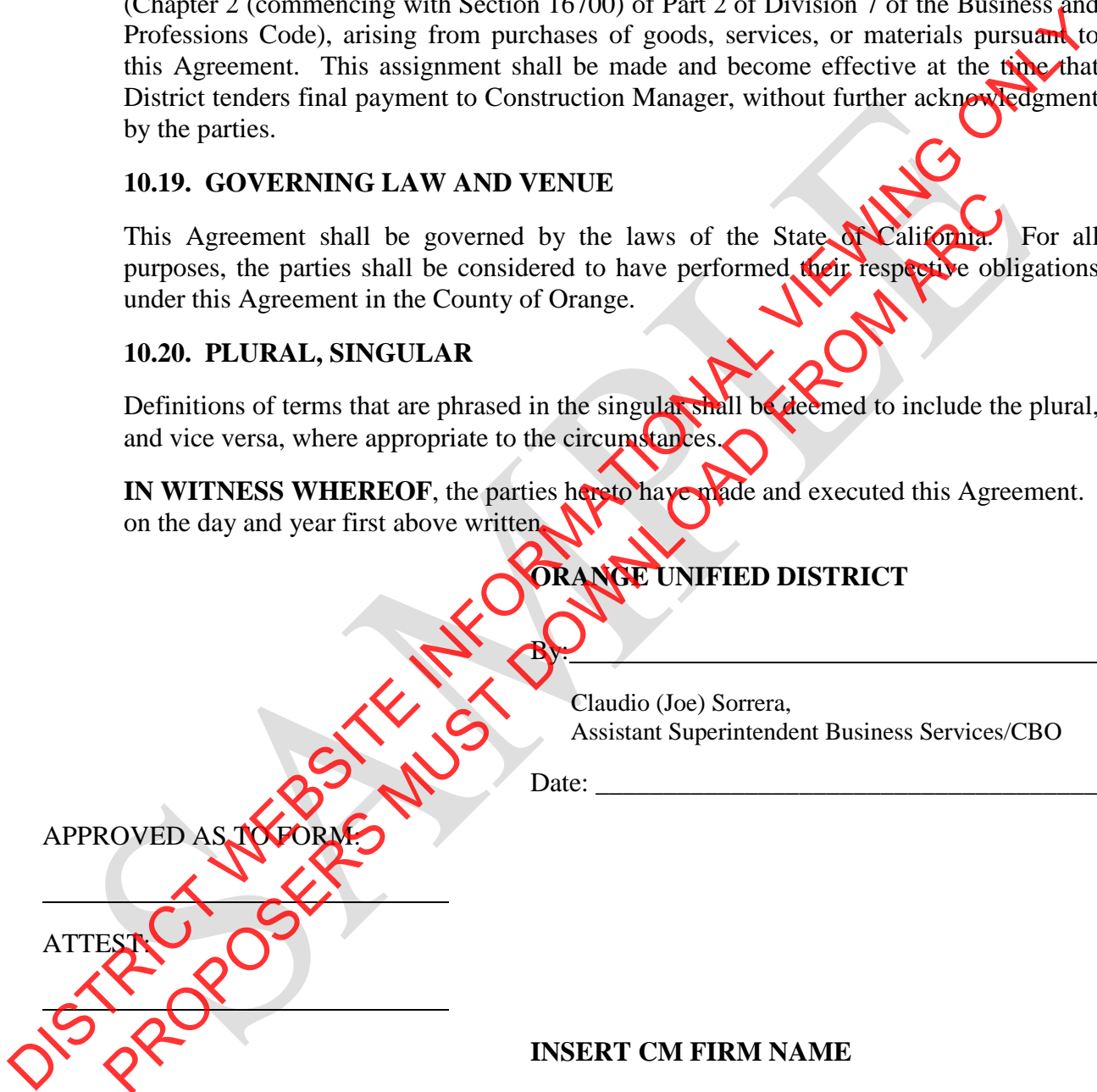
\_\_\_\_\_

**INSERT CM FIRM NAME**

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

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

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



## EXHIBIT A

### SCOPE OF SERVICES

#### CONSTRUCTION MANAGEMENT SCOPE OF WORK

##### I. PRE-CONSTRUCTION

As the District's representative, cost management and accountability is integrated throughout the entire project delivery.

1. Perform project and budget status review
2. Develop the Project Budget; make report of shortfalls/surpluses and recommendations for cost reduction
3. Perform schedule analysis and validation
4. Define key project requirements in coordination with all required agencies
5. Develop integrated milestone master schedule for projects
6. Develop individual milestone schedules for each project from inception through completion and closeout
7. Identify major milestone schedules to manage activities with deadlines and other inflexible conditions
8. Provide cost estimates during the design phase
9. Perform estimate/budget reconciliation
10. Provide oversight and tracking of documentation for statutory and regulatory processes (EIRs, environmental quality assessments, relocation plans, permitting, etc.)
11. Assist the District in obtaining all the necessary permits and approvals for the project
12. Coordination of District Departments and Project Stakeholder's roles and responsibilities
13. Coordination of fixtures, furniture and equipment, including furniture, equipment, materials, supplies, utilities, etc.
14. Move management if required
15. Assist District in planning for purchase of new equipment for the FF&E which will move to the permanent building, or old equipment utilized and new equipment purchased for the new construction
16. Assist District with audit and processing of salvage and surplus of used equipment
17. Identify agencies with project oversight and approval/permit responsibilities, including but not limited to: Any and all State Agencies with applicable oversight, Division of State Architect Inspector, Air Quality Management District and Regional Water Quality Control Board
18. Identify local community stakeholders such as City of Orange, community action groups and neighboring churches
19. Prepare roles and responsibilities matrix
20. Coordinate with the District to implement and maintain cost management procedures
21. Review Inspector's responsibilities, project certification and closing before start of site construction, if/as applicable to pre-construction phase
22. Perform constructability reviews and provide input to District including opportunities for

- value engineering
23. Provide coordination between Architect and District and develop written procedures for communications
  24. Verify utility point of connection coordination (civil, mechanical, electrical and plumbing) and service connection locations (pressure and sizing)
  25. Verify ADA requirements (permanent or temporary)
  26. Data/fiber connections and pathways (computer lab power, data and WIFI)
  27. Site planning for future expansion and/or removal of facilities
  28. Verify site lighting (permanent or temporary)
  29. Verify landscape requirements (permanent or temporary)
  30. Assist the District in preparing a detailed estimate of construction costs; update and refine estimate at 50% and 90% completion of construction documents; and advise and make recommendations for corrective action
  31. Provide recommendations regarding assignment of responsibilities for temporary facilities and equipment, materials and services for common use of contractors; verification is included in all the proposed contract documents
  32. Provide detailed monthly cash flow tracking system and update monthly spreadsheet monthly or as required
  33. Provide responsible reporting, documentation recommendations and supervision of preconstruction scheduling, review and make recommendations during design development stages
  34. Prepare Construction Management Plan – establish project scope and general basis for sequence; evaluate local construction market, district, schedule/budget, develop various alternative approaches and make recommendations to the District
  35. Assist in selecting and retaining the professional services of other consultants, surveyors, testing labs and coordinate services
  36. Assist District in setting up and administering District Standards
  37. Develop RFP and RFQ scope of work for Consultants as needed, coordinating with District Staff
  38. Recommend on selection of Consultants
  39. Assist with DSA Project Certification and closeout of Open DSA numbers, if/as applicable during pre-construction phase
  40. Develop and incorporate hard copy and electronic filing system including
  41. Ensure each site has a current and accurate As-Built Plan
  42. Establish Web Based document control system
  43. Develop Detailed Design Phase Schedule
  44. Review scope of work and project with all District Staff including Teachers, Principals, Department Heads and anyone influenced by the project to get their feedback for adding value that aids student achievement and usability

## **II. BID AND AWARD**

45. Assist District in preparing front-end documents, project plans and specifications for bid review and perform quality control of pre-qualification and bid packages including Division 0 and Division 1 for contracts
46. Create scope of work for Projects

47. Assist District in developing bidder interest in project and maintain contact with potential bidders
48. Prepare necessary bid advertisements
49. Coordinate preparation and placement of notices and advertisements
50. Conduct pre-bid conferences
51. Assist the District with developing agenda items
52. Develop, document and distribute meeting minutes
53. Provide bid phase management: prepare addenda, respond to bid inquiries and document bidder response
54. Develop and expedite bidding procedures for bid document issuance, bid tracking and receipt of proposals and administer any prequalification of potential contractors
55. Coordinate communications related to bidder RFIs
56. Administer addenda process and review each addendum for time, cost and constructability impact
57. Assist in prequalification of Contractors, bid opening, evaluation for completeness, responsiveness and price and make a formal report to District of the potential award
58. Assist in public relations and be the point of contact for any community complaints and questions
59. Re-Bid if necessary
60. Schedule procurement of materials/equipment
61. Prepare Bid Phase analysis and recommendation
62. Ensure timely submission of the contract award to Board
63. Prepare Site Logistic Plan
64. Review and Comment on Addenda(s)
65. Assist in execution of contract award and construction agreement
66. Assist in re-bids and in revising scope to reduce cost

### **III. CONSTRUCTION**

67. SWPPP consultant management and coordination during construction
68. Conduct pre-construction meeting
69. Obtain certificates for insurance and bonds from contractor file hard copies as well as electronically and give to District
70. Develop meeting agenda, take meeting minutes and distribute minutes to relevant parties
71. Coordinate with campus operations, District departments, regulatory agencies and other consultants and contractors as needed by the project during construction
72. Provide change order cost analysis and time extension and validation during construction
73. Process Contractor Requests for Information (RFI) and document clarifications
74. Process, review (non-design related) and coordinate Contractor Submittals (including product samples)
75. Evaluate requests for change orders and negotiate cost proposals
76. Facilitate progress payment process
77. Monitor Contractors' schedules
78. Provide administrative, management and related services to monitor the work
79. Coordinate DSA required inspections and field observation as necessary
80. Negotiate resolutions for contract disputes, schedule delays and claims

81. Conduct regular project status meetings and provide meeting minutes
82. Prepare project status reports and present to the Board or COC as required
83. Provide photographic and video project documentation
84. Coordinate the work pursuant to the District schedule; responsible for coordinating site construction services; and provide responsible reporting and documentation
85. Assist District with construction contract administration; coordinate prep of staging areas; coordinate preparation for construction site; and coordinate mobilization of contractors and construction sequencing
86. Establish and implement procedures with Architect and coordinate review of submittals, RFIs and assist District in monitoring certified payroll
87. Coordinate with District IOR all testing required by Architect and third parties and assist in selecting any special consultants or testing labs
88. Advise and make recommendations of District contract prerogatives and notice to accelerate schedule due to Contractor failings, withholding payments for cause, etc.
89. Obtain Contractor safety programs and monitor implementation and submit to District
90. Receive and review Endorsements of Insurance, Certified Payroll, Performance and Payment bonds and forward them to District
91. Keep a daily log, generate and distribute evaluation reports on the Contractor construction schedule updates on a monthly basis
92. Provide District with notice and recommendations on the Contractor's schedule
93. Develop and implement comprehensive document management program and at completion, deliver all documents to the Architect
94. Take photos of the work and maintain an electronic file of the work and change order work
95. Assist the District in reviewing and accepting the Contractor's schedule of values
96. Develop and implement procedures for the review and processing of applications; review all "as-built" documents and ensure documents are updated and current; and review with Architect and make recommendations to the District pertaining to Contractors submittal
97. Review and advise on Contractors Potential Change Orders
98. Review and advise on Architects Potential Additional Service Contracts
99. Evaluate Contractor's proposal costs and make formal recommendations to the District
100. Assist with and inspect District purchased materials and their deliveries/setup
101. Do not issue instructions contrary to contract between District and Contractor or District and Architect
102. Assist District in preparation and distribution of change order reports on a monthly basis
103. Perform evaluation of contents of any claim; make recommendations to District and prepare estimates based on any alleged cause of claims; and prepare alternate estimates
104. Maintain task tracker/issues log/matrix to ensure 100% completion
105. Review Contractors As-Built Drawings
106. Assist with obtaining DSA required forms
107. Make recommendation for notice of substantial completion, completion, or cessation
108. Develop and implement procedures for Contractors Payment Applications
109. Prepare a cash flow of the contractors work
110. Review and comment on Contractors 3 week look ahead
111. Review, Analyze and make recommendation on Contractors claims for schedule delays
112. Ensure timely completion and quality of the work
113. Provide CM Project Office and all necessary furniture, equipment, supplies, utilities, drinking

water, restrooms, site safety reviews, and all necessary insurances.

#### **IV. CLOSEOUT**

114. Obtain all written materials for closeout for all equipment installed in the Project
115. Coordinate final inspection with DSA, Architect and the District
116. Compile record drawing information (as-built plans) from contractor and submit to the District for record
117. Coordinate final payment applications and process with district
118. Prepare project acceptance documents for the District
119. Assist with coordination and processing of all necessary paperwork and closeout documents with Office of Public School Construction (OPSC), DSA and other applicable agencies
120. Coordinate and schedule training sessions
121. Coordinate and compile "punch lists" from the District, Architect, Engineers and Consultants. Schedule completion with the Contractor and inspect all work. Manage Punch lists until work has been completed and signed off by appropriate parties.
122. Recommend courses of action to the District when requirements of a contract are not being fulfilled
123. Coordination of filed notice of completion upon approval by DSA
124. Manage issues related to construction deficiencies through final resolution
125. Create close out matrix with materials (artic stock) and training per the contract documents/specifications and ensure they are delivered or completed.

#### **V. POST-CONSTRUCTION**

126. Manage submission of Final Verified Reports, (DSA-6) approved from Project Inspector, Architect, Engineer and Contractor verifying that all construction complies with DSA approved plans
127. Coordinate project Inspector Qualification Record (DSA-5) for approval
128. Coordinate contract information (DSA-102) for approval
129. Prepare final accounting and closeout reports
130. Coordinate with Architect and Engineers on District's receipt of M&O Manuals
131. Coordinate any necessary training for M&O staff
132. Provide as-builts to site Maintenance office(s) as well as the District Facilities Department

**END OF EXHIBIT A**

**EXHIBIT B**

Refer to Exhibit “E” for information related to estimated fees and hourly rates for various additional construction services, attached and included with this agreement.

**END OF EXHIBIT B**

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**EXHIBIT C**  
**COMPENSATION SCHEDULE**

Phase	Subphase (Milestone)	Fee (% of Budgeted Construction Costs)*
I. Preconstruction		
II. Bid and Award		
III. Construction – x % Fee Total		
	20% of work complete per Contractor Pay Application	
	40% of work complete per Contractor Pay Application	
	60% of work complete per Contractor Pay Application	
	80% of work complete per Contractor Pay Application	
	100% of work complete per Contractor Pay Application	
IV. Close-Out		
V. Post-Construction		
		<b>Total %</b> %

**\* DOES NOT INCLUDE CHANGE ORDERS. CONSTRUCTION MANAGER WILL NOT RECEIVE ANY ADDITIONAL FEES (OR MARK-UPS) ON CONTRACTOR CHANGE ORDERS**

**ADDITIONAL TERMS REGARDING COMPENSATION**

- xxx% is a NOT-TO-EXCEED AMOUNT for each Project.
- To perform services, Construction Manager will provide two (2) full-time on-site staff
- Construction Manager will not charge for:
  - Additional corporate/regional office support
  - Attending any Board or Citizens’ Oversight Committee meetings after normal work hours
  - Travel time and/or mileage

**END OF EXHIBIT C**



**EXHIBIT D**

**KEY PERSONNEL**

Depending on the timing of the project(s), the following individuals may be assigned to the District's projects:

**Project Managers:** INSERT  
**Construction Managers:** INSERT  
**Project Engineers:** INSERT  
**Project Coordinator:** INSERT  
**Executive Management:** INSERT

**NOTE:** All personnel listed above have been cleared through the California Department of Justice. Refer to Master Agreement Exhibit "F" – Criminal Background Investigation/Fingerprinting Certification that is required of the Construction Manager.

**END OF EXHIBIT D**

**EXHIBIT E**

Exhibit “E” delineates the Construction Manager’s proposal for “ INSERT ”, dated INSERT (INSERT pages), inclusive of a master list of fees, hourly rates for various construction management staffing required by the district.

The Construction Manager’s proposal is included after this Exhibit “E” narrative (*at end of Master Agreement*).

The Construction Manager’s proposal is included to general describe the Construction Manager’s proposed summary scope of work, fee structures, and staffing hourly billing rates only. Where terms and conditions between the District’s Master Agreement and Work Authorizations and Construction Manager’s proposal differ, the District’s Agreement and Work Authorizations shall prevail.

**END OF EXHIBIT E**

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## **EXHIBIT F**

### **CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION**

#### **Purpose**

California Education Code Sections 33192 and 45125 et al., provides if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice.

The awarded Contractor shall not permit contractor employees to come in contact with pupils until the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) has ascertained that the employee has not been convicted of a violent or serious felony, as defined in Penal Code Sections 667.5(c) and 1192.7.

The awarded Contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. Submittal of

Contractor certifications shall be to the District's Facilities and Planning Department.

**DOJ and FBI clearance and fingerprinting are the responsibility of the awarded Contractor. Submission of certifications and a list of DOJ and FBI cleared employees shall constitute acknowledgement by the Contractor that the employees listed are eligible to provide supervision services for non-cleared employees on a school site campus in accordance with all legislative and penal codes referenced in this Section.**

#### **Procedures:**

1. DOJ information is available online at: <http://ag.ca.gov/fingerprints/agencies.htm>
2. FBI information is available online at: [http://www.fbi.gov/about-us/cjis/background-checks/background\\_checks](http://www.fbi.gov/about-us/cjis/background-checks/background_checks)
3. When the Contract has been awarded, the Contractor will be provided with a District authorized DOJ's "Request for Authorization to Receive State Summary Criminal History Information - Contract Employee for Public/Heritage/Private Schools" form.
  1. This form is a component of the *Authorization Request Packet for School Contractor Employees*, available online at the DOJ's website: [http://ag.ca.gov/fingerprints/forms/cont\\_req.pdf](http://ag.ca.gov/fingerprints/forms/cont_req.pdf)
4. The Contractor will complete the DOJ's *Authorization Request Packet for School Contractor Employees* and apply for the Originating Agency Identifier (ORI) number from the Department of Justice. Instructions are included in the packet. The Contractor must possess an ORI number to complete the fingerprinting process. Please Note: DOJ ORI number processing can require several weeks.
5. After the Contractor receives an ORI number from the DOJ, the Contractor completes the Live Scan request form for each employee to be fingerprinted (this form is included in the Authorization Request Packet for School Contractor Employees).
6. The Contractor coordinates their employee Live Scan fingerprinting services and may select one of the approved Live Scan vendors listed at <http://ag.ca.gov/fingerprints/publications/contact.htm>. Vendor fees will vary. Live Scan processing requires a valid photo identification and ORI number to obtain employee

DOJ and FBI criminal records checks. Please Note: DOJ and FBI clearance may require several weeks for processing.

7. After the Contractor receives approved criminal record check for employee(s) from the DOJ and FBI, the Contractor shall complete the Certification by Contractor Criminal Records Check, include the list of employees who are DOJ and FBI approved and submit the form(s) to the District Facilities and Planning Department for coordination and issuance of project identification badges. Badge ID photos must be scheduled through the Facilities and Planning Department **prior** to commencement of the project. Allow ten (10) business days for completion of the District badging process. The cost for District badge(s) is \$10.00 (non-refundable) per badge. District ID badges are **required** to be worn at all times on the project.
8. Upon completion of the project, or as employee(s) are added or removed from the project, the Contractor is responsible to return District issued ID badges to the Facilities and Planning Department for proper disposal **and** required to update the Certification by Contractor Criminal Records Check with the list of approved employee(s). If a District issued ID badge is lost or a replacement badge is required, a \$10.00 (non-refundable) per badge is applicable.

End of Article Numbers.

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**CERTIFICATION BY CONTRACTOR  
CRIMINAL RECORDS CHECK**

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

Project Number: \_\_\_\_\_

**To the Governing Board of Orange Unified School District**

I, \_\_\_\_\_ certify that:  
Name of Contractor

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

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of the Contractor.

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

\_\_\_\_\_ The Contractor has complied with the fingerprinting requirements of Education Code Sections 33192 and 45125 et al., with respect to all Contractor's employees and all of its subcontractors' employees who may have a contact with District pupils in the course of providing services pursuant to the Contract, and the California department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code Section 45122.1, as well as all other applicable legislative and penal codes that may be referenced in this Section. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto: and/or

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

\_\_\_\_\_ Pursuant to Education Code Section 45125.2, Contractor certified that all employees will be under the continual supervision of, and monitored by, an employee(s) of the Contractor 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(s) who will be supervising Contractor's employee(s) and its subcontractors' employee(s) is/are:  
Name and Title: See attached Criminal Records Check Employee Name List (page 4)

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

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

I declare under penalty of perjury that the foregoing is true and correct.

Executed at \_\_\_\_\_, California on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone

**CRIMINAL RECORDS CHECK**  
**(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)**  
Use additional copies of page as needed

Name of Project: \_\_\_\_\_

Project Number: \_\_\_\_\_ As of Date: \_\_\_\_\_

**Name of Employee(s)** \_\_\_\_\_ **Project Position** \_\_\_\_\_

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.

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**END OF EXHIBIT "F"**