



Ventura County Community College District

PURCHASING DEPARTMENT

DATE: February 21, 2023
TO: All Respondents
FROM: Sheere Bishop-Griego, Consultant
SUBJECT: **Addendum #1** – RFQ/P #647 – Project Management and Construction Management (PM/CM) Services for Ventura College Student Housing Project

This **Addendum #1** amends RFQ/P #647 - Project Management and Construction Management (PM/CM) Services for Ventura College Student Housing Project as follows:

EXHIBIT B AGREEMENT FOR PM/CM SERVICES is amended to include the following form of Agreement for PM/CM Services totaling 22 pages dated Rev. 02-20-2023.

This Addendum No. 1 is hereby made part of the RFQ/P #647 to the same extent as though it was originally included therein.

Acknowledgment of receipt of all addenda issued is required in all proposers' responses. Failure to acknowledge receipt may result in rejection of a response.

End of Section

AGREEMENT FOR PM/CM SERVICES

This Agreement for Project and Construction Management Services (“Agreement”) is dated April 11, 2023 for reference purposes only and is made by and between **VENTURA COUNTY COMMUNITY COLLEGE DISTRICT**, a California community college district (“District”) and _____ (“PM/CM”).

WHEREAS, the District has received funding from the State of California and the County of Ventura to plan, design, and construct a public work of improvement at the District’s Ventura College campus commonly referred to as the Ventura College Student Housing Project (“Project”), an affordable housing option for low-income Ventura College students.

WHEREAS, the District desires to retain PM/CM to provide project and construction management services along with related work product in connection with the Project as more particularly described herein.

WHEREAS, PM/CM is a professional project and construction manager, qualified and capable of providing the services and work product contemplated herein for the District’s Project, in accordance with the terms hereof.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and PM/CM agree as follows:

AGREEMENT

1 BASIC SERVICES

- 1.1 **Scope.** PM/CM shall provide Basic Services consisting generally of project and construction management along with related or required work product to meet the District’s Project parameters as more particularly set forth herein.
- 1.2 **PM/CM Services.** Basic Services and authorized Additional Services provided by the PM/CM shall be performed by, or under the direction and control of, a licensed architect, registered engineer, or licensed contractor.

2 PM/CM COMPENSATION

- 2.1 **Contract Price.** The District shall pay PM/CM \$_____ .00 for the scope of PM/CM services set forth herein plus a contingency of \$_____ .00, for a total amount of \$_____ .00 (“Contract Price”), payment of which will be made by the District in accordance with the terms hereof. The Contract Price includes PM/CM’s fee, personnel expenses, inclusive of all benefits and burdens, fees of any sub-consultant or subcontractor to PM/CM, insurance, other overhead costs and all other direct and indirect expenses incurred in the performance of this Agreement. Any unused or unearned portion of the contingency amount at Project completion will be deducted from the Contract Price.
- 2.2 **Additional Services.** If the District shall approve or direct PM/CM to perform or provide Additional Services described generally in Article 3 of the Conditions to this Agreement, PM/CM shall be compensated for its personnel providing such Additional Services in

accordance with the Rate Schedule attached hereto as **Exhibit A – Hourly Rate Schedule**. PM/CM shall obtain in advance the District’s approval of the nature and extent of actual costs reasonably and necessarily incurred by PM/CM in providing such additional services without mark-up or multiple.

2.3 District Payments.

2.3.1 PM/CM Billings to District. During the course of providing Basic Services, PM/CM shall submit monthly billing invoices to the District for payment of the Contract Price for Basic Services and authorized Additional Services performed or incurred in the immediately prior month. All billings for Additional Services and those for Basic Services, as requested by the District, shall be itemized.

2.3.2 Payment for Additional Services. District shall pay PM/CM for authorized Additional Services monthly in arrears.

2.3.3 District Payments to PM/CM. Within thirty (30) days of receipt of PM/CM’s properly submitted billing invoices for work as described in the Scope of Services, District will make payment to PM/CM of undisputed amounts due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due PM/CM hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Architect or the Contractor. The District may, however, withhold or deduct from amounts otherwise due PM/CM hereunder if PM/CM 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 PM/CM 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.

3 Term. The term of this Agreement shall commence _____, 2023 and shall terminate on _____, 2028 (“Termination Date”). In the event that the Project shall not be completed or the District shall not have issued Final Payment to the Contractor as of the Termination Date specified herein through no fault or neglect of the PM/CM, the Termination Date shall be extended. In such event, Basic Services provided by PM/CM following the Termination Date shall be in accordance with the Rate Schedule attached hereto as **Exhibit A – Hourly Rate Schedule**. If the Project is not completed by the Termination Date and delayed completion of the Project is caused in whole or in part by the acts, omissions, or other conduct of the PM/CM, the Termination Date shall be extended commensurate with the number of calendar days attributed to the PM/CM (“Extended Termination Date”). During the Extended Termination Date, the PM/CM shall continue to provide or perform the Basic Services with no adjustment of the Contract Price.

4 Insurance. Coverage amounts and limits for policies of insurance to be obtained and maintained by PM/CM as a cost of the work pursuant to Article 4 of the Conditions to this Agreement are:

<i>Workers Compensation</i>	<i>In accordance with applicable law</i>
<i>Employers Liability</i>	<i>\$1,000,000</i>
<i>Commercial General Liability (including Bodily Injury or Death and Property Damage)</i>	
<i>Per Occurrence</i>	<i>\$1,000,000</i>
<i>Aggregate</i>	<i>\$2,000,000</i>

<i>Automobile Liability - Bodily Injury or Death and Property Damage</i>	
<i>Per Occurrence</i>	<i>\$1,000,000</i>
<i>Professional Liability</i>	
<i>Per Claim</i>	<i>\$2,000,000</i>

5 Miscellaneous.

- 5.1 Governing Law; Interpretation.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or PM/CM.
- 5.2 Successors; Non-Assignability.** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors and assigns of PM/CM and the District. Neither PM/CM nor District shall assign rights or obligations hereunder without the prior written consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent. This Agreement may not be orally amended, modified, or terminated.
- 5.3 Authority.** The individual executing this Agreement on behalf of PM/CM warrants and represents that they are authorized to execute this Agreement and bind PM/CM to all terms hereof. The individual executing this Agreement on behalf of District warrants and represents that they are authorized to execute this Agreement subject to approval or ratification by the District’s Board of Trustees, to bind the District to all terms hereof and authority granted to enter into this Agreement.
- 5.4 Notices.** Notices under this Agreement shall be addressed and delivered as follows:

If to District: Dr. David El Fattal
 Vice Chancellor, Business and Administrative Services
 Ventura County Community College District
 761 East Daily Drive, Suite 200
 Camarillo, CA 93010

If to PM/CM:

- 5.5 Entire Agreement.** This Agreement, the accompanying Conditions and the documents enumerated below, if any, are all of the documents forming a part of the Agreement:

- Exhibit A Hourly Rate Schedule
- Exhibit B Response to RFQ/P for PM/CM Services submitted by:

The foregoing constitutes the entire agreement and understanding between the District and PM/CM concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and PM/CM.

5.6 No Third Parties. Nothing contained in this Agreement shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against PM/CM.

IN WITNESS WHEREOF, the District and PM/CM have executed this Agreement as of the date set forth above.

“PM/CM”

“DISTRICT”

By: _____

By: _____

CONDITIONS OF AGREEMENT FOR PROJECT AND CONSTRUCTION MANAGEMENT SERVICES

ARTICLE 1 RELATIONSHIP OF PARTIES

- 1.1 Relationship of PM/CM to Other Project Participants.** PM/CM's services shall be provided in conjunction with contracts between the District and the Architect, the materials testing firm, the geotechnical firm, the DSA inspector, and the Contractor. The Architect, materials testing firm, the geotechnical firms, the DSA inspector, and the Contractor are responsible for the adequacy and sufficiency of the Project design and the content of Design Documents and work for the Project. These firms shall perform their duties in accordance with their contracts with the District. Except as expressly set forth herein, neither this Agreement, nor PM/CM's rendition of services hereunder shall be deemed PM/CM's assumption of responsibility for: (a) the adequacy or sufficiency of the Project design or the Design Documents or work for the Project, which are and remain that of these firms; or (b) construction means, methods, techniques, procedures, sequences, safety at the Site, or performance of the Work in accordance with the Contract Documents, all of which are and remain the responsibility of the Contractor.
- 1.2 PM/CM Independent Contractor Status; PM/CM as Agent of District.** In providing services hereunder, PM/CM shall be an independent contractor to the District. The express terms hereof set forth the limited extent to which PM/CM is authorized to act as an agent on behalf of the District. PM/CM shall be responsible to the District and third parties for the consequences of PM/CM's actions or conduct as an ostensible agent of the District which exceed the express limited scope of PM/CM's agency authority set forth herein.
- 1.3 District Responsibilities.**
- 1.3.1 Information.** The District shall provide information known to it regarding the Project, including the District's objectives, schedule requirements, and other constraints and requirements which may affect the Project budget, time for Project completion, and Project scope.
- 1.3.2 District Representative.** The District shall designate a representative to act on the District's behalf with respect to the Project and who shall be authorized to render decisions on behalf of the District and to carry out the District's responsibilities under this Agreement, all of which shall be discharged or performed in a manner so as to avoid unreasonable delay in the orderly and sequential progress of the Project design and construction and PM/CM's services hereunder.
- 1.3.3 Construction Tests, Approvals and Inspections.** The District shall pay the costs of all tests, approvals or inspections required by law or other deemed necessary or appropriate in connection with construction of the Project or portions thereof.
- 1.3.4 District Consultants.** The District shall furnish all legal, accounting, insurance, and other consulting services as may be necessary for the Projects.
- 1.3.5 Other Work.** The District reserves the right to perform work related to the Project with the District's own forces, and to award contracts in connection with the Project which are not part of the PM/CM's responsibilities under this Agreement.

- 1.4 PM/CM Standard of Care.** PM/CM shall provide the Basic Services and authorized Additional Services using its professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. PM/CM's services hereunder shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of Project design, bidding, and construction.

ARTICLE 2 BASIC SERVICES

- 2.0 Personnel.** PM/CM will establish a construction management organization appropriately and reasonably staffed to perform the Basic Services. PM/CM's personnel and the specific roles, authority and responsibility of the PM/CM's personnel are subject to the reasonable approval of the District.

- 2.0.1 Designated Personnel.** PM/CM shall provide, at a minimum, the following designated personnel for the term of the Agreement:

Principal in Charge
Project Director
Project/Construction Manager
Project Engineer

- 2.0.2 PM/CM's Project Director.** The PM/CM's Project Director shall have the overall responsibility for performance of PM/CM's obligations hereunder and be authorized to act on behalf of the PM/CM in discharge of PM/CM's services hereunder.

- 2.0.3 Change of Personnel.** Appropriate staffing may require the replacement of designated personnel or the addition of PM/CM personnel to perform the Basic Services at no change to the Contract Price. District approval of such personnel shall be obtained in advance. District reserves the right to refuse any candidate for a designated position.

2.1 Design / Pre-Construction Phase.

- 2.1.1 Selection of Architect.** Assist the District in the selection of the Architect to prepare the Design Documents.
- 2.1.2 Planning Workshops.** Assist the District in planning workshops and attend meetings with stakeholders.
- 2.1.3 Review of Project Requirements.** Provide preliminary evaluation of the Project budget requirements. Prepare preliminary estimates of Design Cost and Construction Cost for early schematic designs based on area, volume, and other standards. Assist the District in achieving mutually agreed upon Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.
- a) **Project Management Plan.** Develop a Project Management Plan, including considerations of budget, design, operational requirements, and schedule for the overall Project, including planning, design and construction. In conjunction with the District, identify and develop alternatives for sequencing, management or planning of Project design and construction for more efficient or economic means of achieving

the District's Project objectives. Based upon Project delivery and design standards defined by the District, develop for the District's approval an overall optimum Project Management Plan, including schedule of critical milestones and associated budgets for each milestone.

- b) **Cash Flow Tracking System.** With the District's assistance, provide a detailed cash flow tracking system for the Project. Update the cash flow spread sheet bimonthly or as required by the District.
- c) **Project Controls.** Develop and implement Project management controls, including planning, scheduling, communications, budgeting, progress reporting and problem identification, tracking and resolution.
- d) **Monthly Reports.** Provide for the District's review and acceptance, a monthly report for the Project. This report shall status the progress of the Project. Assist the District in providing all construction-related Board of Trustee agenda items, for example, change orders, notice of completion, etc.
- e) **Long Lead Items.** Evaluate the Project to determine whether the District should procure equipment (e.g., HVAC units, hardware, electrical switchgear, etc.) or building systems (e.g., roofing, suspended ceilings, etc.) and provide to the Contractor for installation due to long lead times (OFCI).

2.1.4 Constructability Review.

- a) Provide plan review comments of Design Documents during their Schematic Design and Design Development Phases to determine conformity with the general scope of Work identified by the District, the District's construction standards and design guidelines, the Architect's professional standard of care, and for clarity, consistency and coordination of the various components of the Design Documents. Advise on Site use and improvements, selection of materials, and building systems and equipment. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs of materials, preliminary budgets and economic factors.
- b) Perform a constructability review of Design Documents through 90% completion of the Construction Document phase to determine conformity with the general scope of Work identified by the District, the District's construction standards and design guidelines, the Architect's professional standard of care, and for clarity, consistency and coordination of the various components of the Design Documents. PM/CM shall maintain a written log or other documentation of comments, recommendations or other notations generated in the course of its constructability review, and all such materials shall be available to the District for review or reproduction upon the District's reasonable request. Upon completion of its constructability review, PM/CM shall provide the District with a comprehensive final report on a sheet-by-sheet basis of its review, findings and recommendations. In consultation with the District, a determination will be made by the PM/CM for the items reflected in its final constructability report which are to be incorporated into the Design Documents.

PM/CM will thereafter monitor the Architect's revisions of the Design Documents for the purpose of ensuring that constructability review comments and recommendations are accurately and completely incorporated into the Design Documents.

- c) The constructability review conducted by PM/CM hereunder is distinguished from the actions, responsibilities and work product of the Architect; PM/CM's constructability review and the comments or recommendations resulting therefrom are advisory to the District and the Architect. The PM/CM's constructability review shall, however, represent PM/CM's professional judgment that the Design Documents meet the scope of Work, design and construction guidelines established by the District for the Project or by applicable, law, code, regulation or ordinance and are suitable for bidding and construction. Subject to the foregoing limitations, by performing the constructability review and its comments or recommendations resulting therefrom, PM/CM shall not be deemed to have assumed responsibility for the Project design or the contents of the Design Documents.
- d) PM/CM shall provide value analysis of the Design Documents prepared in the Schematic Design Phase and the Construction Documents Phase of the Architect's Contract with the District for the Project and the proposed materials, equipment, systems and other items depicted therein to evaluate and make recommendations to the District for alternatives, deletions or amendments which pertain to anticipated construction costs, useful life, maintenance and operational costs or efficiency of operations. PM/CM shall provide the District with written value analysis recommendations, cost/benefit analyses of value engineering recommendations and in consultation with the District, determine the extent to which the PM/CM's value analysis recommendations are to be incorporated into the Design Documents. Where value analysis recommendations are to be incorporated into the Design Documents, PM/CM shall monitor the Architect's incorporation of such recommendations to ensure that they are completely and accurately incorporated into the Design Documents. Value analysis recommendations shall represent PM/CM's professional judgment that the form, fit and function of various items and components as depicted in the Design Documents are not materially affected by such recommendations and that the District will be benefited by incorporation of such recommendations by reduced construction costs, reduced operational costs or maintenance costs and/or extended useful life.

2.1.5 Construction Cost Estimate. PM/CM shall review the construction cost estimate prepared by the Architect and the District's construction budget for the Project at the completion of Schematic Design, Design Development and 70%-90% Construction Document phases. Based upon Design Documents revised to incorporate any constructability review comments and value engineering recommendations ("Construction Documents"), the PM/CM will prepare a detailed construction cost estimate. PM/CM will provide ongoing estimates for all proposed changes to the Project and/or its elements. Where the PM/CM's construction cost estimate varies from the Architect's estimate or the District's construction budget, PM/CM shall reconcile such difference and make recommendations for modifications of the Project scope, work depicted in the Construction Documents, or other measures so that the construction cost estimate conforms with the District's Project construction budget. PM/CM shall make recommendations for materials, products or systems whether or not depicted in the

Construction Documents as suitable for bidding as alternate additives or deductions. PM/CM's cost estimates shall be made based on PM/CM's professional experience and qualifications. The cost estimates represent PM/CM's best judgment as a professional construction consultant familiar with the construction industry, including cost of labor, materials, and equipment. However, PM/CM does not guarantee the bids or that the actual construction cost will not vary from any cost estimate prepared by PM/CM.

2.1.6 Public Relations. PM/CM will assist the District and Architect in public relations activities including preparation of the Project information, and attending internal and public meetings as required, including Site meetings and Board meetings as required by the District. PM/CM will assist the District in developing and implementing communication with the District's constituents and the communities served, including website documents.

2.2 Bidding Phase.

2.2.1 Bidder Interest. PM/CM will assist and make recommendations to the District regarding solicitation and development of bidder interest in the Project.

2.2.2 Development and Issuance of Contract and Bid Documents. Based upon the Design Documents developed and prepared by the Architect, PM/CM will assist and make recommendations to the District for development, preparation and issuance of Contract Documents for the Construction Contract and Bid Documents for bidding the Construction Contract for Project Construction. PM/CM will assist in the preparation of General Conditions and other supplementary conditions as necessary for the Construction Contract and review applicable portions of the Design Documents, including Specifications for content, consistency and coordination. PM/CM will assist the District in complying with applicable legal requirements for the advertisement and solicitation of Bid Proposals from Contractors. PM/CM will assist in the establishment of bidding schedules.

2.2.3 Bidding Process. During the bidding for the Construction Contract, PM/CM will:

- a) conduct one or more pre-bid conferences, as necessary with the bidders and record, prepare and distribute minutes thereof;
- b) assist the Architect with responses, on behalf of the District, to bidders' inquiries, questions or clarifications relating to the bidding, the Project or the Design Documents, with responses being based upon information provided by the District and/or the Architect and in consultation with the District; where necessary or appropriate, PM/CM will assist the District and the Architect in the development and issuance of addenda to the Contract Documents, Bid Documents and/or Design Documents for the Construction Contract;
- c) assist the District in the receipt and review of Bid Proposals, including review for responsiveness and bidder responsibility, preparation of bid summary analyses and a recommendation for the selection of a bidder for award of the Construction Contract; assist the District in obtaining required governmental approvals for award of the Construction Contract;

- d) assist the District in evaluating bid protests or inquiries and make recommendations for resolution.
- e) assist the District in preparing the Construction Contract.

2.3 Construction Phase.

2.3.1 Administration and Coordination of Construction Contract and Construction.

PM/CM will provide administrative, management, and related services necessary to generally administer the Construction Contract and to observe the Work of the Contractor during the Construction Phase of the Project including:

- a) As necessary, assist the District in obtaining required permits, excluding permits required to be obtained directly by the Contractor. Assist the District in verifying that the District has paid applicable fees and assessments. Assist in obtaining approvals from authorities having jurisdiction over the Project;
- b) Assist the District in receiving and reviewing the Contractor's Certificates of Insurance and Bonds along with commentary as to the extent to which such Certificates of Insurance and Bonds comply with the applicable terms Contract Documents for the Construction Contract;
- c) Provide advice and recommendations to the District for issuance of Notice to Proceed directing commencement of work under the Construction Contract;
- d) Scheduling, coordinating, and conducting pre-construction, progress, and construction meetings; recording, maintaining and distributing minutes thereof;
- e) In consultation with the Architect, develop and implement procedures for the submittal and processing of Submittals required by the Construction Contract. PM/CM will review Contractor's Submittals and coordinate the same for transmittal to the Architect for review and approval;
- f) In consultation with the District and the Architect, develop and implement procedures for the handling and disposition of the Contractor's requests for information or clarifications;
- g) Establish and implement procedures for the transmittal and receipt of communications, drawings and other information between PM/CM, Architect and the Contractor relating to Project construction;
- h) Assist the District in selection and retention of testing laboratories, inspection services, and other special consultants for Project construction;
- i) Coordinate Site activities of the Contractor and allocation of Site staging and storage areas; and

- j) With the Architect and the District's maintenance personnel, observe the Contractor's testing and commissioning of utilities, operational systems, and equipment for readiness.

2.3.2 Monitoring of Construction Costs; Contractor's Applications for Payments.

- a) **Construction Costs.** PM/CM will monitor the Construction Costs and advise the District of the financial condition of the Project by:
- 1) Developing Project cash flow reports, forecasts and other financial reports to the District, including those reflecting variations between actual Construction Costs and the Construction Costs budget and estimated costs of unperformed Project activities;
 - 2) Maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed and additional work performed by the Contractor on a time and materials basis, or other work requiring accounting records;
 - 3) Monitor and advise the District of costs pertaining to potential, pending and completed changes to Construction Contract; and
 - 4) Advising and making recommendations to the District for adjustments to the Construction Cost budget relative to actual or anticipated Construction Costs.
- b) **Applications for Progress Payments.** PM/CM will participate in the review of Progress Payments to the Contractor and in consultation with the District and the Architect, make recommendations for the disbursement of Progress Payments to the Contractor as follows:
- 1) PM/CM will assist in the development of procedures for submittal, review, and processing of Progress Payments to Contractor, along with associated forms and reporting systems.
 - 2) Based upon PM/CM's observations and evaluations of each Application for Progress Payment, PM/CM will review and recommend to the District the amount due on each such Application for Progress Payment; PM/CM's recommendations shall be based on PM/CM's observations at the Site, the data in each Application for Progress Payment, and to the best of PM/CM's knowledge, information and belief, the Work has progressed to the point indicated in the Application for Progress Payment and the quality of the Work is generally in accordance with the Contract Documents for the Construction Contract.
- c) **Construction Contract Close-Out; Final Payment.** In consultation with the District and the Architect, PM/CM will assist and participate in the review of the Application for Final Payment. PM/CM will compile for transmittal to the District the Close-Out documents required by the Construction Contract, including As-Built Drawings, Operations and Maintenance Manuals, test certificates, warranties and guarantees, and all documents required by DSA to close out and certify the Project. PM/CM will review and in consultation with the District and the Architect, PM/CM will make

recommendations to the District as to Final Completion of the Construction Contract and disbursement of the Final Payment under the Construction Contract.

2.3.3 Project Progress.

- a) **Project Schedule.** PM/CM shall review the Contractor's Project Construction Schedule and updates thereof and shall endeavor to secure Contractor's compliance with such Schedule. PM/CM shall advise the District of compliance with the terms of the Construction Contract along with measures appropriate to obtain compliance if necessary. PM/CM is and will not be in control of the Architect's or Contractor's activities in connection with the Project, and therefore, PM/CM does not warrant or represent that the actual construction schedule will be consistent with the estimated construction schedule for the Project.
- b) **Long Lead Items.** Investigate and recommend a schedule for the Contractor's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect. Expedite and coordinate delivery of these purchases with the Contractor.
- c) **Labor Analysis.** Analyze the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Make recommendations for actions designed to minimize adverse effects of labor shortages.
- d) **Progress Records.** PM/CM will maintain records of the progress of construction of Project construction, including written progress reports and photographs reflecting the status of Project construction and percentage completion. PM/CM will maintain daily records during Project construction showing weather conditions, Subcontractors at the Site, work in progress, work accomplished, problems encountered and other matters materially affecting the Project, completion of the Project or Construction Costs.
- e) **Substantial Completion and Final Completion.** Upon request of the Contractor, PM/CM will in conjunction with the District and the Architect determine that Substantial Completion and Final Completion have been achieved.

2.3.4 On-Site Observations.

- a) **PM/CM On-Site.** During Project construction and at substantially all times during which there are construction activities under the Construction Contract, PM/CM shall have its Project Manager or other authorized representative at the Site to observe Site construction activities. PM/CM shall maintain in their office, on a current basis, the Construction Schedule, Construction Contract, Drawings, Specifications, Addenda, Requests for Information, pending and approved Change Orders and other Modifications, Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; and other related documents.

- b) **Construction Quality.** The PM/CM will endeavor to guard the District against defects and deficiencies in construction and workmanship on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor the workmanship of the Contractor for conformity with: (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; and (c) the requirements of the Construction Contract.
- c) **Review of Work.** Whenever in the ordinary course of discharging its services hereunder PM/CM shall discover or observe patent conditions of defective or deficient construction or workmanship which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, PM/CM shall take prompt action appropriate under the circumstances, including notifying the District and Architect in writing.
- d) **Site Safety.** PM/CM shall review Contractor's safety programs and Site-specific safety plan for conformity with requirements of the Construction Contract and applicable law; PM/CM shall monitor the Contractor's compliance with safety programs and Site-specific safety plan and advise the District of measures, if any, necessary or appropriate to obtain the Contractor's compliance. PM/CM's responsibilities for monitoring of safety programs or Site-specific safety plan shall not extend to direct control over or charge of the acts or omission of the Contractor. By undertaking the obligations hereunder, PM/CM shall not be deemed to have assumed responsibility for the adequacy or sufficiency of safety programs or Site-specific safety plan implemented by Contractor.

2.3.5 Changes and Claims.

- a) **Coordination of Changes.** PM/CM will coordinate and disseminate correspondence, drawings and other written materials by and between the Contractor, the District and the Architect relating to Changes to the work of the Construction Contract. PM/CM will coordinate the Contractor's performance of Changes. PM/CM will maintain a log or other records to monitor the pendency and disposition of Changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular Change or Change Order or the cumulative effects thereof on Project construction costs or completion.
- b) **Processing of Changes and Change Orders.** PM/CM will assist the District and the Architect in evaluation of requests by Contractor for issuance of Change Orders, assist in negotiations with Contractor's proposals relative to Change Orders and the adjustment of Contract Price or Contract Time under the Construction Contract. PM/CM will make recommendations to the District and the Architect for handling and disposition of the Contractor's proposals relative to Change Orders. If a Change to the work of the Construction Contract is approved or authorized by the District, PM/CM will assist the District and the Architect in the preparation of a Change Order reflecting such approved or authorized change to the Construction Contract.
- c) **Claims Handling.** PM/CM will assist the Architect in the review, evaluation and processing of claims asserted by Contractor, including entitlement and cost and time

impacts; PM/CM will make recommendations to the District as to the merit, handling and disposition of Contractor's claims.

ARTICLE 3 ADDITIONAL SERVICES

3.0 Additional Services. The services described in this Article 3 are not included in the Basic Scope of PM/CM's services hereunder. If the District shall request any of the Additional Services described in this Article 3, PM/CM shall be compensated for the same in accordance with the provisions of the Agreement relating to Additional Services. If Additional Services described below are provided by PM/CM through no fault or neglect of PM/CM, prior to providing any such Additional Services, PM/CM shall notify the District in writing. Unless the District shall notify PM/CM in writing authorizing Additional Services, PM/CM shall not proceed to provide such Additional Services. The following constitute Additional Services:

- a) Services required or necessary as a result of significant changes in the Project scope or other requirements of the Project, including Project size, quality or complexity or material changes to the Project Schedule.
- b) Services required or necessary as a result of the default or termination of the Architect or a Contractor, failure of performance of the District or the Contractor under the Construction Contract, or major defects or deficiencies in the work of a Contractor.
- c) Services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
- d) Evaluation of excessive claims submitted by Contractor.
- e) Services in connection with any arbitration or other legal proceeding arising out of the Project, except to the extent that PM/CM is a party to such proceeding.
- f) Services relative to future systems, facilities or equipment not included within the scope of the Project.
- g) Recruiting or training maintenance personnel.
- h) Services to investigate existing conditions or facilities or to provide measured drawings thereof.
- i) Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.
- j) Any other service not expressly included within the Basic Scope of Services hereunder.

ARTICLE 4 INSURANCE AND INDEMNITY

4.1 Insurance. PM/CM shall purchase and maintain the following policies of insurance with an admitted insurer or insurers, qualified to do business in the State of California and acceptable to the District which will protect PM/CM and the District from claims which may arise out of or result from PM/CM's actions or inactions relating to this Agreement, whether such actions or

inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- 4.2 Workers' Compensation and Employers Liability Insurance.** PM/CM shall purchase and maintain as a cost of the work Workers' Compensation Insurance covering claims under workers' compensation, disability benefit and other similar employee benefit acts may be liable. PM/CM shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by PM/CM. The Employer's Liability Insurance required of PM/CM hereunder may be obtained by PM/CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by PM/CM hereunder.
- 4.3 Commercial General Liability (Bodily Injury & Property Damage) Insurance and Commercial Automobile Insurance.** PM/CM shall purchase and maintain Commercial General Liability (Bodily Injury or Death and Property Damage) Insurance as will protect PM/CM from the types of claims set forth below which may arise out of or result from PM/CM's services under this Agreement and for which PM/CM may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of PM/CM's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than PM/CM's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by PM/CM, or (b) by another person; (iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (vi) contractual liability insurance applicable to PM/CM's obligations under this Agreement; and (vii) products/completed operations.
- 4.3.1 Additional Insureds.** District, its officers, officials and employees shall be named as additional insureds and shall state that, with respect to the operations of PM/CM hereunder, such policy is primary and any insurance carried by the District is excess and non-contributory with such primary insurance. PM/CM and District waive all rights of subrogation against the other.
- 4.3.2 Policy Endorsement.** PM/CM shall deliver to the District a policy endorsement naming the District, its officers, officials and employees as additional named insureds in the coverage amounts required under this Agreement.
- 4.4 Professional Liability Insurance.** PM/CM will procure and maintain professional liability insurance covering claims arising out of the performance of services under this Agreement. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter at rates consistent with the time of execution of this Agreement as adjusted for inflation. In the event that PM/CM subcontracts any portion of PM/CM's duties, PM/CM shall require any such subcontractor to purchase and maintain insurance coverage as provided in this Agreement. Failure to maintain professional liability insurance is a material breach of this Agreement and grounds for immediate termination.

- 4.5 Coverage Amounts.** Insurance to be procured and maintained by PM/CM under this Article 4 shall be in the coverage amounts set forth in the Agreement.
- 4.6 Policy Endorsements; Evidence of Insurance.** PM/CM shall deliver to the District policy endorsements for the commercial general liability policy and certificates of insurance evidencing workers compensation, employers liability and professional liability insurance policies in the coverage amounts required herein.
- 4.7 Deductibles and Self-Insured Retention.** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District.
- 4.8 Notice of Cancellation.** Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 4.9 PM/CM Indemnity of District.** To the extent permitted by law, PM/CM shall indemnify, defend and hold harmless the District from all claims arising out of this Agreement, including without limitation, claims for bodily injury, death, physical property damage (other than to the work of the Project itself and property damage covered by Builders Risk insurance) and demands, losses, liabilities or other claims of third parties to the extent arising out of, in whole or in part, this Agreement or PM/CM's services hereunder or the negligent or willful acts, omissions or other conduct of PM/CM. The foregoing shall include without limitation, attorneys fees, experts fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph shall be provided by counsel acceptable to the District. The PM/CM's obligations hereunder are not limited in any way or by any limitation on the amount or type of damages or compensation payable to the PM/CM. The provisions of this paragraph shall apply during the period of PM/CM's performance under this Agreement and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations. The District shall include in the Construction Contract a requirement that the Contractor shall indemnify PM/CM to the same extent that Contractor is obligated to indemnify the District.

ARTICLE 5 TERMINATION; SUSPENSION

- 5.1 Termination for Default.** The District may terminate this Agreement upon thirty calendar (30) days advance written notice to PM/CM if there is a default by PM/CM in its performance of a material obligation hereunder. Such termination shall be deemed effective the thirty first (31st) day following the date of the written termination notice, unless during such thirty (30) day period, PM/CM shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to PM/CM if: (a) PM/CM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by PM/CM or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for PM/CM or any of PM/CM's property on account of PM/CM's insolvency; or (b) if PM/CM disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due PM/CM, if any, shall be based upon Basic Services and authorized Additional Services incurred or provided up to the effective date of the

District's termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due, if any, shall be made by District only after completion of the Construction Phase of the Project. PM/CM shall remain responsible and liable to District for all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of PM/CM's default hereunder, to the extent that such losses, damages or other costs exceed any amount due PM/CM hereunder for Basic Services or authorized Additional Services.

- 5.2 District's Right to Suspend.** The District may, in its discretion, suspend all or any part of the construction of the Project, work under the Construction Contract or PM/CM's services hereunder; provided, however, that if the District shall suspend construction of the Project, work under the Construction Contract or PM/CM's services hereunder for a period of sixty (60) consecutive days or more and such suspension is not caused by PM/CM or the acts or omissions of PM/CM, upon rescission of such suspension, the Contract Price will be subject to adjustment to provide for actual costs and expenses incurred by PM/CM as a direct result of the suspension and resumption of Project construction or construction under a Construction Contract or PM/CM's services hereunder.
- 5.3 District's Termination of Agreement for Convenience.** The District may, at any time, upon thirty (30) days advance written notice to PM/CM, terminate this Agreement, in whole or in part, for the District's convenience and without fault, neglect or default on the part of PM/CM. In such event, the Agreement shall be deemed terminated thirty (30) days after the date of the District's written notice to PM/CM or such other time as the District and PM/CM may mutually agree upon. In such event, the District shall make payment of the Contract Price to PM/CM for services provided through the date of termination plus actual costs incurred by PM/CM directly attributable to such termination, but in no event shall PM/CM be entitled to payment of loss of profits.
- 5.4 Lack of Funding.** PM/CM acknowledges and agrees that funds utilized by the District to pay for services provided by PM/CM under this Agreement are public money from public sources, including the State of California, and is subject to variation. The District reserves the right to modify, limit or cancel, in whole or in part, PM/CM's services hereunder on account of funding changes or limitations.

ARTICLE 6 GENERAL

- 6.1 Marginal Headings; Captions.** The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of PM/CM and District hereunder.
- 6.2 Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by PM/CM.
- 6.3 Notices.** Notices PM/CM or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder

from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt, by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid, or by overnight delivery with confirmed receipt.

6.4 Disputes.

6.4.1 Continuation of PM/CM Services. Except in the event of the District's failure to make payment of undisputed amounts of the Contract Price due PM/CM, notwithstanding any disputes between District and PM/CM hereunder, PM/CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

6.4.2 Arbitration. All claims, disputes or other matters in controversy between PM/CM and District arising out of or pertaining to the Project or this Agreement shall be settled and resolved by binding arbitration conducted in accordance with the American Arbitration Association's Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Architect or the Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, PM/CM and District agree that any arbitration proceedings initiated between PM/CM and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or Contractor. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Site. The award rendered by the Arbitrator(s) shall be final and binding upon the District and PM/CM. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. The Architect, Contractor, Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and PM/CM, in which case an appropriate severance order shall be issued by the Arbitrator. The expenses and fees of the Arbitrator shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator may award arbitration costs, including Arbitrator's fees but excluding attorneys' fees, to the prevailing party. The parties agree that the Arbitrator shall not be empowered to add to, subtract from or in any other manner modify, alter or amend the terms of this Agreement. The Arbitrator shall conform to the legal rules of evidence in California and the basis of the Arbitrator's award shall be in accordance with California law. The Arbitrator shall provide a written award setting forth the specific bases for the award. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The

substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

6.5 Severability. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted here from, but all remaining provisions will remain and continue in full force and effect.

6.6 Records.

6.6.1 PM/CM Accounting Records. PM/CM shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses, and other direct costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applied consistently and shall be available for inspection or reproduction by the District upon reasonable request at any time during PM/CM's performance hereunder. Following completion of the Project and the Agreement or the termination of this Agreement, PM/CM shall maintain accounting records for seven (7) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to District or as otherwise required by law, code, rule or regulation for inspection or reproduction.

6.6.2 Project Records. Records, documents and other materials generated or received by PM/CM in the course of performing services hereunder may, following completion of the Project or termination of this Agreement, be retained by the District in its sole discretion.

6.7 Force Majeure; Acts of Third Parties. PM/CM shall not be responsible for the consequences of: Acts of God (such as tornado, flood, hurricane, etc.); the District's, Architect's, consultant's, Contractor's or vendor's (and their respective agents, employees, consultants, vendors and subcontractors) acts, omissions to act, or failures to timely act; strikes, lockouts or other labor disturbances; riots, insurrections, or civil commotions; embargoes; unforeseen shortage or unavailability of materials, supplies, labor and equipment; fire; unavoidable casualties; sabotage; vandalism; epidemic or pandemic; changes in the requirements of law, statutes, regulations and other legal requirements of government authorities; casualties requiring reconstruction or repair of the Project or any part thereof; or any other matters beyond the reasonable control of PM/CM and not the responsibility of PM/CM under this Agreement.

6.8 Definitions.

6.8.1 Construction Contract. The Contract for Construction awarded by the District to a Contractor for the construction of the Project.

6.8.2 Contractor. The Contractor to the District under a Construction Contract awarded by the District for construction of the Project.

6.8.3 Design Documents. The Drawings, Specifications, calculations and other work product and Instruments of Service prepared by the Architect for the Project. Design Documents include surveys, soils reports and other documents prepared for the Project by a licensed Architect or registered Engineer, whether under contract to the Architect or District.

- 6.8.4 Architect.** The Architect is the design professional under contract with the District to provide design services for the Project. References to the Architect include its consultants retained to prepare or provide any portion of the Design Documents.
- 6.8.5 Submittals.** Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractors or suppliers illustrating some portion of the work of the Project.
- 6.8.6 Site.** The physical area for construction and activities relating to construction of the Project.

Exhibit A
Hourly Rate Schedule

Exhibit B

Response to RFQ/P for PM/CM Services submitted by:
