

CONSTRUCTION MANAGEMENT SERVICES “AT RISK” AGREEMENT

This Construction Management Services “At Risk” Agreement (“Agreement”) is entered into this ____ Day of ____, 2010 by and between **SOUTHWESTERN COMMUNITY COLLEGE DISTRICT** (“District”) and _____ (“CM”). The District is referred to in this Agreement as “the Owner.” The Owner and the CM are collectively referred to in this Agreement as “the Parties.” This Agreement is entered into with reference to the following recitals, all of which are incorporated herein by this reference.

RECITALS

WHEREAS, the Owner is the owner of the real property at 900 Otay Lakes Road, Chula Vista, CA 91910 and 880 National City Boulevard, National City, CA 91950 (“the Property”).

WHEREAS, the District has determined that the best interests of the District are served by development and construction of a facility on the Property for educational/administrative purposes (“the District Project”).

WHEREAS, the District has retained various ARCHITECTS and PLANNING, (hereinafter or “the Architect” to provide and perform certain services in connection with design, bidding and construction of the District Project.

WHEREAS, the Architect has completed preparation of the Design Documents for the District Project in a series of sequential phases described as the Preliminary Plans and the Working Drawings.

WHEREAS, as of the date of this Agreement, the Architect has completed the Preliminary Plans and Working Drawings Phases of the Design Documents for the District Project and has submitted the same to the Division of State Architect (“DSA”) for approval.

WHEREAS, jurisdiction over the Design Documents for the District Project is vested in the Division of State Architect.

WHEREAS, the District has elected to bid construction of the project to multiple contractors (“Trade Contractors”) and to construct the District Project by entering into contracts (“Trade Contracts”) with the successful bidders for each Trade Contract, which will then be assigned to the CM as described in this Agreement.

WHEREAS, the District intends to bid the District Project with the Trade Contractors hereinafter referred to as “the Project.”

WHEREAS, in connection with reviews of the Design Documents prepared by the Architect for the Project, bidding of Trade Contracts for construction of the Project, the District desires’ to retain and contract with the CM to provide construction management services “at risk” for the District Project, as further described in this Agreement.

WHEREAS, in or about January 2010, the District issued a Request for Proposals (“the RFP”) for professional construction management services pursuant to Government Code Section 4525 et seq., through, which the District sought proposals from construction management firms to provide the construction management services “at-risk” in connection with review of Project Design Documents and the bidding/construction of the District Project, by this reference, the RFP is incorporated herein as if set forth in full.

WHEREAS, the CM submitted a written proposal dated February 4, 2010 responding to the RFP (“the RFP Response”); by this reference the RFP Response is incorporated herein as if set forth in full.

WHEREAS, the District desires to retain the CM to provide certain services in connection with the District Project in order to achieve the objectives relating to the District Project, including without limitation, review of the Project Design Documents by the CM, management of the bidding process for the Trade Contracts the CM, management of a Project construction by the CM, expedited completion of Project construction, economies of scale by a single set of Trade Contractors constructing the District Project and the risks for the time/costs to complete Project construction as set forth in this Agreement.

WHEREAS, the CM is a professional construction manager, duly qualified and capable of providing the Basic Services described herein accordance with the term hereof, and shall not act as a general contractor nor be entitled to self-perform any construction work on the District Project.

NOW THEREOF, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

ARTICLE 1: BASIC SERVICES

1.1 General: Phases of Basic Services. The CM shall provide and perform the Basic Services more particularly described in this Agreement. The Basic Services shall be performed and completed in a series of sequential Phases generally described as: Pre-Construction, Construction and Post-Construction. The scope of the CM's Basic Services and obligations during each Phase of the Basic Services shall be as set forth herein. All of the Basic Services during the Construction Phase shall be performed or provided by or under the control of an individual employed by the CM, which is a Licensed B – General Building Contractor and or A – General Engineering Contractor under California law. Basic Services under this Agreement include without limitation the General Conditions items to be provided by the CM during the Construction Phase, as further described in this Agreement and Exhibit A hereto. The CM expressly acknowledges that this Agreement and the Basic Services only include the professional construction management services “at risk” described herein, and that the CM shall not have the authority to self-perform any construction work on the District Project or otherwise act as a general contractor.

1.1.1 Leadership Energy Efficiency Design (LEED) and Building Information Modeling (BIM). The CM shall assist the Architect and Owner in achieving goals for both LEED and Building Information Modeling implementation as it applies to each scopes of work.

1.2 Relationship of CM to Other Project Participants. The CM acknowledges that the District has entered into, or will be entering into, contracts with other parties pertaining to the design, bidding and/or construction of the Project, including without limitation, contracts with the Architect, the Inspector, and Test/Inspection service providers and others. The CM acknowledges that accomplishing the Project objectives of the District will require that the CM and other parties under Project related contracts with the District each completely and timely perform in accordance with their respective contractual obligations and in a collaborative manner consistent with the Project objectives of the District. The CM acknowledges and agrees that its performance of the obligations under this Agreement in a complete and timely manner and in a collaborative manner with other Project participants is a material obligation of the CM under this Agreement

1.3 CM Standard of Care. CM shall provide the Basic Services using its best 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. 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 timely completion of the CM's review of Project Design Documents, Trade Contractor's bidding and Project construction to permit occupancy of the District Project in accordance with Owner's objectives.

- 1.4 CM Project Manager/Field Superintendent.** Within five (5) calendar days of the date of this Agreement, or such other time as mutually agreed by the parties, the CM shall prepare and submit to the Owner's Representatives a written statement setting forth the identities and qualifications of the individuals proposed by the CM as the Project Manager/Field Superintendent in connection with the CM's obligations under this Agreement. The Project Manager/Field Superintendent shall be to the reasonable satisfaction of the Owner; if the Owner requests alternatives to the individual(s) proposed by the CM as the Project Manager/Field Superintendent, the CM shall provide such alternatives until the Owner has approved of the Project Manager/Field Superintendent. Once approved by the Owner, the CM shall not designate other individual(s) to serve in such capacities in connection with this Agreement without the prior consent and approval of the Owner. The Project Manager/Field Superintendent shall: (a) be authorized to act on behalf of the CM with respect to this Agreement; and (b) be authorized to render binding decisions on behalf of the CM.
- 1.5 Ineligibility to Bid.** The CM, and any other business with common ownership shall be ineligible to bid on any Trade Contract for the Project, but shall remain eligible to bid on any other Owner projects. The CM maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for the CM, to solicit or secure this Agreement. Further the CM warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for the CM, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.
- 1.6 Additional Services.** At any time during the term of this Agreement, the Owner may request the CM to perform Additional Services. As used herein, "Additional Services" shall mean any service which is determined by the Owner to be necessary for proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the time of execution of this Agreement, and was not included in the Scope of Services. However, the The CM shall not perform, nor be compensated for, Additional Services without obtaining the Owner's prior written authorization.

ARTICLE 2: OWNER RESPONSIBILITIES

- 2.1 Owner Information.** The Owner shall each provide full information to the CM regarding the District Project, as applicable, including objectives, schedule requirements, budget limitations and other constraints and requirements which may affect the Project Budget, time for completion of Project construction or Project scope. The Owner shall provide the CM with the Project and Construction Budget for the District Project for review by the CM.
- 2.2 Owner's Representatives.** The district shall designate a representative to act on its behalf with respect to the Project and who shall be authorized to render decisions on behalf of the Owner, as applicable, and to carry out the responsibilities of the Owner 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 CM's performance of services and other obligations hereunder. Unless modified by subsequent written notice, the District Representative is Henry Amigable, CCM, Bond Program Director (the District Representative hereinafter referred to as "the Owner's Representatives.")

- 2.3 Tests/inspections.** In accordance with applicable law, rule or regulation, the Owner shall: (a) retain a Project Inspector ("Inspector") to provide construction observations as required by applicable laws, rules or regulations; and (b) retain Test/Inspection Service Providers to conduct Construction Phase tests/inspections of materials/equipment forming a part of the Project, as required by applicable law, rule or regulation. The foregoing notwithstanding, as set forth below, the Basic Services of the CM include assistance to the Owner in identifying, selecting and retaining the Inspector and Test/Inspection Service Providers.
- 2.4 Owner Consultants.** Except to the extent of Design Consultants retained by the Architect, other consultants required or desired by the Owner in connection with the Project shall be retained and paid for by the Owner. Such other consultants include, without limitation, legal counsel, insurance/surety consultants or insurance consultants.
- 2.5 Validation.** The Owner and CM may mutually agree to pursue the board actions and other approvals necessary for the filing of a validation action pursuant to the provisions of the California Code of Civil Procedure. Owner and CM agree that if a validation action is to be filed, the parties will mutually agree on the timing and allocation of costs for such a validation action.

ARTICLE 3: PRE-CONSTRUCTION PHASE

- 3.1 Project Bidding and Construction Strategy.** The CM shall, in conjunction with the Owner's Representative and other staff of the District, review the current status of completion and approvals for bidding the Project Design Documents to Trade Contractors. The objective of these reviews is the development of an overall strategy for bidding and constructing the District Project taking into account factors affecting time for completing construction of the District Project or the costs of constructing the Project. The CM shall conduct such interviews and participate in such meetings and conferences with the Architect, Owner's Representatives, the Owner's staff and others as necessary to develop a bidding and construction strategy consistent with the Owner's Project objectives. The CM shall submit its written recommended bidding/construction strategy to the Owner for their acceptance within twenty (20) calendar days, or such other time as mutually agreed by the parties, of the date of this Agreement ("the Preliminary Bidding/Construction Strategy"). Within seven (7) calendar days, or such other time as mutually agreed by the parties, of the Owner's Representatives' receipt of the CM's Preliminary Bidding/Construction Strategy, the Owner will submit comments, modifications and other direction to the CM relating to the CM's Preliminary Bidding/Construction Strategy. The CM shall modify the Preliminary Bidding/Construction Strategy as necessary to obtain acceptance of the Owner.

Modifications, if any, to the CM's proposed bidding/construction strategy shall be completed within five (5) calendar days, or such other time as mutually agreed by the parties, of the CM's receipt of written communication from the Owner regarding modifications necessary to obtain the Owner's acceptance of the CM's bidding/construction strategy; the modification process shall continue until the Owner has accepted the entirety of the CM's proposed bidding construction strategy ("the Final Bidding/Construction Strategy"). The CM shall implement the Final Bidding/Construction Strategy.

3.2 Review of Design Documents. The CM, including the CM's Project Manager and Field Superintendent, shall review the Design Documents completed by the Architect to ensure complete understanding of the Project design and scope.

3.2.1 Constructability Review. The CM shall review the Design Documents to ascertain whether the Project, as depicted in the Design Documents: (a) accurately and completely reflect the Owner's Project objectives; and (b) the Project Design Documents are free of errors, omissions, conflicts, or other deficiencies so that Trade Contractors can construct the Project as depicted in the Design Documents without delays, disruptions or additional costs resulting from errors, omissions, conflicts or other deficiencies in the Design Documents. The scope of the CM's constructability reviews shall include, without limitation: (a) confirmation that requirements noted in the Design Documents are consistent with and conform to the Owner's Project requirements; (b) confirmation that the various components of Design Documents prepared by the Architect and its Design Consultants have been coordinated and are consistent with each other so as to eliminate conflicts within or between components of the Design Documents; (c) confirmation from a CM's perspective and professional standard of care, that there are no errors, omissions or other deficiencies in the Design Documents excluding latent structural design defects, the liability of which shall remain with the Architect.

The CM shall submit written Constructability Review comments to the Owner's Representatives within fifteen (15) calendar days, or such other time as mutually agreed by the parties, of the date of this Agreement. The Owner shall have the sole and exclusive discretion to accept some, all or none of the CM's Constructability Review Comments. If the Owner accepts any of the CM's Constructability Review Comments, the CM shall review the Design Documents modified by the Architect for confirmation that the Owner accepted Constructability Review Comments are incorporated into the Design Documents issued on behalf of the Owner for bidding by Trade Contractors. If the CM determines that the Architect has not incorporated into the Design Documents the Constructability Review Comments accepted by the Owner, the CM shall advise the Owner of measures to ensure that the Design Documents issued for bidding by Trade Contractors incorporate the Owner accepted Constructability Review Comments. The CM shall implement such measures as directed or authorized by the District.

3.2.2 Owner Review of Constructability Comments; Incorporation of Constructability Review Comments. Upon receipt of the CM's Recommendations and

the CM's Constructability Review Comments, the Owner shall promptly complete review of the same. Within five (5) calendar days, or such other time as mutually agreed by the parties, of the date of the CM's Constructability Review Comments, the CM and the Owner's Representatives shall meet and confer to arrive at mutually agreed Constructability Review Comments to be incorporated by the Architect into the Project Design Documents.

3.2.3 Labor/Materials Marketplace Survey. The CM shall survey the existing labor and materials marketplace conditions in the locality of the Project to ascertain the availability of suitable labor and materials necessary to complete Project construction. Within fifteen (15) days, or such other time as mutually agreed by the parties, of the date of this Agreement, the CM shall complete the labor/materials marketplace survey and provide the Owner's Representatives with a written evaluation of the extent of available and suitable labor/materials and whether the CM anticipates that the extent of available and suitable labor/materials will impact the costs/time for completion of Project construction. If the CM concludes that the extent of available and suitable labor/materials may have an adverse impact on costs/time for completion of Project construction, the CM's written evaluation shall include recommendations for measures to mitigate such potential adverse impacts to costs/time.

3.3 Development of Bid Packages. Based upon its review of the Design Documents (including any Owner accepted Value Engineering Recommendations and Constructability Review Comments), the CM shall develop written Bid Package descriptions suitable for bidding by Trade Contractors. Within forty five (45) calendar days, or such other time as mutually agreed by the parties, of the date of this Agreement, the Bid Packages developed by the CM shall be submitted to the Owner's Representatives for review and acceptance by the Owner. Within seven (7) calendar days, or such other time as mutually agreed by the parties, of the CM's submission of its proposed Bid Packages to the Owner's Representatives, the Owner will complete review of the Bid Packages and provide the CM with comments, requested modifications and similar matters relating to the proposed Bid Packages. Within seven (7) calendar days, or such other time as mutually agreed by the parties, of the CM's receipt of such comments, requested modifications and similar matters, the CM shall revise and re-submit the revised Bid Packages to the Owner's Representatives for acceptance by the Owner. Notwithstanding the foregoing provisions or any other provisions of this Agreement, the review of Bid Packages by the Owner's Representatives and acceptance of Bid Packages by the Owner: (a) shall not relieve the CM of its responsibility under this Agreement for developing Bid Packages which incorporate therein all work, labor, materials, equipment and services necessary to construct the Project depicted in the Design Documents issued on behalf of the District for bidding by Trade Contractors; or (b) deemed the assumption of responsibility by the Owner for the completeness, accuracy or sufficiency of any Bid Package or the totality of the Bid Packages developed by the CM, except the extent a change to a bid package is required by the Owner results in damage or impact to the Project. The CM shall modify the Bid Packages as necessary to obtain the Owner's acceptance of the entirety of each Bid Package and the entirety to all Bid Packages. The CM shall be responsible for incorporating into each Bid Package and identifying all

work, labor, materials and services required under each Bid Package so that the District Project, as constructed by the Trade Contractors, is as depicted in the Design Documents issued for bidding, subject to Owner approved Changes during the Construction Phase. Costs for work, labor, materials or services indicated in the Design Documents issued for bidding by Trade Contractors which are not incorporated into a Bid Package shall be the sole responsibility of the CM, and the CM shall ensure that any such work is properly contracted and paid for in accordance with the requirements of this Agreement and applicable law, except the extent a change to a bid package is required by the Owner results in damage or impact to the Project. Nothing contained herein is intended to give the CM the right to self-perform any such work..

3.4 Bid-Time Master Project Schedule. Based upon Bid Packages accepted by the Owner's Representatives, within fifteen (15) calendar days, or such other time as mutually agreed by the parties, of the Owner's acceptance of all Bid Packages proposed by the CM, the CM shall develop and submit to the Owner's Representatives for review and acceptance by the Owner a Bid-Time Master Project Schedule which is: (a) consistent with the Final Bid/Construction Strategy; (b) consistent with the Owner's time objectives for completion of Project Construction; and (c) reflects all of the Work of each Bid Package necessary to complete Project construction in accordance with the Design Documents. The Bid-Time Master Project Schedule shall be prepared with the most recent edition of commercially available software designed specifically for the scheduling of construction projects and which utilizes the critical path method of scheduling. The CM's use of scheduling software other than a current or equivalent version of Microsoft Project 2000, Primavera P3, SureTrak Project or Primavera Project Planner will require approval of the Owner's Representatives which may be granted, withheld, or conditioned in the sole discretion of the Owner's Representatives. The Bid-Time Master Project Schedule shall indicate the start/finish dates for the principal activities of each Bid Package necessary to complete Project construction. The CM shall sequence, schedule and coordinate the work of each Bid Package in the Bid-Time Project Master Schedule in a logical, reasonable and orderly manner so that Project construction can be completed for the Construction Budget and within the time established by the Owner. If the Owner's requirements for the Project include phasing elements of Project construction, the Owner's phasing requirements shall be set forth in the Bid-Time Master Project Schedule. The CM acknowledges that the Bid-Time Master Project Schedule prepared by the CM will be included in the Bid Documents for each Bid Package and that Trade Contractors bidding on a Bid Package will rely upon the Bid-Time Master Project Schedule in developing their respective Bid Proposals. Accordingly, the CM is solely responsible for the accuracy and completeness of the Bid-Time Master Project Schedule and the reasonable, logical and orderly scheduling, sequencing and coordination of the Trade Contractors' construction and construction-related activities to complete Project construction within the time and Construction Budget established by Owner, except for changes to the Bid-Time Master Project Schedule, required by Owner.

3.5 Construction Budget; CM Estimate of Construction Costs. The CM shall review the Owner's Construction Budget for the District Project as well as Estimates of Construction Costs prepared by others for the District Project as depicted in Design Documents as of

the date of this Agreement. Based upon such reviews, within fifteen (15) calendar days, or such other time as mutually agreed by the parties, of the date of this Agreement, the CM shall submit to the Owner's Representatives the CM's Preliminary Estimate of Construction Costs for the Project depicted in such Design Documents. Upon completion of the CM's Constructability Reviews pursuant to this Agreement, the CM shall prepare the Final Estimate of Construction Costs which shall reflect modifications to the Design Documents resulting from Owner accepted Constructability Review Comments. The CM's Final Estimate of Construction Costs shall be prepared and submitted to the Owner's Representatives not more than fifteen (15) calendar days, or such other time as mutually agreed by the parties, following the CM's submission of its Constructability Review Comments. All of the CM's Estimates of Construction Costs shall: (a) be in such format and with such detailed breakdown as directed by the Owner's Representatives including without limitation a detailed breakdown of estimated costs for construction for the District Project; (b) be organized by the standard specifications sections established by the "Design Documents" and or the "Architects Project Manual"; and (c) be based upon the then current market conditions for labor, materials and equipment necessary to complete Project Construction in accordance with the Design Documents. If the CM's Final Estimate of Construction Costs for the District Project, exceeds the Construction Budget by ten percent (10%) or greater, the CM shall make recommendations to the District, for measures to reduce the Estimate of Construction Costs to conform with the Construction Budget for the District Project. If the CM's Final Estimate of Construction Costs (for the District Project) is less than the Construction Budget (for the District Project) by ten percent (10%) or more, the CM shall make recommendations to the District, for items to incorporate into the Project to conform the CM's Estimate of Construction Costs with the Construction Budget for the District Project.

3.6 Review and Assembly of Bid Documents. The CM shall review and recommend modifications to the Owner's standard forms of bid and contract documents for each Trade Contract. Within forty five (45) days, or such other time as mutually agreed by the parties, of the date of this agreement, the CM shall assemble bid and contract documents for each Bid Package for submission to the Owner's Representatives for their respective review and acceptance on behalf of the Owner. The CM shall not issue any bid or contract documents for bidding by Trade Contractors until the entire bid and contract documents for all Bid Packages are accepted by the Owner's Representative. Unless, directed by the Owner's Representative, the bid and contract documents shall include provisions: (a) advising bidders of the implementation of a Labor Compliance Program ("LCP") in connection with all or portions of the Project pursuant to Labor Code § 1771.5 (AB1506); and (b) establishing a process for implementation of the LCP during Project construction and require all Trade Contractor payment and performance bonds to name Owner and CM as co-obligees. In addition, bid documents shall require all Trade Contractors to name Owner and CM and Architect as additionally insured on all Trade Contractor required insurance policies evidenced by insurance certificate and endorsement 2010 11/85 endorsements.

3.7 Authority to Bid. The CM shall review approvals heretofore obtained by or on behalf of the Owner relating to authority of the Owner to engage in bidding the District Project for construction. The CM shall assist the Owner in obtaining all regulatory approvals relating to authority of the Owner to engage in bidding Project construction. If there are limitations to the Owner's authority to bid the Project the CM shall advise the Owner of the same and assist the Owner in removing such limitations.

3.8 Bidding of Trade Contracts

3.8.1 Advertisements. The CM shall develop, for review by the Owner's Representatives, such legal advertisements of the availability of Bid Packages for bidding as required by applicable law for the District. Upon the Owner's Representatives' approval of the CM developed legal advertisements the CM shall place such advertisements in a newspaper of general circulation in San Diego County. The CM shall also make recommendations to the Owner's Representatives for placement of notices and issuance of other communications for the purpose of publicizing the availability of the Bid Packages for bidding by Trade Contractors. The CM shall place such other notices and issue communications for such purposes as directed or approved by the Owner's Representatives.

3.8.2 Trade Contractor Pre-Qualification. The CM shall make recommendations to the Owner relative to engaging in a pre-qualification process for all or some of the Bid Packages. If the Owner elects to engage in the pre-qualification process for any of the Bid Packages, the CM shall: (a) develop pre-qualification criteria and the pre-qualification application; (b) develop and place advertisement(s) in a newspaper of general circulation in San Diego County of the availability of pre-qualification applications; (c) develop and implement a program to inform potential bidders for the Bid Packages subject to pre-qualification of the pre-qualification process and to encourage potential Trade Contractors to engage in the pre-qualification process; (d) review and evaluate responses to the pre-qualification application; and (e) make recommendations to the Owner for selection of Trade Contractors deemed pre-qualified to submit Bid Proposals for Bid Packages subject to the pre-qualification process. Notwithstanding the CM's obligations pursuant to the preceding, the selection of potential bidders deemed pre-qualified shall be subject to the review and acceptance by the Owner's Representatives.

3.8.3 Dissemination of Bid Documents to Trade Contractors. The CM shall establish a system for reproduction and dissemination of Bid Documents to Trade Contractors and for maintaining records of the identities/addresses/telephone-fax numbers/email addresses of the Trade Contractors who have obtained Bid Documents. Electronic files and paper copies of the CM's records relating to potential Trade Contractor bidders who have obtained the Bid Documents shall be available to the Owner upon request of the Owner's Representatives to the CM.

3.8.4 Trade Contractors Campaign; Disabled Veteran Business Enterprise (DVBE) Contacts. The CM shall, by all appropriate means of communications, advise Trade Contractors of the availability of Bid Packages for bidding by Trade Contractors.

The CM shall endeavor to maximize the participation of qualified Trade Contractors whose principal place of business is situated in the San Diego Metropolitan area. The CM shall maintain written or electronic records of contacts made and communications transmitted to/received from potential bidders for the Bid Packages. All such records shall be available for review and/or reproduction by the Owner upon request of the Owner's Representative. The CM acknowledges that, to the extent required by California law, the Owner may be under a legal obligation to incorporate Good Faith Effort requirements for Disabled Veteran Business Enterprises ("DVBE") in the Trade Contract bidding documents for Project construction. As necessary, the CM shall assist the Owner in undertaking all necessary and appropriate steps to develop and implement a process for contacting and notifying potential DVBE bidders or sub-bidders of Project bidding, to inform bidders for the Trade Contracts of the contacts made by the CM with potential DVBE sub-bidders and to facilitate communications between bidders for the Trade Contracts and potential DVBE sub-bidders so that the Owner can comply with DVBE requirements.

3.8.5 Pre-Bid Conference(s). The CM shall conduct pre-bid conferences, including the job walk(s), if one is required or scheduled in the Bid Documents for any Bid Package. The pre-bid conference shall include without limitation: (a) description of the District Project and each Bid Package; (b) description of the process for bidding and award of Trade Contracts; and (c) material requirements of the Trade Contracts relating to bonds, insurance and similar administrative requirements of the Trade Contracts, including requirements/information on Labor Compliance Program (LCP) and implementation of the LCP. The job walk shall provide Trade Contractors with an overview of the Site and an understanding of the physical limitations and constraints affecting the Work of the Project or portions thereof. As necessary or appropriate the CM shall conduct separate, detailed pre-bid conferences with potential bidders for specific Bid Packages. The CM shall develop a process for monitoring attendance by potential Trade Contractor bidders and their potential Subcontractors at job walk(s) and pre-bid conferences. The process developed by the CM shall include without limitation information relating to: (a) each potential Trade Contractor bidder and each potential Subcontractor bidder to a potential Trade Contractor bidder in attendance; (b) the identity and contact information for the representative of each potential Trade Contractor and each Subcontractor to a potential Trade Contractor bidder (including address, telephone number(s), fax number(s) and email address); and (c) whether the representative of each potential Trade Contractor bidder and potential Subcontractors were in attendance for the entirety of the job walk or pre-bid conference, as applicable. The CM shall record and transcribe minutes of the pre-bid conferences and job walk(s). Minutes maintained by the CM shall be issued by the CM to all bidders who have theretofore obtained the Bid Documents, the Owner's Representatives and the Architect. The CM shall also assist the Architect and the Owner with the preparation of Addenda to the Bid Packages as necessary during the bidding process in response to any questions by the Bidders. All addenda shall be issued by the Architect in a uniform format as approved by the Owner.

3.8.6 Opening/Reading of Bid Proposals. The CM shall, with assistance of the Owner's Representatives, conduct the public opening and reading of Bid Proposals for

Bid Packages. Upon completing the public opening and reading of Bid Proposals, the CM shall develop and submit to the Owner's Representatives written summaries of the results of bidding for each Bid Package; the summary shall include identities of the Bidders, the amount proposed by each Bidder, including amounts proposed for Alternate Bid Items, if any included in the bidding for any Bid Package and the identification of the apparent low bidder for each Bid Package consistent with the method for selection identified in the applicable Bid Packages.

3.8.7 Review of Bid Proposals; Recommendations for Award of Trade Contracts.

The CM shall review submitted Bid Proposals to determine: (a) whether the bidder submitting the Bid Proposal is a responsible bidder; (b) whether the Bid Proposal is responsive to material bidding requirements for the Bid Package; and (c) the price proposed for the base scope of Work of each Bid Package and for each Alternate Bid Item, if any, included in the bidding of any Bid Package. The CM shall make recommendations to the Owner regarding: (a) rejection of a Bid Proposal based upon the "non-responsibility" of the bidder; (b) rejection of a Bid Proposal for non-responsiveness to material bidding requirements of a Bid Package; (c) rejection of a Bid Proposal for any other reason; (d) rejection of all Bid Proposals; and (e) award of Trade Contracts. To the extent that the bidding for a Trade Contract include Alternate Bid Items, the CM shall make written recommendations for the Owner's Representatives for the Alternate Bid Items, if any, to be included in the scope of the Trade Contracts awarded by the Owner. The CM shall make written recommendations to the Owner's Representatives for award of the Trade Contracts. The CM is not authorized to award any Trade Contract. Award of a Trade Contract shall only be by action of the Owner.

3.8.8 Owner Assignment of Trade Contracts to CM. Within ten (10) calendar days, or such other time as mutually agreed by the parties, of the date that a Trade Contractor awarded a Trade Contract returns the executed Agreement for the Trade Contract and other documents/instruments required to be submitted with the executed Agreement (including without limitation, Certificates of Insurance, Bonds, etc.), the Owner, CM, Trade Contractor and the Trade Contractor's Surety shall execute an assignment of each Trade Contract from the Owner to the CM (collectively hereinafter "the Assignment"). The Assignment shall assign to the CM all of the rights and obligations of the Owner under each Trade Contract, except for rights and remedies of the Owner relating to warranty obligations and latent defect obligations of the Trade Contractor and the Owner retained rights set forth in this Agreement. However, CM shall remain responsible for assisting the Owner in enforcement of its warranty rights as described herein.

3.8.8.1 Owner Retained Rights. Notwithstanding the effectuation of an Assignment of a Trade Contract pursuant to the foregoing, the Owner retains the right to have any Trade Contract re-assigned to the Owner upon occurrence of: (a) an event of CM default under this Agreement which is not cured within the time permitted for cure actions by the CM under this Agreement; or (b) if the Owner reasonably determines that the CM is encountering adverse financial circumstances or (c) termination by the Owner in accordance with the termination provisions of this Agreement. Re-assignment of a Trade Contract from the CM to the Owner shall

be effectuated by the Owner's written notice to the CM of the Owner's exercise of its rights of re-assignment and the effective date of such re-assignment. Except for the written notice described above, no other action shall be required of the Owner or the CM to effectuate a re-assignment of a Trade Contract to the Owner. Notwithstanding re-assignment of a Trade Contract from the CM to the Owner pursuant to the foregoing, the CM's obligations hereunder relating to any such re-assigned Trade Contract shall be in accordance with the provisions of this Agreement.

3.8.8.2 Escrow Account for Trade Contract Funds. Owner and CM may, upon mutual agreement, cause a Trade Contractor Escrow Payment Account to be opened at a mutually agreeable financial institution. Owner and CM shall meet and confer regarding management, control and procedures related to the deposit and disbursement of Trade Contractor payments from the escrow account.

ARTICLE 4: CONSTRUCTION PHASE

4.1 Administration and Coordination of Trade Contracts and Construction. CM shall provide administrative, management and related services necessary to administer the Trade Contracts and to schedule, sequence and coordinate the Work of the Trade Contractors during the Construction Phase of the Project so that the Owner's Project objectives (including without limitation, budgetary and time objectives) are achieved and that the work of each Trade Contract is completed in strict conformity with the requirements of each Trade Contract. The CM's responsibilities include without limit: (a) written notice to the Owner of the CM's intent to issue Notice(s) to Proceed directing commencement of work under the Trade Contracts; (b) scheduling, coordinating and conducting pre-construction and construction meetings; recording, maintaining and distributing minutes thereof; (c) in consultation with the Architect, develop and implement procedures for the submission and processing of Submittals required by each Trade Contract; (d) in consultation with the Owner and the Architect, develop and implement procedures for the handling and disposition of the Trade Contractors' requests for information or clarifications; (e) establish and implement procedures for the transmittal and receipt of communications, drawings and other information between the Owner, Owner's Representatives, CM, Architect, Inspector, Test/Inspection services and the Trade Contractors relating to Project construction; (f) assist the Owner in selection and retention of Test/Inspection Service Providers and the Inspector; (g) schedule, sequence and coordinate activities of the Trade Contractors; and (h) allocate Site staging and storage areas among the Trade Contractors.

4.2 Monitoring of Construction Costs. CM will monitor on-going Construction Costs and advise the Owner of the financial condition of the Project by: (a) development of Project cash flow reports, forecasts and other financial reports to the Owner, including those reflecting variations between actual Construction Costs and the Construction Budget and estimated costs of unperformed District Project activities; (b) maintaining records reflecting the actual costs for activities completed or in progress, including records

relating to work performed on a unit cost basis and additional work performed by the Trade Contractors on a time and materials basis; (c) monitor and advise the Owner of costs pertaining to potential, pending and completed changes to any Trade Contract; and (d) advising and making recommendations to the Owner for adjustments to the Construction Budget relative to actual or anticipated Construction Costs. Data, information and analysis of Project Construction Costs pursuant to the foregoing shall be maintained for the District Project. The CM shall prepare and submit cost reports (which summarize and present in a logical format the information derived from (a)-(d) above, to the Owner's Representatives on a monthly basis; provided that if the Owner's Representatives reasonably determines that more frequent cost reports are required, the CM shall comply with the directive(s) of the Owner's Representatives. The information compiled by the CM and reports generated by the CM relating to Construction Costs shall be in such detail and format as required by the Owner's Representatives, including without limitation cost reports for the District Project. In addition the extent of detail and the nature of the format of such reports, the information compiled by the CM and reports generated by the CM shall specifically indicate the original Contract Price of each Trade Contract, the extent of adjustment to the original Contract Price for each Trade Contract by Owner approved Change Orders and the extent of potential further adjustment to the original Contract Price of each Trade Contract as of the date of the CM's report based upon the Change(s) or potential Change(s) known to the CM at the time of the CM's preparation of a cost report for a Trade Contract. The CM shall submit written reports to Owner once a month, or as otherwise mutually agreed which summarize and track construction costs.

4.3 Payments to Trade Contractors.

4.3.1 Trade Contractors' Applications for Progress Payments. The CM shall develop and implement procedures for Trade Contractors' submittal of Applications for Progress Payments and the review, processing and disbursement of Progress Payments to Trade Contractors, along with associated forms and reporting systems. The CM shall ensure that all Trade Contractor applications conform to the Schedule of Values submitted by the individual Trade Contractors pursuant to the requirements of the Trade Contract Documents. The Application for Progress Payment shall be submitted on appropriate forms approved by the Owner which are the same, or substantially similar to AIA Forms G702 and G703. The CM shall, along with the Architect and Inspector, review and certify to the District the amount due on Trade Contractors' Application for Progress Payment, CM's Progress Payment certifications shall constitute the CM's representation to the Owner that, based on CM's observations and professional evaluation at the Site, the data in each Application for Progress Payment, and to the best of 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 in generally in accordance with the Contract Documents for the Trade Contract subject only to results of subsequent tests, inspections and other procedures, minor deviations from requirements of the Trade Contracts correctable prior to completion and any specific qualifications expressed by CM in its certification. CM's issuance of a Certificate pursuant to the preceding shall be a representation that the Trade

Contractor(s) is/are entitled to payment in the amount so certified. The CM's review of Applications for Progress Payment shall be undertaken and completed in a timely manner so that its Progress Payments due each Trade Contractor are disbursed within the time permitted by applicable law without incurring interest liability or other penalties/liabilities. Construction payments will have a ten percent (10%) retention authorized until Trade Contractor's work has been formally accepted per Public Contracts' Code.

4.3.2 Owner Disbursement of Progress Payments. The Owner shall disburse proceeds to the CM due for progress payments due Trade Contractors under a Trade Contract upon the CM's presentation of: (a) the Trade Contractor's request for payment; (b) documentation supporting the Trade Contractor's payment request; and (c) the verification/certification from the CM, Architect and Inspector of the amount due the Trade Contractor on such payment request, based on the applicable provisions of the Trade Contract. Within twenty (20) calendar days, or such other time as mutually agreed by the parties, of the date of the CM's submission of all of the foregoing to the Owner, the Owner shall make payment to the CM of the amount verified by the CM, Architect and Inspector as being due the Trade Contract, except to the extent that the Owner's payment of such amount or any portion thereof is: (a) subject to withholdings for Stop Notice, Prevailing Wage Rate violations or other withholdings of payment(s) due the Trade Contract under the terms of the Trade Contract or by operation of law; or (b) in excess of the GMCC as that term is defined herein. Within ten (10) calendar days, or such other time as mutually agreed by the parties, of its receipt from the Owner of a payment designated for a Trade Contractor, the CM shall disburse the same to the Trade Contractor.

4.3.3 Form and Timing Of Submission And Disbursement. The CM shall implement a process pursuant to which it collects all of the Trade Contractor's applications for payment for a given month and submits a single itemized statement to the Owner, no later than the 30th day each month. This statement shall identify the cumulative amount of Trade Contractor billings for which the Owner will issue a check to the CM. The Owner shall issue a check to the CM for the total amount identified in the statement within fifteen (15) days of receipt. The CM will then be responsible for making the payments to the individual Trade Contractors. The statement will also include a separate itemized billing for the compensation due to the CM for its services. Prior to seeking payment for any CM services related to the Trade Contractors, the CM shall compile all of the available Schedule of Values submitted by the Trade Contractors and prepare for the Owner's review and approval a Master Schedule of Values including all of the Trade Contractors. The Owner shall use this Master Schedule of Values to disburse all payments, but will issue the payments due only to the CM by separate check. CM shall ensure that all such progress payments for Trade Contractors are timely made under applicable law, which requires that payment be made within thirty (30) days of a properly submitted, undisputed payment request pursuant to Section 20104.50 of the Public Contract Code. The CM shall indemnify the Owner against any and all claims arising from or related to the failure of the CM to comply with the prompt payment requirements under the Public Contract Code unless the Owner makes payment to the

CM after thirty (30) days and the Owner's late payment results in the CM receiving payment designated for a Trade Contractor from the Owner, thirty (30) days after the CM's Application for Progress Payment.

4.4 Substantial Completion; Punchlist. Upon the Architect issuing a Certificate of Substantial Completion for a Trade Contract, the CM shall inspect the Work of the Trade Contract to verify the Trade Contractor's achievement of Substantial Completion. If upon such inspection, the CM determines that notwithstanding the Architect's issuance of the Certificate of Substantial Completion the Trade Contractor has not achieved Substantial Completion, the CM shall: (a) meet and confer with the Architect to address/resolve differences between the CM and the Architect; (b) notify the Owner in writing of its determination; (c) identify the portions of the Work of the Trade Contract to be completed in order for Substantial Completion to be achieved; and (d) set forth recommendations to the Owner for measures to secure Substantial Completion of the Trade Contract. If authorized by the Owner, the CM shall enforce measures necessary to achieve Substantial Completion of a Trade Contract.

4.5 Project Progress.

4.5.1 Master Project Schedule. CM shall, within thirty (30) days, or such other time as mutually agreed by the parties, of the Assignment of Trade Contracts, develop an overall comprehensive Project Schedule for construction of the Project showing the activities of each of the Trade Contractors necessary for completion of Project construction ("Master Project Schedule") which is consistent with the Owner's objectives for completing Project construction. CM will incorporate the Trade Contractors' separate Construction Schedules into the Master Project Schedule to the extent that the same do not impair the Owner's time objectives for completing Project construction. During the course of Project construction and based upon Trade Contractors' updated Construction Schedules, CM shall monitor and update the Master Project Schedule on a monthly basis or more frequently as may be requested from time-to-time by the Owner so that the Owner is kept fully informed at all times of the status and progress of overall Project construction and the status of each Trade Contractors' construction progress. Where the actual rate of Project construction progress is behind that indicated by the Master Project Schedule, CM shall advise and make recommendations to the Owner for remedial action. The CM shall implement and enforce remedial measures as authorized by the Owner.

4.5.2 Trade Contractors' Schedules. CM shall review the Trade Contractors' Construction Schedules and updates thereof, advising the Owner of compliance with the terms of the Trade Contract along with remedial measures appropriate to obtain compliance if necessary. The CM shall implement and enforce remedial measures as authorized by the Owner.

4.5.3 Coordination of Construction Activities. CM shall coordinate the activities of the Trade Contractors with each other and those of the CM, the Architect, Inspector, Test/Inspection Service Providers, others and the Owner in conformity with the Master Project Schedule, including the coordination and sequencing of Trade Contractors'

construction activities so that Site space is appropriately allocated and the progress of construction per the Master Project Schedule is maintained. Material obligations of the CM under this Agreement are scheduling, coordination and sequencing the activities of the Trade Contractors in a manner so that Project construction is completed in accordance with the Guaranteed Maximum Construction Cost/ Guaranteed Completion Date (GMCC/GCD), as more particularly described herein.

4.5.4 Progress Records. CM will maintain records of the progress of Project construction, including written progress reports and photographs reflecting the status of Project construction and percentage completion and submitted to the owner monthly. CM will maintain daily records during Project construction showing weather conditions, Trade Contractors and their Subcontractors at the Site, work accomplished under each Trade Contract, problems encountered and other matters materially affecting the Project, completion of the Project or Construction Costs.

4.5.5 Final Completion. Upon the Inspector and/or the Architect issuing a Certificate of Final Completion for a Trade Contract, the CM shall inspect the Work of the Trade Contractor and confirm that the Trade Contractor has fully complied with all requirements of the Trade Contract relating to the Work and the Trade Contractor's other obligations under the Trade Contract and that Final Completion under the Trade Contract has been achieved. If upon such inspection and confirmation, the CM determines that notwithstanding the Certificate of Final Completion issued by the Inspector or the Architect, the obligations of the Trade Contractor under its Trade Contract have not been fully performed in accordance with the terms of the Trade Contract and that Final Completion has not been achieved, the CM shall: (a) meet and confer with the Architect/Inspector to address and resolve differences concerning final completion; (b) notify the Owner in writing of its determination; (c) identify the portions of the Work of the Trade Contract or other obligations of the Trade Contractor to be completed in order for Final Completion to be achieved; and (d) set forth recommendations to the Owner for measures to secure Final Completion of the Trade Contract. If authorized by the Owner, the CM shall enforce measures necessary to achieve Final Completion of the Trade Contract. Upon determining that Final Completion of a Trade Contract has been achieved, the CM shall issue its Certificate of Final Completion for that Trade Contract, as applicable.

4.6 Site Observations.

4.6.1 CM On-Site. During Project construction and at all times during which there are construction activities under the Trade Contracts at the Site, CM shall have its Project Manager or Field Superintendent at the Site, to observe, coordinate and manage the activities of the Trade Contractors. CM shall maintain at the Site the Trade Contracts, Drawings, Specifications, approved Change Orders, Submittals, applicable codes, rules and regulations and other written or electronic materials relating to the District Project.

4.6.2 Construction Quality. The CM shall guard the Owner 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 Trade Contractors for conformity with: (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; or (c) and the requirements of the Trade Contracts. The CM shall, without adjustment of the Contract Price hereunder or the GMCC (as that term is used and defined herein) be responsible and liable for the correction of any portion of the Project installed or constructed by a Trade Contractor which is not in conformity with: (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; or (c) the requirements of the Trade Contract.

4.6.3 Site Safety.

4.6.3.1 General. The CM shall develop and implement Site safety programs as necessary to comply with applicable law, code, rule or regulation and as appropriate for the Site.

4.6.3.2 Owner's Safety Program or Requirements. Prior to any Trade Contractor's performance of Work at the Site, the CM Shall review the Owner's safety program or safety requirements, if any, meet and confer with the Owner's Representatives to review the Owner's safety program/requirements and to incorporate the same into the CM's Site safety programs.

4.6.4 Site General Conditions. At all times during construction activities at the Site, the CM shall provide or cause to be provided the items of personal property and services identified in Exhibit A (General Conditions Items) attached to this Agreement. The items and services identified in Exhibit A are included in the General Conditions Costs portion of Contract Price set forth in this Agreement.

4.6.5 Storm Water Pollution Prevention Plan (SWPPP). CM will be responsible for creating and submitting a SWPPP for each applicable project based on its scope of work. If the Trade Contractor includes SWPPP in their scope of work, the CM will not be allowed to include any SWPPP cost in the CM's General Conditions.

4.7 Changes and Claims.

4.7.1 Coordination of Changes. The CM acknowledges that Changes to the scope or Work of a Trade Contract during construction of the Project are likely to increase the Project Construction Costs, extend time for completing Project construction and prevent the Owner from realizing its Project objectives. Accordingly, the CM acknowledges and agrees that a material obligation of the CM under this Agreement is management of circumstances which may give rise to a Change to a Trade Contract in a manner so that only necessary Changes are implemented and that the costs/time for implementation of necessary Changes are minimized. CM shall coordinate and disseminate correspondence, drawings and other written materials by and between the Trade Contractors, the Owner, Owner's Representatives, Inspector, Test/Inspection Service Providers and the Architect relating to Changes to the Trade Contracts. CM shall coordinate and oversee the Trade Contractors' performance of Changes authorized by the Owner to ensure timely and full

completion of Changes. CM will maintain a log or other written records to monitor the pendency and disposition of Changes and Change Orders to keep the Owner 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 Construction Costs or time for completion of Project construction.

4.7.2 CM Notice to Owner; Owner Decisions. Upon the CM becoming aware of circumstances which will or may require the issuance of a Change Order, the CM shall: (a) notify the Owner's Representatives of such circumstances in a prompt and timely manner taking into account the then existing circumstances of Project construction including without limitation the progress of Project construction, safety and factors affecting completion of the potential change; (b) develop, in conjunction with the affected Trade Contractor(s) and the Architect, alternative approaches to addressing the circumstances resulting in a potential change; (c) provide the Owner's Representatives with written or graphic materials describing, in detail, alternative approaches to the potential change, along with time/cost impacts of each alternative; and (d) provide the Owner's Representatives with written recommendations for the Owner's selection of an approach to address the potential Change along with a description of the basis for the CM's recommendation. Upon receipt of all of the foregoing described notices and other information, the Owner shall make timely decisions regarding authorization to proceed with a Change; the Owner's decisions shall be communicated in writing to the CM through the Owner's Representatives.

4.7.3 Processing of Changes and Change Orders. CM shall prepare Change Orders authorized by the Owner and distribute the same for execution by the Trade Contractor, Owner, Architect and Inspector. The CM is not authorized, without the prior consent and authorization of the Owner, to effectuate or authorize any Change to any Trade Contract. The CM shall be liable to the Owner for all direct and consequential costs, losses or damages resulting from the CM's direction or authorization to effectuate a Change to any Trade Contract without the prior direction and authorization of the Owner. The CM shall administer submission of Owner authorized changes to regulatory agencies with jurisdiction over such changes by the Architect/Inspector; the CM shall confirm, in writing, to the Owner's Representatives that all necessary regulatory approvals have been obtained for Owner authorized Changes; if necessary regulatory approvals have not been obtained or not obtained in a timely manner to avoid delay to Project construction and/or to avoid additional Project Construction Costs, the CM shall notify the Owner's Representatives of such circumstances along with recommendations for securing such necessary approvals.

4.7.4 Claims Handling.

4.7.4.1 General. CM shall develop a process and procedures for the review, evaluation, processing and disposition of claims asserted by Trade Contractors; CM will make recommendations to the Owner as to merit, handling and disposition of Trade Contractors' claims. The CM's obligations relating to Trade Contractor's claim shall continue notwithstanding completion of the Work under a Trade Contract or completion of Project construction, until all Trade Contractor

claims are fully and finally resolved. The CM shall ensure that its claims handling process and procedures are consistent with the claims requirements set forth in the Trade Contract documents and California law. The CM shall provide the Owner with notice and copies of all relevant claims information/documentation.

4.7.4.2 Allocation of Responsibility for Trade Contractor Claims. Liability of the CM or the Owner for Trade Contractor Claims shall be based on the overall allocation of risks for Project Construction Costs as set forth in this Agreement. The Owner shall be liable for payments of a claim asserted under a Stop Notice filed against the Project proceeds for a Trade Contract only to the extent of: (a) undisbursed proceeds for that Trade Contract at the time that a Stop Notice is filed with the Owner; (b) the Owner has directed and authorized additional Work under a Trade Contract. The CM shall immediately provide the Owner and the Owner's Legal Counsel with copies of all Stop Notices filed with the CM to ensure that Project funds are properly withheld for any valid Stop Notices, in accordance with State law.

4.7.5 Emergencies. In the event of emergency circumstances actually or potentially resulting in harm/injury to persons or property, the CM shall, without prior notice or authorization of the Owner, take such actions or direct such actions by Trade Contractors as necessary to prevent or mitigate harm/injury to persons or property.

ARTICLE 5: POST-CONSTRUCTION PHASE

5.1 Review and Transmittal of Trade Contractor Close-Out Documents. The CM shall receive from the Trade Contractors the close-out documents and items to be submitted by each Trade Contractor under the terms of their respective Trade Contracts upon completion of obligations under a Trade Contract. The CM shall, in conjunction with the Architect, review each Trade Contractor's close-out submittals to determine conformity with requirements of each Trade Contract; if the CM determines that any Trade Contractor's close-out submittals are not in conformity with requirements of the Trade Contract, the CM shall take necessary actions to secure compliance with the requirements of the Trade Contract. Within ten (10) calendar days, or such other time as mutually agreed by the parties, of receipt from a Trade Contractor, the CM shall deliver to the Owner's Representatives all of the Trade Contractor's close-out submittals, except for the Trade Contractor's as-built drawings which the CM shall transmit to the Architect for the Architect's preparation of the Record Drawings.

5.2 CM Project Records. Within thirty (30) calendar days, or such other time as mutually agreed by the parties, of the date of issuance of a Certificate of Final Completion for a Trade Contract, the CM shall assemble and deliver to the Owner all of the Project records maintained during the Construction Phase by the CM relating to the Trade Contract. Notwithstanding any provision of this Agreement to the contrary or any provision of law to the contrary, all documents, work product, whether of a tangible or intangible nature, whether in draft or final form and whether recorded in writing or any other medium,

including without limitation, electronic files relating to the District Project or this Agreement are the sole and exclusive property of the Owner.

- 5.3 Trade Contractors' Post-Construction Obligations.** If any Trade Contractor is obligated under the terms of its Trade Contract to provide work, labor materials or services after completion of Project construction, the CM shall manage Trade Contractors' post-construction activities for conformity with requirements of the Trade Contract. The CM shall secure Trade Contractors' compliance with their respective post-construction obligations, including, but not limited to, assisting the Owner in enforcement of its warranty rights against the Trade Contractors after the filing of the Notice of Completion, and throughout the entire time period that the Owner possesses such warranty rights pursuant to the Trade Contracts..
- 5.4 Project Reports.** The CM shall monitor the filing of DSA reports and other actions required by applicable law, rule or regulation to be undertaken by the Architect, Inspector or Trade Contractors upon completion of Project construction. If the Architect, Inspector or any Trade Contractor have not filed reports or taken other actions required upon completion of Project construction, the CM shall secure compliance by the Architect, Inspector or a Trade Contractor with regard to such requirements. The CM will assist the Owner in completion of actions to be undertaken by the Owner upon completion of Project construction, including without limitation preparation of Notices of Completion for each Trade Contract.
- 5.5 Project Closeout.** The CM shall assist the Owner and Architect in preparing and filing all documentation necessary to closeout the Project with DSA and the Office of Public School Construction (OPSC) and to obtain final DSA approval and certification.

ARTICLE 6: CM COMPENSATION

- 6.1 Contract Price for Basic Services.** The Contract Price for the CM's performance of the Basic Services under this Agreement shall consist of the following components: (a) a lump sum fixed fee of **WHOLE DOLLARS (\$0.00)** for completion of the Pre-Construction Phase of the Basic Services ("the Pre-Construction Price"); (b) a lump sum fixed fee equal to % of the GMCC for completion of the Construction/Post Construction, Construction and Post-Construction Phases of the Basic Services ("the Bid/Construction Price"); and (c) a not to exceed amount of **WHOLE DOLLARS (\$0.00)** for the costs of General Conditions at the Site during the Construction Phase of the Project ("the General Conditions Price").
- 6.2 CM Guaranteed Maximum Construction Costs and Guaranteed Completion Date.** The CM acknowledges and agrees that the Contract Price set forth in Article 6.1 above is based in part upon the CM's guarantee to the Owner of the maximum Construction Costs for the District Project ("the Guaranteed Maximum Construction Costs" or "GMCC") and the CM's guarantee of the date of Final Completion of the District Project ("the Guaranteed Completion Date" or "GCD").

6.2.1 Establishment of GMCC; CM Preparation of Initial GMCC Statement.

Within ten (10) calendar days, or such other time as mutually agreed by the parties, of the date of this Agreement, the CM shall submit to the Owner's Representatives a written statement setting forth the GMCC proposed by the CM ("the Initial GMCC Statement") based upon the Design Documents current as of the date of this Agreement. The Initial GMCC Statement shall include: (a) confirmation that the scope of the Project for which the GMCC is submitted is identical to the scope of the Project as bid by the Trade Contractor (if Alternate Bid Items are included in Trade Contractors awarded by the Owner, a confirmation that the Initial GMCC is inclusive of all Alternate Bid Items); (b) identification of items, if any, included in the scope of the Project and the Initial GMCC on the basis of an allowance amount rather than a fixed price amount (the statement shall specifically identify the amount of allowance allocated for each identified allowance item); (c) assumptions, if any, made by the CM in arriving at the Initial GMCC which are not expressly set forth in the Design Documents; and (d) the date of Final Completion of construction of the District Project. The CM's preparations of the Initial GMCC Statement in accordance with the foregoing and within the time set forth above are material obligations of the CM under this Agreement.

6.2.2 Costs Excluded From GMCC. The following costs are excluded from the GMCC, all of which shall be paid directly by the District:

- (a) fees, costs or expenses paid to the Architect and its Design Consultants,
- (b) costs of salaries and benefits paid to Owner employees engaged in connection with the Project,
- (c) costs, fees or expenses paid to the Inspector,
- (d) costs, fees or expenses paid to Test/Inspection Service Providers,
- (e) costs or fees for obtaining permits or approvals (except to the extent included in the scope of a Trade Contract awarded by the Owner), and
- (f) costs, expenses or fees of Design Consultants and other consultants retained by the District in connection with the Project ("District Consultants").

6.2.3 District Review of Initial GMCC Statement. Within ten (10) calendar days, or such other time as mutually agreed by the parties, of the Owner's Representatives receipt of the Initial GMCC Statement, the Owner's Representatives will review and advise the CM in writing of objections, if any, of the Owner to any portion of the Initial GMCC Statement. If the Owner's Representatives notify the CM of any Owner objections to the Initial GMCC Statement, within ten (10) days, or such other time as mutually agreed by the parties, thereafter, the Owner and CM shall meet and confer in good faith to resolve objections interposed by the Owner and to reach mutual agreement as to the entirety of the Initial GMCC Statement.

6.2.4 Final GMCC; Final GCD. Within ten (10) calendar days, or such other time as mutually agreed by the parties, after the CM's completing its review of all Bid Proposals for all Bid Packages and the CM's determination of the identity of the responsible bidder submitting the lowest priced Bid Proposal for each Bid Package, the CM shall prepare and deliver to the Owner's Representatives a written statement setting forth the Final

GMCC and the Final GCD for the District Project for review and acceptance by the Owner. Within ten (10) calendar days, or such other time as mutually agreed by the parties, of the Owner's Representatives' receipt of the CM's proposed Final GMCC and Final GCD, the Owner's Representatives shall advise the CM of acceptance of the same or modifications thereto necessary for the Owner's acceptance. The CM shall include certification in writing that the GMCC includes all Construction Costs and costs associated with the Contract Price necessary to complete and deliver the Project. If the Owner's Representatives advise the CM of any modifications to the CM's proposed Final GMCC or its proposed Final GCD, the CM and Owner's Representatives shall meet and confer in good faith to address and fully resolve any objections or the CM to the Owner's modifications to the CM's proposed Final GMCC or its proposed Final GCD. Upon mutual agreement between the Owner and the CM concerning the Final GMCC and the Final GCD, the Owner and the CM shall execute an amendment to this Agreement setting forth the Final GMCC and the Final GCD ("the GMCC Amendment").

6.2.5 Adjustments to Final GMCC during Construction Phase. The GMCC reflected in the GMCC Amendment prepared pursuant to this Agreement shall not be modified during the Construction Phase except in the event of the following circumstances: (a) the Owner directs and authorizes a Change to a Trade Contract which is related solely to Owner discretionary/initiated changes (the foregoing excludes any Changes resulting from the acts, errors, omissions or other willful misconduct of the CM, including, but not limited to any errors or omissions in the Design Documents which the CM, exercising its professional standard of care, should have identified in its constructability review.); (b) unanticipated field conditions which could not be reasonably foreseeable by the CM are encountered under a Trade Contract which requires Changes to the Trade Contract;. (c) Changes to a Trade Contract are directed by a governmental agency with jurisdiction over the Project or portions thereof, which could not be reasonably foreseen or anticipated by the CM at the conclusion of the Pre-Construction Phase of Basic Services under this Agreement; (d) Changes to a Trade Contract are necessitated by amendment(s) or enactment(s) of laws, rules, ordinances or regulations applicable to the Project or portions thereof which could not be reasonably anticipated or foreseen by the CM at the conclusion of the Pre-Construction Phase of Basic Services; or (e) Changes to a Trade Contract resulting from emergencies not caused, in whole or in part, by the acts, omissions or other conduct of the CM or its employees, agents or representatives. Adjustments to the Final GMCC shall be reflected in a written amendment to the GMCC Amendment duly executed by the Owner and the CM ("GMCC Adjustment Amendments"). Notwithstanding any adjustments to the GMCC pursuant to the foregoing, the Contract Price for Basic Services under this Agreement shall not be modified.

6.2.6 Adjustment to GCD during Construction Phase. The GCD shall be subject to amendment during the Construction Phase only if: (a) the Final GMCC is modified in accordance with this Agreement and the modified GMCC directly affects the time for completion of Project construction; (b) the Owner directs or authorizes the suspension of construction of the Project as a whole, or suspension of construction under any Trade Contract and such directive or authorization actually delays Final Completion of the

Project; (c) the Owner directs or authorizes delays to construction of the Project as a whole or delays to construction under any Trade Contract and such directive or authorization actually delays Final Completion of the Project; or (d) completion of construction of the Project is delayed by the acts or omissions of the Owner or its employees, agents or representatives (excluding delays caused by the acts, errors, omissions or other willful misconduct of the CM, including, but not limited to any errors or omissions in the Design Documents which the CM, exercising its professional standard of care, should have identified in its constructability review). Adjustments to the GCD on account of a circumstance described above shall be reflected in GMCC Adjustment Amendments duly executed by the Owner and the CM.

6.2.7 CM Notice of Adjustments to GMCC or GCD. An express condition precedent to any obligation of the District to consider or to adjust the Final GMCC or the Final GCD is the CM's delivery of written notice to the District no more than ten (10) days following the CM's initial awareness of a circumstance which the CM believes is justification for adjustment of the Final GMCC or Final GCD. The failure of the CM to deliver written notice to the District of the occurrence of circumstances the CM believes is justification for modification of the Final GMCC or the Final GCD shall be deemed the CM's waiver of any right to modification of the Final GMCC or the Final GCD for such circumstances, if the District suffers actual prejudice by lack of notice. If the CM provides such written notice, the District shall thereafter promptly consider the request and equitably adjust the Final GMCC or the Final GCD, as applicable. If the source or nature of a basis for adjustment of the Final GMCC or the Final GCD is on-going, the CM's delivery of written notice within the time set forth above after the Initial awareness of such event shall be deemed sufficient notice.

6.2.7.1 GMCC Adjustments. If the CM has provided written notice in strict conformity with the foregoing, the extent of adjustment of the Final GMCC shall be equal to the amount of the adjustment of the Contract Price of the Trade Contract(s) affected by the circumstances set forth in Paragraph 6.2.5 of this Agreement.

6.2.7.2 GCD Adjustments. The GCD shall be adjusted only to the extent that Final Completion of Project construction is or will be delayed by circumstances justifying adjustment of the Final GCD, as forth in this Agreement. The CM acknowledges and agrees that the adjustment of Contract Time under a Trade Contract which does not have an effect on the Final Completion of the Project shall not be a basis for adjustment of the Final GCD.

6.2.8 Mutual Contingency. In addition to the amount of the Final GMCC, upon mutual agreement of the Owner and the CM on the amount of the Final GMCC, the CM and Owner shall establish a contingency amount equal to XX percent (0%) of the Final GMCC ("the Mutual Contingency"). The mutual contingency shall be used and expended for unforeseen site conditions and for changes evaluated on a case-by-case basis as agreed to by the Owner and CM if such changes are determined to have been unreasonable to foresee and are not included in the CM's Constructability Review ("Site

Conditions and Changes). If agreed, the mutual contingency shall be used to pay for additional construction costs necessarily incurred to address and resolve such unforeseen site conditions and changes. All such costs reflected in Owner approved Change Orders to Trade Contractors relating to such unforeseen Site Conditions shall be deducted from the Mutual Contingency until the Mutual Contingency is exhausted. The foregoing notwithstanding, no portion of the Mutual Contingency may be applied to costs arising out of unforeseen site conditions and changes at the Site unless approved by the Owner. Any portion of the Mutual Contingency applied to costs arising out of unforeseen Site conditions and changes shall be reflected in a written instrument duly executed on behalf of the CM, Architect, DSA and Owners as necessary Costs for addressing and resolving such unforeseen site conditions and changes which exceed the Mutual Contingency shall be funded by the Owner. If upon Final Completion of the Project there is any remaining balance of the Mutual Contingency, the remaining balance shall be allocated seventy percent (70%) to the Owner and thirty percent (30%) to the CM. In such event, the Owner will make payment of the portion of the remaining balance of the Mutual Contingency due the CM within thirty (30) calendar days, or such other time as mutually agreed by the parties, of the date of Final Completion of the Project.

6.2.9 CM Responsibility for Construction Costs Exceeding Final GMCC. If the Project Construction Costs exceed the Final GMCC, including all adjustments thereto in accordance with this Agreement, the CM shall be solely responsible for all Construction Costs exceeding the Final GMCC, as adjusted. If a Change Order, or portion thereof, is authorized by the Owner and issued for any purpose other than the circumstances set forth in Paragraph 6.2.5 of this Agreement, within thirty (30) calendar days, or such other time as mutually agreed by the parties, of the issuance of such Change Order, the CM shall deposit with the Owner the amount of each such Change Order attributable to circumstances other than those described in Paragraph 6.2.5 of this Agreement. The CM's timely and complete deposit of funds pursuant to the foregoing is a material obligation of the CM under this Agreement.

6.2.10 CM Responsibility for CM Caused Delays. If Final Completion of the Project occurs after the GCD (including adjustments to the GCD in conformity with this Agreement) and such delay is caused by the CM, the CM acknowledges and agrees that the District will sustain losses, damages and costs which are extremely difficult to fix and ascertain. Accordingly, if Final Completion of the Project is not achieved within the GCD (including adjustments thereto) due to acts, omissions or other conduct of the CM, the CM agrees to pay to the Owner as damages and not a penalty, the amount of Three Thousand Dollars (\$3,000) per calendar day beyond the adjusted GCD date until Final Completion of the Project is achieved ("CM Liquidated Damages"). If acts or omissions of the CM cause Final Completion of the Project not to be achieved as of the applicable GCD and there is any remaining balance of the Contract Price for Basic Services held by the Owner at such time, the Owner may thereafter withhold disbursement(s) of the Contract Price for Basic Services and General Conditions otherwise due the CM under this Agreement, such withheld amounts will be credited to any balance due the Owner from the CM. If after application of the credit balance described in the preceding sentence or if there is no remaining balance of the Contract Price for Basic Services or if

the Owner elects not to exercise its rights under this Agreement to withhold the Contract Price from payment to the CM, there is any amount of CM Liquidated Damages due from the CM to the Owner, the CM shall make full payment of such amount within thirty (30) calendar days, or such other time as mutually agreed by the parties, of the District's demand therefor. The CM's obligations hereunder are material and shall survive termination of the Agreement or completion of Project construction.

6.3 District Payments of the Contract Price.

6.3.1 CM Monthly Payment Requests.

6.3.1.1 Payment of the Pre-Construction Price. Upon completion of all Pre-Construction Phase obligations, the CM shall submit an invoice to the Owner for payment of the entirety of the Pre Construction Price.

6.3.1.2 Payment of Construction/Post-Construction Price. Commencing in the month in which the CM issues the first Notice to Proceed to a Trade Contractor, and in each month thereafter until the Project is completed, CM shall submit to Owner on forms approved by Owner a written request for payment of the remaining Construction/Post Construction Price with such supporting data as Owner may request, covering the amount of the Project work then completed. Unless specified otherwise, such request and supporting data shall be submitted by CM so that it is received by Owner no later than the last day of the month preceding the month in which payment will be made. Upon Owner's approval, Owner will make a progress payment of the Construction/ Post Construction Price to the CM in the amount of ninety per cent (90%) of the estimated value of the Project work performed through the date of the payment request.

6.3.1.3 Payment of General Conditions Price. Commencing in the month in which the CM issues the first Notice to Proceed to a Trade Contractor, and in each month thereafter until the Project is completed, CM shall submit to Owner on forms approved by Owner a written request for payment of the remaining General Conditions Price with such supporting data as Owner may request, covering the amount of the Project work then completed. Unless specified otherwise, such request and supporting data shall be submitted by CM so that it is received by Owner no later than the last day of the month preceding the month in which payment will be made. Upon Owner's approval, Owner will make a progress payment of the General Conditions Price prorated over the term of the GCD to the CM in the amount of ninety per cent (90%) of the estimated value of the Project work performed through the date of the payment request.

6.3.2 District Payments of Contract Price. Within thirty (30) calendar days, or such other time as mutually agreed by the parties, of the date of the District's receipt of CM's billing invoices, District will make payment to CM of undisputed amounts of the Contract Price due for Basic Services, authorized Additional Services, General Conditions costs and Allowable Reimbursable Expenses. No deductions shall be made or

withheld from payments due CM hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Architect or any Trade Contractor. The District may, however, withhold or deduct from amounts otherwise due CM hereunder if 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 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.

ARTICLE 7: INSURANCE AND INDEMNITY

7.1 CM Insurance.

7.1.1 Workers' Compensation and Employer's Liability Insurance. CM shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts under which CM may be liable. 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 CM. The Employer's Liability Insurance required of CM hereunder may be obtained by CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by CM hereunder.

7.1.2 Commercial General Liability and Property Insurance. CM shall purchase and maintain Commercial General Liability and Property Insurance as will protect CM from the types of claims set forth below which may arise out of or result from CM's services under this Agreement and for which CM may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than CM's employees; (ii) 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 CM, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) 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; (v) contractual liability insurance applicable to CM's obligations under this Agreement; and (vi) for completed operations. The Owner shall each be an additional named insured to CM's Commercial General Liability insurance policy.

7.1.3 Professional Liability Insurance. CM will procure and maintain professional liability insurance covering claims arising out of the performance of services under this Agreement.

7.1.4 Coverage Amounts. Minimum coverage amounts for policies of insurance

obtained by the CM hereunder shall be as follows:

| Insurance Policy | Minimum Coverage Amount |
|---|--|
| Worker's Compensation | In accordance with applicable law |
| Employer's Liability | One Million Dollars (\$1,000,000) |
| Commercial General Liability (including coverage for automobile liability and property casualty) | Two Million Dollars (\$2,000,000) per occurrence; Two Million Dollars (\$2,000,000) in the aggregate and Five Million Dollars (\$5,000,000) umbrella excess liability |
| Professional Liability | Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate |

7.1.5 Policy Endorsements; Evidence of Insurance. CM shall deliver Certificates of Insurance to the Owner's Representatives which evidence each of the policies of insurance in the minimum coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) authorized to issue insurance by the State of California and to the reasonable satisfaction of the Owner. Coverages under each policy of insurance, whether by endorsement or otherwise, shall provide that such policy will not be materially modified, canceled or allowed to expire without at least thirty (30) calendar days, or such other time as mutually agreed by the parties, advance written notice to the Owner. All policies shall contain a provision stating that the CM's policies are primary insurance and that the insurance of the Owner or any other named insured shall not be called upon to contribute to any loss. All policies shall have a project specific aggregate.

7.1.6 Builders Risk Insurance. During the progress of construction of the Project, the Owner or CM shall obtain and maintain one or more policies of Builder's Risk Completed Value Insurance covering all insurable work of the Project, including extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, acts of civil authorities, collapse and flood, to the full insurable value of the work of the Project and coverage for work of the Project whether in progress or completed. The Owner and CM waive all rights against the other, the Architect, and the Trade Contractors for damages caused by perils covered by insurance obtained under this provision. The policy (ies) of Builders Risk Insurance shall contain express waivers of subrogation by the insurer(s) issuing such policy (ies) to the extent of damages or losses covered thereunder.

If the CM obtains the Builder's Risk Insurance, the Owner will require the CM to obtain a Builders Risk Insurance policy; such policy will contain the appropriate waivers of subrogation described above. If requested by Owner, the CM shall provide Owner with three competitive quotes for the insurance of which Owner shall select one quote. Owner shall reimburse CM the actual cost of the Builder's Risk Insurance and pay all deductibles required.

7.2 District General Liability Insurance. Owner shall obtain and maintain General Liability Insurance covering Owner for claims of bodily injury, death or property damage arising out of the Project.

7.3 Indemnity.

7.3.1 CM Indemnity of Owner. CM shall indemnify, defend and hold harmless the Indemnified Parties from all claims, demands, liabilities, losses, expenses, costs, damages, actions and causes of action of any kind, type or nature including those of the Trade Contractors and other third parties arising out of this Agreement or the Project, 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 the Builders Risk Insurance obtained by the CM or Trade Contractors) and demands, damages, expenses, losses, liabilities or other claims arising out of CM's services hereunder or the negligent, willful acts omissions or other conduct of CM. The Indemnified Parties are: the District, the District Superintendent, the District's Board of Trustees, and all individual members of the District Board of Trustees and the District Board of Trustees and the employees, officers, agents and representatives of the District. The CM's obligations hereunder shall survive termination of this Agreement and the completion of obligations hereunder, until barred by the applicable statute of limitations. The CM acknowledges and agrees that it shall not assert and expressly waives assertion of any defense or diminution of its obligation to defend, indemnify and hold harmless the Indemnified Parties based upon its actions or performance as an agent of the Owner.

7.3.1.1 Notwithstanding Section 7.3.1, CM shall not be required to indemnify, defend, and hold harmless, nor shall CM be required to name as additionally insured, the Architect or Project Inspector for any and all liability resulting from architectural, design and/or engineering services.

7.3.2 Owner Indemnity of CM. The Owner shall indemnify, defend and hold harmless CM from all claims arising out of this Agreement, including without limitation, claims for bodily injury (including death) and physical property damage (other than to the work of the Project itself and property damage covered by the Builders Risk Insurance obtained by the Trade Contractors) which arise out of the negligent or willful acts, or omissions of the Owner.

ARTICLE 8: TERMINATION; SUSPENSION

- 8.1 Termination for Default.** Either the Owner or CM may terminate this Agreement upon seven (7) calendar days, or such other time as mutually agreed by the parties, advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the last day following the date of the written termination notice, unless during such seven (7) calendar day, or such other time as mutually agreed by the parties, period, the Party receiving the written termination notice shall commence to cure it 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 Owner may terminate this Agreement upon written notice to CM if: (a) CM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by 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 CM or any of CM's property on account of CM's insolvency; or (b) if CM disregards applicable laws, codes, ordinances, rules or regulations. If Owner exercises the right of termination hereunder, the amount due CM, if any shall be based upon Basic Services and General Conditions Costs incurred or provided prior the effective date of the Owner's termination of this Agreement, reduced by losses, damages, or other costs sustained by the Owner 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 Owner only after completion of the Construction Phase of the Project. CM shall remain responsible and liable to Owner for all losses, damages or other costs sustained by Owner arising out of termination pursuant to the foregoing or otherwise arising out of CM's default hereunder, to the extent that such losses, damages or other costs exceed any amount due CM hereunder for Basic Services or General Conditions Costs.
- 8.2 Owner's Right to Suspend.** The Owner may, in its discretion, suspend all or any part of the construction of the Project, work under a Trade Contract or CM's services hereunder; provided, however, that if the Owner shall suspend construction of the Project, work under a Trade Contract or CM's services hereunder for a period of sixty (60) consecutive calendar days, or such other time deem appropriate by the nature of the project, and such suspension is not caused by CM or the acts or omissions of CM, upon recession of such suspension, the Contract Price hereunder will be subject to adjustment to provide for actual costs and expenses incurred by CM as a direct result of the suspension and resumption of Project construction or construction under a Trade Contract or CM's services hereunder.
- 8.3 Owner's Termination of Agreement for Convenience.** The Owner may, at any time, upon seven (7) calendar days, or such other time as mutually agreed by the parties, advance written notice to CM terminate this Agreement for the Owner's convenience and without fault, neglect or default on the part of CM. In such event, the Agreement shall be deemed terminated seven (7) calendar days, or such other time as mutually agreed by the parties, after the date of the Owner's written notice to CM or such other time as the

District and CM may mutually agreed upon. In such event, the Owner shall make payment of the Contract Price to CM for services provided through the date of termination plus actual costs incurred by CM directly attributable to such termination plus termination costs equal to two percent (2%) of the remaining and unpaid Contract Price. Termination by the Owner pursuant to this Section (or Section 8.1) shall entitle the Owner to re-assignment of any or all Trade Contracts as described in Section 3.8.8 above.

- 8.4 CM Suspension of Services.** If the Owner shall fail to make payment of the Contract Price when due CM hereunder, CM may, upon seven (7) calendar days, or such other time as mutually agreed by the parties, advance written notice to the Owner, suspend further performance of services hereunder until payment in full is received. In such event, CM shall have no liability for any delays or additional costs of District Project construction due to, or arising out of, such suspension.

ARTICLE 9: GENERAL

- 9.1 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 CM and Owner hereunder.
- 9.2 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 either party hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by the other.
- 9.3 Notices.** Notices CM or Owner are required or desire to serve on the other shall be valid only if addressed to the other as set forth below or as modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid. Notices effectuated by personal service shall be deemed effective as of delivery of such notices. Notices effectuated by United States Mail shall be deemed effective the third (3rd) working day after deposit in the United States Mail. Notices hereunder shall be addressed as follows:

If to District:
Henry Amigable, District Bond Program Director
Southwestern College
900 Otay Lakes Road,
Chula Vista, CA 91910

- 9.4 Disputes.**

9.4.1 Continuation of CM Services. Except in the event of the Owner's failure to make undisputed payment of the Contract Price due CM, notwithstanding any disputes

between Owner and CM hereunder, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

9.4.2 Mandatory Mediation. All claims, disputes and other matters in controversy between the CM and the Owner arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. Mediation proceedings hereunder shall be conducted in San Diego County. The Owner and CM shall each bear their respective costs and expenses associated with or arising out of any mediation proceeding commenced hereunder, except that the administrative costs of the mediation proceedings and the fees/costs of the mediator(s) shall be borne equally between the Owner and the CM. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the Owner or the CM commencing judicial proceedings.

9.4.3 Jurisdiction and Venue. If any matter in controversy between the Owner and the CM is not fully and finally resolved by mediation proceedings conducted pursuant to the foregoing, such unresolved matters in controversy shall be judicially resolved. Jurisdiction and venue for judicial proceedings relating to such unresolved matters in controversy shall be the San Diego County Superior Court, Central Division.

9.5 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 herefrom, but all remaining provisions will remain and continue in full force and effect.

9.6 CM Accounting Records. CM shall maintain complete and accurate records of its personnel engaged in performing any service hereunder, personnel expenses and other General Conditions costs incurred in connection with performance under this Agreement. Records shall be maintained on the basis of generally accepted accounting principles applies consistently and shall be available for inspection or reproduction by the Owner upon the Project and the Agreement or the termination of this Agreement, CM shall maintain accounting records for five (5) years or such longer period required by applicable law, code, rule or regulation, during which time such records shall be available to Owner or as otherwise required by law, code, rule or regulation for inspection or reproduction.

9.7 Definitions.

9.7.1 Trade Contract. A Contract for Construction awarded by the Owner to a Trade contractor for the construction of a portion of the Project.

9.7.2 Trade Contractor. A Trade Contractor to the Owner under a Trade Contract awarded by the District for construction of the Project.

9.7.3 Design Documents. The Drawings, Specifications, calculations and other work product and Instruments of Service prepared by or on behalf of 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 Owner.

9.7.4 Architect. The District has chosen several Architects to provide design services to the various projects. References to the Architect include the Architect and its consultants retained to prepare or provide any portion of the Design Documents.

9.7.5 Submittals. Shop Drawings, Product Data or Samples prepared or provided by a Trade Contractor or a Subcontractor to a Trade Contractor or suppliers illustrating some portion of the work of the Project.

9.7.6 Site. The physical area for construction and activities relating to construction of the Project.

9.7.7 Project Budget. The Project Budget is the total costs allocated by the Owner for bidding and construction of the Project by the Trade Contractors, exclusive of fees and costs of the Architect, CM and other consultants of the Owner, Site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project which are not included in the scope of the Trade Contracts. The Project Budget established by the Owner may be modified by the Owner from time-to-time.

9.7.8 Construction Cost Estimates. Construction Cost Estimates are estimates of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Trade Contractors' profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Trade Contractor bids for the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the Owner in the Project Budget, if any.

9.7.9 Construction Costs. The costs of labor, materials, equipment (inclusive of the Trade Contractors' administrative costs/profit) necessary to complete construction of the Project.

9.7.10 Project Schedule. The Project Schedule is a written or graphic description prepared by the CM showing the various activities necessary to complete Project construction, and the sequencing of such activities. The Project Schedule shall incorporate each Trade Contractors' Construction Schedule.

9.7.11 Construction Schedule. A Construction Schedule is the written or graphic description of the scheduling, sequencing and interrelationships of activities necessary to complete a Trade Contract. Construction Schedules are prepared by the Trade

Contractors for review by the CM and acceptance by the District and for incorporation into the Project Schedule by the CM.

9.7.12 Construction Contract Documents. The Contract Documents issued by or on behalf of the Owner under a Trade Contract for construction of a portion of the Project. Construction Contract Documents include all modifications issued by or on behalf of the District. Unless otherwise expressly stated, references to the Construction Contract Documents are referenced to all of the Contract Documents issued for all of the Trade Contracts awarded for Project construction

9.7.13 Substantial Completion. Substantial Completion is when the Work of a Trade Contract has been completed and installed and the Work can be used or occupied for its intended purposes, subject only to minor corrections, repairs or modifications.

9.7.14 Final Completion. Final Completion is when all of the Work of a Trade Contract has been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Trade Contractor has completed all other obligations to be performed on its part under the Trade Contract.

9.8 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Owner and 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 CM. This Agreement and the following enumerated documents constitute the entirety of the Agreement: the RFP, the RFP Response, and Exhibit "A" General Conditions Items/Services. Notwithstanding incorporation of the RFP and the RFP Response herein by reference, in the event of any conflict or inconsistency between the terms of this Agreement and any provision of the RFP or the RFP Response, the terms and provisions of this Agreement shall govern and control.

9.9 Assignment or Transfer. All Services to be furnished under this Agreement shall be deemed professional services. As such, the CM shall have neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in or obligations under this Agreement without the prior written consent of the Owner.

9.10 Prohibited Interests.

9.10.1 Conflict of Interest For the term of this Agreement, no member, officer or employee of the Owner, during the term of his or her service with the Owner, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

9.10.2 Conflict of Employment. Employment by the CM of personnel on the payroll of Owner shall not be permitted in the performance of the Services, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by the CM of personnel who have

been on the Owner's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon the CM securing this or related Agreements with the Owner, is prohibited.

- 9.11 Equal Opportunity Employment.** The CM represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
- 9.12 Independent Contractor.** CM is retained as an independent contractor and is not an employee of Owner. No employee or agent of CM shall become an employee of Owner.
- 9.13 Drug/Smoke-Free Workplace.** The Owner and all Owner projects are "drug-free" and "smoke-free" workplaces and, as such, require that the CM be subject to the requirements mandated by California Government Code Sections 8350, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the CM to police and oversee its personnel on the Project. If the CM fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the Owner, the Owner may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the CM at law and/or in equity.
- 9.14 Prevailing Wages.** The CM is alerted to the requirements of California Labor Code Section 1770 et seq. and the Owner's LCP as described herein, which would require the payment of prevailing wages, where the services or any portion thereof are determined to be a public work as defined therein. The CM shall provide support to the Owner's LCP provider as requested by Owner.
- 9.15 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same Agreement.
- 9.16 Exhibits and Recitals.** All Exhibits and Recitals referenced in this Agreement and attached hereto are hereby incorporated by this reference into this Agreement.
- 9.17 Right to Employ Other Consultants.** The Owner reserves the right to employ other consultants in connection with the Project, or to perform work related to the Project with the Owner's own forces. The CM shall notify the Owner if any such independent action will in any way compromise the CM's responsibilities under this Agreement.

9.18. 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 herefrom, but all remaining provisions will remain and continue in full force and effect.

9.19 Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Owner and the CM.

9.20 Time of Essence. Time is of the essence for each and every provision of this Agreement

9.20.1. This Agreement shall commence on MONTH DATE, 2010, and shall be terminated on MONTH DATE YEAR.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date set forth above.

"District"

Southwestern Community College District

Raj K. Chopra, Ph.D.
Superintendent/President

"Construction Management"

Name
Title

Originator: Nicholas Alioto, Vice President for Business & Financial
Affairs

Account No.: