



Preparing every student to thrive in a global society.

**REQUEST FOR PROPOSALS (RFP)**

**RFP-02-17-18**

**CONSTRUCTION MANAGEMENT SERVICES**

**FOR**

**DW Infrastructure – Synthetic Turf Field,  
James Lick, Oak Grove  
Yerba Buena,  
ST Track & Field Improvements, Santa Teresa**

**August 25, 2017**

East Side Union High School District (ESUHSD) is seeking proposals from the Board approved pool of District construction management firms for full comprehensive project/construction management (CM) services for the Athletic Synthetic field Replacement at James Lick High School, Oak Grove High School, Santa Teresa High School, and Yerba Buena High School

The Proposal **must be received by 1:00 PM on September 8, 2017**, electronically submitted to Capital Purchasing Office at [CapPurchasing@esuhsd.org](mailto:CapPurchasing@esuhsd.org)

**I. Scope of Services**

The scope at James Lick, Oak Grove, and Yerba Buena High School is comprised of removing the existing synthetic turf sports field and rubber track and replace with new. The work shall consist of removal of the athletic surface down to the sub base, making necessary repairs and placing a new synthetic turf and running track system.

The football field and running track at Santa Teresa High School has experienced earth differential movement, which as resulted has uneven surfacing. A subsurface investigation report has been performed by Cleary Consultants, Inc. the scope shall consist of removing material as per the report and rebuilding the subsurface and installation of a new synthetic turf and running track system.

All sites will require replacement of fountains, fence repairs, and other accessories.

The Construction Manager shall provide services as detailed within the District's standard CM Services Agreement to manage all phases of the project (Design through closeout).

East Side Union High School District Board of Trustees

Lan Nguyen, President

Frank Biehl, Vice President

J. Manuel Herrera, Clerk

Pattie Cortese, Member

Van T. Le, Member

Chris D. Funk, Superintendent

830 N. Capitol Ave.

San Jose, CA 95133

T 408.347.5000

F 408.347.5015

[esuhsd.org](http://esuhsd.org)

Possible Project Team members to be managed by the CM firm:

- Architect/Engineer of Record:
- Geotechnical Consultant: Cleary Consultants
- Utility Locator:
- Project Inspector:
- Special Testing Lab:
- Construction Contractor:
- Others

## II. General Instructions

- Questions and Clarifications:
  - All questions and clarification regarding this RFP shall be made IN WRITING and emailed to the person listed below no later than **Thursday, August 31, 2017 by 1:00p.m.** All Emails received will be acknowledged. **RFI's will be answered by Tuesday September 5, 2017 by 1:00pm (if needed).**
    - Email: Capital Purchasing Office @ [CapPurchasing@esuhsd.org](mailto:CapPurchasing@esuhsd.org)
    - Copy: Sharon House at [houses@esuhsd.org](mailto:houses@esuhsd.org)
    - Phone: 408-347-5080 Fax: 408-347-5075
- ESUHSD is responsible only for what is expressly stated in this RFP and written addenda thereto. The District is not responsible for and will not be bound by any person not authorized to act on its behalf.
- As of the issuance date of this RFP and continuing until the date for submission of proposals, communications with ESUHSD employees pertaining to this RFP is strictly limited. Personnel representing ESUHSD will not conduct meetings, conferences or conversations, or exchange written communications with firms and/or individuals who are considering responding to this RFP. A firm whose representatives are found to be acting in any way contrary to this directive will be disqualified from entering into any contract that may result from this RFP.

## III. Concurrent Projects

Separate other projects planned to occur during the same time period include but are not limited to:

- JL Student Center & Quad Mod
- OG New Student Center & Quad Reno, OG Renovate Bld H1/H2 RR
- YB New Student Union & Quad Modernization

#### IV. Proposal Submission Information and Format

- Interested firms are requested to respond in accordance with the direction provided below. The RFP response **shall not exceed fifteen (15) pages**, excluding front and back covers, tabs and appendices for each project that is proposed.
  - Cover letter, should introduce the team and **must be signed by an authorized officer of the firm**
  - Proposed Team, provide resumes of the Key Project Personnel that will be assigned to work if your firm is selected. Indicate by Key Project team member, their respective availability.
  - Proposed Approach
  - Proposed Schedule, provide detail start to finish
  - Fee Proposal
    - Fee, provide hourly rates and breakdown fee by team member, duration by hours in schedule and hourly rate.
    - Other expenses - identify (if none, so state)
    - If project exceeds the preliminary anticipated scope and/or schedule, specify if/how firm will approach additional service consideration
  - Reference Projects, with brief and concise explanations of how those projects are representative and/or reflective of experience that is pertinent to and/or will add value to this project. Include client names, email addresses and phone numbers.
  - The firm that is awarded services under this RFP will be required to execute the District's Agreement for Construction Management Services. If RFP respondent will take issue with any portion of the Agreement, proposal should clarify with specificity any exclusion, clarifications, assumptions or concerns pertaining to the Agreement. (Attachment A)
  - Exhibit 1 – Consultant's Info Signature: **Required when submitting proposal**
  - Attachment B – Conflict of Interest Form: **Complete and sign the form and include with your proposal submission.**
- Email proposal to [CapPurchasing@esuhsd.org](mailto:CapPurchasing@esuhsd.org) Proposals received after the due date and time cannot be accepted. In the subject line of the email please type:

**“RFP-02-17-18 CM Services Response for DW Infrastructure – Synthetic Turf Field/ST Track & Field Improvements”**

- Proposal must be submitted no later than **1:00PM on September 8, 2017.**
- The Construction Management firm or firms shall, at all times during the term of the agreement, carry, maintain and keep in full force and effect, a policy or policies.

#### **Selection Process and Criteria:**

- Selection will be based on District review of respondents' proposed services and fee, qualifications and experience, past project successes and proposed project approach.
- This request does not constitute an offer of employment or to contract for services.

- The District reserves the option to reject any or all proposals, wholly or in part, received by reason of this request.
- All proposals shall remain firm for forty-five (45) days following the closing date for receipt of proposals.
- The District reserves the right to award the contract to the construction management firm that presents the proposal that, in the judgment of the District, best accomplishes the desired results.
- The District reserves the right to reject all proposals without cause.

The firm that best accomplishes the desired results will be recommended for contract award at the September 19, 2017 Board of Trustees Meeting.

## **VII Estimated Proposal and Contract Award Timeline**

- **August 25, 2017** Issuance of Request for Proposals
- **August 31, 2017 by 1:00 p.m.** Request for Information (RFI) must be submitted to Capital Purchasing - ESUHSD
- **September 5, 2017 by 1:00 p.m.** Issuance of final addenda (if needed)
- **September 8, 2017 by 1:00 p.m.** Proposals due (electronically)
- **September 19, 2017** Recommendation of contract award to the Board of Trustees
- **Fingerprinting**  
Construction Management personnel must be fingerprinted and badged prior to the commencement of work on any campus. Per Education Code §45125.1, Construction Management employees that come in contact with District pupils shall not have been convicted of a violent felony listed in Penal Code §667.5(c) or a serious felony listed in Penal Code §1192.7(c).
- **Tobacco and Drug Free Workplace Policy**  
The District and all District properties are tobacco and drug free workplaces and, as such, require that all persons on District Property be subject to the requirements mandated by California Government Code §8350, et seq. when on District sites.
- **Non-Discrimination**  
The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.

## **VIII Reservations**

With respect to this RFP, the District reserves certain rights at any time, as follows:

1. Reject any proposal without indicating any reason for such rejection;
2. Waive or correct any minor or inadvertent defect, irregularity or technical error in a proposal, or in the RFP process, or as part of any subsequent contract negotiation;
3. Request that respondents supplement or modify all or certain aspects of their proposals or other documents or materials submitted;

4. Request that respondents make an oral and/or written presentation if more information is deemed necessary;
5. Terminate this RFP and issue a new RFP;
6. Modify the selection process, the specifications or requirements for materials or services, or the content or format of the proposals;
7. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
8. Terminate failed negotiations with a respondent without liability, and negotiate with other respondents;
9. Disqualify any respondent on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other information available to the District;
10. Request that services be provided by certain staff of a respondent, or request that certain staff of a respondent be excluded from providing services as determined by the District to be in its best interest;
11. Reject a respondent's proposal where the respondent is in breach of, or in default under, any other agreement with the District;
12. Award multiple contracts if it is deemed necessary to provide the specified services.
13. Costs of preparation of proposals will be borne by the proposer.

**END OF DOCUMENT**

# Project Brief –

Project Name: DW Infrastructure – Synthetic Turf Field, Project No. F26-030-818, F26-050-818, F26-606-818/ST Track & Field Improvements, Project No. Z-070-604



## I. Project Description

The scope at James Lick, Oak Grove, and Yerba Buena High School is comprised of removing the existing synthetic turf sports field and rubber track and replace with new. The work shall consist of removal of the athletic surface down to the sub base, making necessary repairs and placing a new synthetic turf and running track system.

The football field and running track at Santa Teresa High School has experienced earth differential movement, which as resulted has uneven surfacing. A subsurface investigation report has been performed by Cleary Consultants, Inc. the scope shall consist of removing material as per the report and rebuilding the subsurface and installation of a new synthetic turf and running track system.

All sites will require replacement of fountains, fence repairs, and other accessories.

The Construction Manager shall provide services as detailed within the District's standard CM Services Agreement to manage all phases of the project (Design through closeout).

Possible Project Team members to be managed by the CM firm:

- Architect/Engineer of Record:
- Geotechnical Consultant: Cleary Consultants
- Utility Locator:
- Project Inspector:
- Special Testing Lab:
- Construction Contractor:
- Other

# Project Brief –

Project Name: DW Infrastructure – Synthetic Turf Field, Project No.  
F26-030-818, F26-050-818, F26-606-818/ST Track & Field  
Improvements, Project No. Z-070-604

**II. Budget:** Note the budgets listed for Items 1-2 below.

		<b>Project Budget</b>	<b>Construction Budget</b>
1	James Lick, Oak Grove, Yerba Buena	7,799,999.45	5,459,999.62
2	Santa Teresa	2,200,000.55	1,540,000.38
3	<b>Totals</b>	10,000,000.00	7,000,000.00

**III. Delivery Method – Piggyback or as assigned**

**IV. Schedule- Construction starts November, 2017 – construction completion  
May, 2018**

END OF DOCUMENT

## Exhibit 1 – Consultant Information/Signature Page Page 1 of 3

The Consultant shall furnish the following information. Failure to comply with this requirement will render the proposal incomplete and may cause its rejection. Please fill out the un-shaded sections in the form below. Also, additional sheets may be attached if necessary. "You" or "your" as used herein refers to the consultant's firm and any of its officers, directors, shareholders, parties and principals.

Consultant Information/Signature Page		
Firm Name		
Firm Address		
Firm Telephone		
Firm Fax Number		
Firm Email		
Type of Firm (Mark an 'X' for the appropriate one)	Individual	
	Partnership	
	Corporation	
	Joint Venture	
Firm's Tax Identification Number		
Primary Contact Name		
Primary Contact's Telephone		
Primary Contact's Email		
Are you currently or within the past five (5) years been involved in litigation with any public agency particularly any school district? (Please answer Yes or No)		
If Yes, explain, and provide case name and number:		
Have you ever failed to complete a project in the last three years? (Please answer Yes or No)		
If yes, give owner and details:		



**Exhibit 1 –  
Consultant Information/Signature Page  
Page 2 of 3**

**Consultant's Representations**

Consultant understands, agrees, and warrants:

1. That Consultant has carefully read and fully understands the information that was provided by ESUHSD to serve as the basis for submission of this proposal.
2. That Consultant has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
3. That all information contained in the proposal is true and correct to the best of Consultant's knowledge.
4. That Consultant did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Consultant in regard to the amount, terms, or conditions of this proposal.
5. That Consultant did not receive unauthorized information from: Any ESUHSD staff member or Consultant during the Proposal period except as provided for in the Request for Qualifications package, addenda thereto, or the pre-proposal conference, if applicable.
6. That by submission of this proposal, the Consultant acknowledges that ESUHSD has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Consultant and Consultant hereby grants ESUHSD permission to make said inquiries, and to provide any and all requested documentation in a timely manner.
7. That funding for any resulting contract is contingent on adequacy and availability.
8. To comply with ESUHSD's insurance provisions, to provide appropriate indemnification for ESUHSD and to hold ESUHSD harmless from Consultant's performance of the contract.
9. Receipt and acceptance of the following addenda is hereby acknowledged:

No. \_\_\_\_\_, Dated \_\_\_\_\_

No. \_\_\_\_\_, Dated \_\_\_\_\_

No. \_\_\_\_\_, Dated \_\_\_\_\_

**Consultant's Signature**

**No Proposal shall be accepted which has not been signed in ink in the appropriate space below:**

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

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

Corporate Seal If applicable
---------------------------------------

**Exhibit 1 –  
Consultant Information/Signature Page  
Page 3 of 3**

---

Signature

Date



## CONFLICT OF INTEREST STATEMENT East Side Union High School District (Consultants)

**[This form must be filled out, signed, dated and submitted by all persons seeking to serve as a consultant to the District]**

Board Policy 3600 of the East Side Union High School District provides in part:

“Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend the consultant's employment.”

The Superintendent has determined that all persons seeking to serve as a consultant to the District shall fill out truthfully, sign, date and submit this Conflict of Interest Statement prior to performing any consultant work or services for the District.

I, \_\_\_\_\_ [NAME OF CONSULTANT], hereby certify the following:

1. I am not an employee of the District.
2. Within the past year I have not been a member of the District Board of Trustees of the District.
3. Neither I nor any member of my immediate family (includes parent, spouse, domestic partner, or child) or member or resident of my household is a member of the District's Citizens Bond Oversight Committee for the District's Measure G or Measure E bond programs.
4. Within the past year I have not provided or made, and will not provide or make, any promise of any gift<sup>1</sup> of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a “**Responsible Employee**”), except:

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

<sup>1</sup> “Gifts” do not include promotional or advertising items such as calendars, desk pads, notebooks and other office items valued less than \$25.00 and which are of the type usually offered by business concerns free of charge to all as part of their public relations programs.



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5. I do not employ or retain, and will not employ or retain, any current District **Responsible Employee** as a consultant, independent contractor or employee during the term of my consultancy agreement with the District.

6. I am authorized to make, and do make, this certification on behalf of \_\_\_\_\_  
[CONSULTANT].

The foregoing certifications are true and correct. I make this certification under penalty of perjury under the laws of the State of California.

Signature of Consultant

---

Signature Date

---

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

**BETWEEN**

**EAST SIDE UNION HIGH SCHOOL DISTRICT**

**AND**

**CM Firm**

**[Date]**

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## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2017 between the East Side Union High School District ("District"), and \_\_\_\_\_ ("Construction Manager") (each a "Party", collectively "Parties"), for the following project(s) ("Project"):

[INSERT PROJECT INFO], as described in the attached Project Information Packet, which Project is part of the District's Measure "E,I, Z, F35" bond program.

### WITNESSETH:

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

#### Article 1. Responsibilities And Services Of Construction Manager

- 1.1. Scope: Construction Manager shall provide the services described herein and under **Exhibit "A"** for the Project. The parties agree that the Construction Manager's services described herein are based on an:

[INSERT PROJECT DELIVERY METHOD (e.g., Agency construction management/general contractor delivery method (Design, Bid, Build).]

Construction Manager agrees to perform corresponding services related to this delivery model as designated by the District. The parties agree that if there is a change in the designated delivery models after execution of this Agreement, Construction Manager's fee shall be equitably adjusted accordingly, positively or negatively, as agreed by the Parties after consultation and, as approved by the District's Governing Board, and this Agreement amended to incorporate such adjusted fee and delivery method.

- 1.2. Coordination: In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with the District design team and bond program manager and with persons responsible for operation of the District's Labor Compliance Program. If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language notifying the sub-consultant(s) of the District's Labor Compliance Program, if any.
- 1.3. Construction Manager's Services: Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed signed by



the District representative. Construction Manager's services will be completed in accordance with the schedule attached hereto as **Exhibit "B"**.

**Article 2. Construction Manager Staff; Conflicts of Interest**

- 2.1. The Construction Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 2.2. The Construction Manager agrees that the following key people (each a "Key Person") in Construction Manager's firm shall be associated with the Project in the following capacities:

Principal In Charge: \_\_\_\_\_  
Project Director: \_\_\_\_\_  
Project Manager(s): \_\_\_\_\_

- 2.3. The Construction Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. In either case, District shall be allowed to interview and approve replacement personnel.
- 2.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement employee from Construction Manager's staff at no cost to the District. Construction Manager shall within seven (7) work days provide a permanent replacement person acceptable to the District and who thereafter shall be a "Key Person" under this Agreement.
- 2.5. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.
  - 2.5.1. Construction Manager represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts or circumstances surrounding this Agreement that constitute a violation of said sections. Construction Manager represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Construction Manager believes any officer, agent or employee of District presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits hereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District. Construction Manager agrees to comply with all conflict of

interest codes, policies and regulations adopted by East Side Union High School District and its reporting requirements.

- 2.5.2. Construction Manager covenants that it and any approved subconsultant presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Construction Manager represents to, and agrees with, District that Construction Manager and its officers and employees have no present, and will have no future, conflict of interest between providing District the services hereunder and any interest Construction Manager and its officers and employees may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District.

### **Article 3. Schedule Of Work**

The Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit “A”** and in accordance with the schedule attached as **Exhibit “B”** as it may be modified by District in its sole discretion. Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

### **Article 4. Construction Cost Budget**

- 4.1. The Construction Manager shall have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect and the District throughout the design process and construction.
- 4.2. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s). The Construction Cost Budget does not include the compensation of the Construction Manager, the Project design professional(s), sub-consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District (not including the costs of Construction Manager’s sub-consultants as may be approved by the District.)
- 4.3. Construction Manager shall work cooperatively with the Project design professional(s) during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit “A,”** so that the construction cost of the work designed by the Project design professional(s) will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District’s written approval. The Construction Manager shall promptly notify the District if it believes the construction cost of the Project as prepared by the design professionals will exceed the Construction Cost Budget. The Construction

Manager, however, shall not perform or be responsible for any design or architectural services.

- 4.4. Evaluations of the District's Construction Cost Budget, and preliminary and detailed cost estimates prepared by the Construction Manager ("Construction Manager's Construction Cost Estimate"), represent the Construction Manager's best judgment as a professional familiar with the construction industry.
- 4.5. If the Bidding Phase has not commenced within ninety (90) days after approval of the Project by the Division of the State Architect ("DSA"), the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 4.6. If any of the following events occur:
  - 4.6.1. The lowest responsive base bid received is in excess of ten percent (10%) of the Construction Cost Budget, or
  - 4.6.2. If the combined total of base bid and all additive alternates is fifteen percent (15%) or more under the Construction Cost Budget, or
  - 4.6.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy, then the District, in its sole discretion, has one or a combination of the following alternatives:
    - 4.6.3.1. Give the Construction Manager written approval on an agreed adjustment to the Construction Cost Budget to reflect the applicable circumstances in Section 4.6.3 above.
    - 4.6.3.2. Authorize the Construction Manager to re-bid and/or re-negotiate the Project within three (3) months time (exclusive of District and other agencies' review time) at no additional cost to the District.
    - 4.6.3.3. Terminate this Agreement without further obligation by either Party.
    - 4.6.3.4. Instruct the Project design professional(s) to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding, with Construction Manager

performing cost estimating, value engineering, and/or bidding support at no additional cost to the District.

- 4.7. The Construction Cost Budget shall be reconciled with the Construction Manager's Construction Cost Estimate and adjusted at the completion of each design phase. Construction Manager shall promptly provide District with a copy of such reconciliation.

## **5. Fee And Method Of Payment**

District shall pay Construction Manager for all services under this agreement an amount equal to \_\_\_\_\_ Dollars and Cents (\$\_\_\_\_\_)

In the event of delays by DSA, the Construction Manager shall assist the Architect in providing written proof that all required DSA final close-out documentation has been submitted and received by DSA. The Construction Manager shall ensure that an electronic copy of referenced documents on CD Rom or in other acceptable electronic format shall be provided to the District. Once such written proof is provided to District's satisfaction, all remaining payments up to 97% of the contract value will be paid in full. The remaining 3% will, be retained until such time as DSA provides the District with the Project closeout Certification Letter in accordance with Exhibit "C".

- 5.1. Construction Manager shall bill its work under this Agreement on a monthly basis using an agreed upon billing format with the District and in accordance with Exhibit "D". District shall pay Construction Manager the Fee pursuant to the provisions herein and in Exhibit "C".
- 5.2. No increase in fee will be due from change orders generated during the construction period to the extent caused by Construction Manager's error, negligence or omission.
- 5.3. The Construction Manager's Fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in Exhibit "C", including, without limitation, all costs for personnel (regular and overtime), travel within two hundred (200) miles of the Project location, meals, offices and office supplies and equipment, per diem expenses, subconsultants retained by Construction Manager (with District's prior written approval), and printing, providing and shipping of deliverables in the quantities set forth in **Exhibit "A."**

## **6. Payment for Extra Work, Extra Services, or Changes**

- 6.1 District-authorized work outside of the scope in Exhibit “A” or District-authorized reimbursable not included in Construction Manager’s fee (and not included in Section 5.3 above) are “Extra Work.” Any charges for Extra Work shall be paid by the District only upon certification and satisfactory proof by Construction Manager that the claimed Extra Work/Charges were authorized in writing in advance by the District’s authorized representative and that the Extra Work has been satisfactorily completed (and that any claimed reimbursable expenses were actually incurred by Construction Manager).
- 6.2 A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Work.

## **7. Ownership Of Data; Audit of Records**

- 7.1 After completion of each Project or after termination of this Agreement, Construction Manager shall deliver to District a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all DSA closeout documents. Said Project records shall be indexed and appropriately organized for easy use by District personnel. All Project records are and shall remain at all times property of the District, whether or not those records are in the Construction Manager’s possession.
- 7.2 Construction Manager shall maintain copies of all documents and records prepared by or furnished to Construction Manager during the course of performing the services for at least three (3) years following completion of the Project, or until the Division of State Architect certifies the project as fully compliant to the approved drawings and constructed as such, whichever is longer. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting Construction Manager’s work under this Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Construction Manager shall permit District to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.

## **8. Termination Of Contract**

- 8.1. If Construction Manager fails to perform Construction Manager’s duties to the

satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs incurred as reasonably estimated to be incurred because of Construction Manager's actions, errors, or omissions that caused the District to terminate the Construction Manager.

- 8.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience, including but not limited to termination based upon suspension of the Project, or non-appropriation or non-availability of funds. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing by District to Construction Manager if there is a termination for convenience.
- 8.3. The Construction Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot reasonably be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction Manager to the District.
- 8.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 8.5. If, at any time in the progress of the Project, the Governing Board of the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the fee associated with the services provided, since the last invoice that has been paid and up to the notice of termination.

## **9. Indemnity**

- 9.1. To the furthest extent permitted by California law, Construction Manager shall defend, indemnify and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the “indemnified parties”) from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity (“Claim”), and injury or damage to property or persons, including but not limited to personal injury and/or death, to the extent that any of the above are caused in whole or in part by the willful misconduct or negligent acts, breaches, errors or omissions of Construction Manager, its officials, officers, employees, subcontractors, consultants or agents directly or indirectly arising out of, connected with, or resulting from the performance of the services, the Project, or this Agreement.
- 9.2. Construction Manager shall immediately pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Construction Manager shall also reimburse District for the cost of any settlement paid by District arising out of any Claims. Construction Manager shall reimburse the indemnified parties for any and all legal expenses and costs, including expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by the above agreement to indemnify. Construction Manager’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties. District shall have the right to accept or reject any legal representation that Construction Manager proposes to defend the indemnified parties.

## **10. Fingerprinting; Conduct**

- 10.1. Unless the District has determined pursuant to Education Code section 45125.2 that on the basis of scope of work in this Agreement of this Project, that Construction Manager and its subcontractors and employees will have only limited contact with pupils, the Construction Manager shall comply with the provisions of Education Code section 45125.01 regarding the submission of employee fingerprinting to the California Department of Justice and the completion of criminal background investigations of its employees. Construction Manager shall not permit any employee to have any contact with District pupils until such time as the Construction Manager has verified in writing to the Governing Board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Construction Manager’s responsibility shall extend to all employees, agents, and employees or agents of its subcontractors regardless of whether those persons are paid or unpaid or acting as independent contractors of the Construction Manager. Verification of compliance with this section and the Fingerprinting/Criminal Background Investigation Certification (**Exhibit “D”**) shall be provided in writing to the District prior to each individual’s commencement of employment or participation on the Project and prior to permitting contact of any kind with may District student.

Construction Manager shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d). In such event and after written notice by District, Construction Manager and its employees and subconsultants working on the Project shall comply with the requirements of section 45125.2 in a manner reasonably acceptable to District.

- 10.2. No drugs, alcohol and/or smoking or use of any tobacco products are allowed at any time in any buildings and/or grounds on District property.

## **11. Responsibilities Of The District**

- 11.1. The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.
- 11.2. The District shall provide to the Construction Manager complete information regarding the District's requirements for the Project.
- 11.3. If the District observes or otherwise becomes aware of any fault or defect in the Project or the Construction Manager's services, or any nonconformity with the construction and contract documents that the District intends to use with contractor(s) for the Project ("Contract Documents"), the District shall give prompt notice thereof to the Construction Manager; failure to give such notice shall not be deemed to be a waiver.
- 11.4. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s), which the District shall provide to the Construction Manager at the Construction Manager's request.
- 11.5. At the request of the Construction Manager, sufficient copies of the Contract Documents shall be furnished by the District (at District's expense) to the Construction Manager to permit the timely performance of services.
- 11.6. The District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties to recommend or provide same.
- 11.7. The District, its representatives, and consultants shall communicate with the Contractor either directly or through the Construction Manager.



- 11.8. The District shall send to the Construction Manager and shall require the design professional(s) to send to the Construction Manager, copies of all notices and communications sent to or received by the District or design professional(s) relating to the Project. During the Construction Phase of the Project, the District may require that the Contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 11.9. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.
- 11.10. The Construction Manager, its agents, subconsultants and employees shall have no responsibility for and the District agrees to bring no claim against the Construction Manager, its agents, subconsultants and employees, relating to the investigation, detection, abatement, replacement, or removal of asbestos material, or relating to sudden or gradual escape or release of hazardous contaminants of any kind into or upon the land, the atmosphere, or any water course or body of water ("Hazardous Material Work"), except claims that:
- 11.10.1. Arise out of the negligence or willful misconduct of the Construction Manager, its agents, employees or subconsultants; or
  - 11.10.2. Relate to the Construction Manager's administration of Hazardous Material Work done by others.

## **12. Liability Of District**

- 12.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 12.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays or breach of Construction Manager in its performance hereunder, shall be paid to District by Construction Manager as provided for herein and/or under California law.
- 12.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.

- 12.4. Construction Manager hereby waives any and all claims for recovery from District of any losses or damages which may arise under this Agreement, which loss or damage is covered by insurance required under this Agreement or otherwise available to Construction Manager. Construction Manager agrees to have its insurance required hereunder endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid or expense incurred, by Construction Manager's insurance company(ies) on behalf of the District.

### 13. Insurance

- 13.1. Construction Manager shall procure prior to commencement of the work that is part of this Agreement, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Construction Manager, its agents, representatives, employees and sub-consultant(s).
- 13.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
- 13.1.1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be no less than four million dollars (\$4,000,000).
  - 13.1.2. **Commercial Automobile Liability, Any Auto.** Two million dollars (\$2,000,000) per accident for bodily injury and property damage.
  - 13.1.3. **Workers' Compensation.** Statutory limits required by the State of California.
  - 13.1.4. **Employer's Liability.** Two million dollars (\$2,000,000) per accident for bodily injury or disease.
  - 13.1.5. **Professional Liability.** This insurance shall cover the Construction Manager and its sub-consultant(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than Twenty-Five Thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the

policy period.

- 13.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 13.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 13.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - 13.5.1. All policies except for the professional liability policy shall be written on an occurrence form.
  - 13.5.2. The District, the Construction Manager, and their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
  - 13.5.3. For any claims related to this project, the Construction Manager’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Construction Manager’s insurance and shall not contribute with it.
  - 13.5.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
  - 13.5.5. The Construction Manager’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - 13.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party,

reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

- 13.6. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.
- 13.7. **Verification of Coverage:** Prior to commencing any work Construction Manager shall furnish the District with:
  - 13.7.1. Certificates of insurance showing maintenance of the required insurance coverage;
  - 13.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

#### **14. Nondiscrimination**

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

#### **15. Covenant Against Contingent Fees**

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

#### **16. Entire Agreement/Modification**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Construction Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed

by both parties. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

### **17. Non-Assignment Of Agreement**

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

### **18. Law, Venue**

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

### **19. Alternative Dispute Resolution**

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

### **20. Severability**

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

## **21. Employment Status**

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

Manager was not an employee.

- 21.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

## **22. Representations and Warranties Of Construction Manager**

- 22.1. Construction Manager represents and warrants that the Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 22.2. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.
- 22.3. Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). Since the Construction Manager is performing work as part of an applicable “public works” or “maintenance” project, and since the total compensation is \$1,000 or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

## **23. Cost Disclosure - Documents And Written Reports**

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

## **24. Communications/Notice**

Communications between the parties to this Agreement and notices required hereunder shall be sent to the following addresses as follows:

**District:**

East Side Union High School District  
830 N. Capitol Avenue  
San Jose, CA 95133  
IMMEDIATE ATTN: Associate

**Construction Manager:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

## Superintendent of Business Services

Notices shall be deemed effective upon delivery if served personally or U.S. Certified Mail, and on the next business day if served via overnight courier (e.g., Federal Express or other nationwide courier) with written confirmation of receipt. Notices provided hereunder may not be served via Regular U.S. Mail or via facsimile or electronic mail.

### **25. Disabled Veteran Business Enterprise Participation**

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

### **26. Other Provisions**

- 26.1. The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.
- 26.2. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care as stated in this Agreement and which shall be, at a minimum, the standard of care of Construction Managers performing similar work for California school districts at or around the same time and in or around the same geographic area.
- 26.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In



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

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

<b>East Side Union High School District</b>	_____
Date: _____, 20__	Date: _____, 20__
By: _____	By: _____
Title: _____	Title: _____

**EXHIBIT “B”**  
**SCHEDULE OF WORK**

**BASIC SERVICE, GENERAL PROGRAM SERVICES  
PRECONSTRUCTION PHASE**

**PRE-BID PHASE**

**BIDDING PHASE**

**CONSTRUCTION PHASE**

**CLOSEOUT PHASE**

**EXHIBIT “C”**  
**FEE SCHEDULE**

**Compensation**

1. The Construction Manager’s fee set forth in this Agreement shall be full compensation for all of Construction Manager’s Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit “A.”**
2. The amount of compensation shall not exceed the amount set forth in this Agreement, including all billed expenses, without advance written approval of the District.
3. District shall retain three percent (3%) of Construction Manager’s fee or Ten Thousand Dollars (\$10,000), whichever is greater, until DSA has provided the District with the Project closeout Certification Letter.

**Method of Payment**

1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.
2. Construction Manager shall submit these invoices to the District via the District’s authorized representative or designated employee.
3. All invoices must include the following information:
  - 3.1 Applicable purchase order number
  - 3.2 Location of work/service performed
  - 3.3 Summary detail of work/service performed including project number for facilities contracts
  - 3.4 Service date(s)
  - 3.5 Number of hours of service
  - 3.6 Materials listed by quantity and unit price
4. Construction Manager shall submit to District on a monthly basis documentation showing proof that payments were made to its approved sub-consultants.
5. Upon receipt and approval of Construction Manager’s invoices, the District agrees to make payments on all undisputed amounts within sixty (30) days of receipt of the invoice.

**EXHIBIT “D”**

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below must be checked, with the corresponding certification provided, and this form attached to the Independent Construction Manager Agreement for Professional Services (“Agreement”):

☐ [TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]

Construction Manager’s employees will have only limited contact, if any, with District so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Construction Manager or its employees or officers for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District.

Date:

District Representative’s Name and Title: \_\_\_\_\_

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

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Construction Manager’s services under this Agreement and Construction Manager certifies its compliance with these provisions as follows: “Construction Manager certifies that the Construction Manager has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Construction Manager’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Construction Manager, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. **A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.**

☐ [TO BE COMPLETED BY CONSULTANT] I am a representative of the Construction Manager entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Construction Manager.

Date:

Name of Construction Manager or Company: \_\_\_\_\_

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

Print Name and Title: \_\_\_\_\_

## **EXHIBIT "A"**

### **RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

<b>1. BASIC SERVICES.....</b>	<b>A-1</b>
<b>2. GENERAL PROGRAM SERVICES .....</b>	<b>A-4</b>
<b>3. PRECONSTRUCTION PHASE .....</b>	<b>A-4</b>
<b>4. PRE-BID PHASE .....</b>	<b>A-6</b>
<b>5. BIDDING PHASE .....</b>	<b>A-7</b>
<b>6. CONSTRUCTION PHASE .....</b>	<b>A-7</b>
<b>7. FINAL COMPLETION.....</b>	<b>A-11</b>
<b>8. FINAL DOCUMENTS.....</b>	<b>A-11</b>
<b>9. WARRANTY .....</b>	<b>A-12</b>

## **EXHIBIT “A”**

### **RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

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

#### **1. BASIC SERVICES**

Construction Manager agrees to provide the services described below:

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Advise the District as to the regulatory agencies that have jurisdiction over the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation the Division of the State Architect.
- 1.3. Contract for or employ, at Construction Manager’s sole expense, sub-consultant(s) to the extent deemed necessary for Construction Manager’s services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement. All subconsultants shall comply with the District’s conflict of interest requirements as set forth in Section 2.4 herein and prior to commencing any work shall provide District with a completed and signed conflict of interest form as prepared by District.
- 1.4. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.
- 1.5. Chair, conduct and take minutes of periodic meetings between District and its design professional(s) of the Site Committee meetings, and of construction meetings during the course of the projects. Construction Manager shall invite the District and/or its representative to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.
- 1.6. Assist and review the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Construction

Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.

- 1.7. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation in the form of a "Phase Letter" accompanied with the "Phase Deliverable Check List".
- 1.8. Upon the written request of District develop a Management Information System to assist in establishing communications between the District, Construction Manager, design professional(s), contractor(s) and other parties on the Project. In developing the MIS, the Construction Manager shall interview the District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system.
- 1.9. Coordinate transmittal of documents to regulatory agencies for review and shall advise the District in writing of potential problems in completion of such reviews.
- 1.10. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.11. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project.
- 1.12. Assist District with coordinating the delivery of Bid Documents to the bidders. The District shall obtain the District-approved Contract Documents from the design professional(s) and the Construction Manager shall arrange for printing, binding, wrapping, and delivery to the bidders. The Construction Manager shall not be responsible for the cost of printing Bid Documents. The Construction Manager shall maintain a list of bidders receiving Contract Documents.  
  
Prepare an estimate of costs for all addenda and shall submit the estimate to the District for approval.
- 1.13. Provide and maintain a management team on the Project sites.
- 1.14. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 1.15. Cooperate and coordinate with the persons responsible for operation of the District's labor compliance program, if applicable.

- 1.16. Comply with and manage any storm water management program that is approved by the District and applicable to the Project, at no additional cost to the District.

Ensure that all Project contractor(s), Project sub-contractor(s) and Construction Manager's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.

Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

- 1.17. Construction Manager is not responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when requested by District (and at no additional charge to District) and Construction Manager shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:

- 1.17.1 Ground contamination or hazardous material analysis.

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

- 1.17.3 Compliance with the California Environmental Quality Act ("CEQA"), except that Construction Manager agrees to coordinate its work with that of any CEQA consultants retained by the District, and to provide current information for use in CEQA compliance documents.

- 1.17.4 Historical significance report.

- 1.17.5 Soils investigation.

- 1.17.6 Geotechnical hazard report.

- 1.17.7 Topographic survey, including utility locating services.



1.17.8 Other items specifically designated as the District's responsibilities under this Agreement.

1.17.9 As-built documentation from previous construction projects.

1.18. The District and the Construction Manager shall agree, in writing, to any additional cost prior to start of each effort. Any reimbursable expenses or costs, including use of construction trailers, phones, equipment and supplies, and all other expenses and costs deemed to be outside of the normal basic scope and services shall be approved in advance and following Board policy, approved prior to the Construction Manager incurring those costs.

## 2. GENERAL PROGRAM SERVICES

2.1. **General:** Construction Manager shall monitor and advise the District as to all material developments in the Project. Construction Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for the Project. Construction Manager shall be the focal point of all communication to and from construction contractor(s) and shall be copied on all communications between District and its design professional(s).

2.2. **Scheduling:** Construction Manager shall prepare methods to track and report on schedule status for each assigned project and for the overall construction program. Construction Manager shall develop master schedules and milestone schedules for each project, and shall report on same each month to the District.

2.3. **Cost Controls:** Construction Manager shall prepare and implement methods to budget and track all expenditures on each Project. Construction Manager shall generate monthly reports to the District reflecting this information.

2.4. **Communications to Board and Community:** The Construction Manager may be required to attend each meeting of the District's Board of Trustees, and to provide updates at each meeting. In addition, Construction Manager shall attend Citizens Bond Oversight Committee meetings or other Project-related meetings within the community when requested by District.

## 3. PRECONSTRUCTION PHASE

3.1. Provide overall coordination of the Projects; serve as the focal point of communication, transmitting information to the District and Project team on general aspects of the Projects, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the contractor(s) to District and project design team shall be through the Construction Manager. The Construction Manager shall receive

simultaneous copies of all written communications from the District or the project design team to the contractor(s).

- 3.2. Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Projects that involve all members of the Project teams, including District, design professional(s), and construction contractor(s) as requested by District.
- 3.3. Provide value engineering at 50%, 90, and 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the Design Documents and shall be coordinated with the District's design guidelines and design professional(s). The Construction Manager will prepare a value engineering report to document the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
- 3.4. Perform constructability reviews and site verification of the Project at the Design Development Phase and at 90% Construction Documents. The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The Construction Manager shall also make recommendations to the District with respect to constructability, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work and separate bid trade packages (where appropriate). However, the Construction Manager is not responsible for providing, nor does the Construction Manager control, the Project design or the contents of the design documents. The Construction Manager's actions in reviewing the Project design and design documents and in making recommendations as provided herein are advisory only to the District. The design professional(s) are not third party beneficiaries of the Construction Manager's work described in this paragraph and the design professional(s) remains solely responsible for the contents of design drawings and design documents.
- 3.5. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with design professional(s) and advise and consult with District. Construction Manager shall review and approve contractor(s)' schedules, but shall not dictate any contractor(s)' means and/or methods of performance.
- 3.6. Establish schedules for the soils consultant, for any hazardous materials testing

and other consultants, and review costs, estimates, and invoices of each.

- 3.7. Develop and implement a management control system, if requested by District to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project. The system will allow for monthly progress reports to the District regarding the schedule for the Project.
- 3.8. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 3.9. Attend all planning, programming and master site planning meetings relating to the Project.
- 3.10. Provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phase as directed by District; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 3.11. Advise District regarding "green building" technology and lifecycle costing, when applicable.

#### **4. PRE-BID PHASE**

- 4.1. Develop a master schedule and a construction milestone schedule for the Project.
- 4.2. In consultation with District and according to District approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 4.3. Work with the design professional(s) to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.
- 4.4. Work with the design professional(s) to separate the construction phase for the Project into bid packages.

## **5. BIDDING PHASE**

- 5.1. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures. Field questions from bidders, referring questions to design professional(s) and District as required. Coordinate with design professional(s)' to respond to bidder questions by addenda.
- 5.2. Prepare bid analyses and advise District on compliance of bidders with District requirements and bid requirements. Report and recommend to District after review and evaluation. Make recommendations to District for prequalification of bidders and award of contracts or rejection of bids.
- 5.3. Conduct pre-award conferences with successful bidders using District approved form.
- 5.4. Schedule and conduct preconstruction meetings; maintain, prepare, and distribute minutes.

## **6. CONSTRUCTION PHASE**

- 6.1. Administer the construction contracts.
- 6.2. Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 6.3. Coordinate work of the construction contractor(s) and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 6.4. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction contractor(s), and design professional(s).

- 6.5. Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. Construction Manager shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, Construction Manager will take appropriate measures to secure compliance, subject to District approval.

During the construction phase of the Project, Construction Manager shall ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. Construction Manager shall incorporate construction contractor(s)' construction schedule updates and revisions into the Project construction schedule.

- 6.6. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when contractor(s) fails to fulfill contractual requirements.
- 6.7. In coordination with the design professional, the Construction Manager may authorize variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Construction Manager shall provide to the design professional(s) and the District copies of these authorizations within (48) hours of incident. Notify District with supporting documents that show cost, scope and justification for work.
- 6.8. The Construction Manager shall develop and implement with assistance from the District, the design professional(s), and the Project Inspector, procedures for the submittal, review and processing of applications by contractor(s) for progress and final payments for all construction contracts. When submitting Pay Applications for contractor, certified payroll for the period reported must be attached. If not, return to the contractor within (7) seven days.
- 6.9. The Construction Manager shall verify that safety programs are developed and submitted by each of the contractor(s) as required by the contract. The Construction Manager shall report any observed deviations from the contractors. Safety Program and applicable OSHA requirements to the appropriate contractor personnel and follow-up with a written safety notice to the contractor and the District. Neither Construction Manager nor District shall be responsible for or have any liability for contractor(s) failure to provide, comply with, or enforce said safety programs.

- 6.10. The Construction Manager shall record the progress of each Project by a daily log and will make available to the District upon request.
- 6.11. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District **timely** notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.
- 6.12. Negotiate contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District's governing board.
- 6.13. Maintain a allowance log for the Project and implement procedures to expedite processing of PO reconciliation or change orders.
- 6.14. Adhere to District procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 6.15. Develop and implement procedures with the assistance and confirmation of the design professional(s)] for the review and processing of construction contractor(s) applications for progress and final payments for all construction contracts. Coordinate the submittal, review, verification and processing of payment applications for progress and final payment for all Construction contracts.
- 6.16. Assist District in selecting and retaining special consultants, testing laboratories, selection, layout, procurement or specification of movable furniture, furnishings, equipment or other articles and coordinate their services.
- 6.17. In conjunction with the Project Inspector and the design professional(s), monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the respective Construction Documents. As appropriate, with assistance of design professional(s) and the Project Inspector, make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the construction Contract Documents. To aid District in guarding against defects in the work of the construction contractors, Construction Manager shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
  - 6.17.1 accepted industry standards;
  - 6.17.2 applicable laws, rules, or ordinances; and
  - 6.17.3 the design documents and Contract Documents. Where the work of a

Construction contractor does not conform as set forth above,  
Construction Manager shall, with the input of design professional(s):

- 6.17.4 notify the District of any non-conforming work observed by the Construction Manager;
  - 6.17.5 assist the architect in rejecting non-conforming work; and
  - 6.17.6 take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
- 6.18. Maintain logs of requests for information (“RFI”) from construction contractor(s), based on information obtained from the design professional(s).
- 6.19. Establish and implement procedures, in collaboration with the District and design professional(s), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the Construction contractor(s) to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.
- 6.20. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data and will make available to the District upon request.
- 6.21. Prepare and distribute to the District, monthly project status reports for each active Project and the Program, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 6.22. Maintain at the Project site (for Construction Manager’s use and the use of the Project Inspector) and, if necessary, Construction Manager’s office, a current copy of all approved documents, drawings, specifications, addenda, change orders and other modifications, and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s). At the completion of the Project, deliver all such records to District. Construction contractor(s) and design professional(s) share responsibility to prepare “Record Drawings” and “As-Built” documents.

- 6.23. Observe, with District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. Maintain records of start-up and testing as provided by the construction contractor(s), and monitor District compliance with applicable provisions of the Contract Documents.
- 6.24. Determine, with the design professional(s) and District, when the Project or designated portions thereof are nearing completion.
- 6.25. As the Project nears completion, assist the design professional(s) and the District in its preparation of a list of incomplete or unsatisfactory items ("punch list work") and a schedule for the completion of the punch list work, and provide a copy of the punch list work to the construction contractor(s). Coordinate construction contractor(s)' performance and completion of punch list work. Review, with the design professional(s) and District, the completed punch list work. Monitor, with design professional(s) input, that completed punch list work complies with applicable provisions of the Construction Documents.
- 6.26. Assist the design professional(s), the Inspector, and District, final inspections of the Project or designated portions thereof. Notify District of final completion.

## **7. FINAL COMPLETION**

The Construction Manager shall consult with the design professional(s), the Inspector, and the District and shall determine when the Project and the contractor(s)' work is complete so that the District may file a Notice of Completion for the Project. Construction Manager shall provide District written notification of final completion of the Project. The Construction Manager shall provide to the District a written recommendation regarding payment to the contractor(s).

## **8. FINAL DOCUMENTS**

The Construction Manager shall review, monitor and approve all as built drawings, maintenance and operations manuals, and other closeout documents to be sure all required documents meeting contract requirements are provided. The Construction Manager shall use its best efforts and all due diligence in coordination with responsible design professionals to ensure all Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or DSA's approval of the Project.

The Construction Manager shall secure and transmit to the District required guarantees, keys, manuals, record drawings, and daily logs. Using Exhibit "E" Close-Out Document Check Sheet, the Construction Manager shall forward all documents and plans to the



District upon completion of the Project and organize all plans and documents so that are ready for any appropriate audit or review.

**9. WARRANTY**

The Construction Manager shall develop a warranty inspection and warranty work procedure that all contractor(s) are to follow. The procedure shall comport with the Construction contracts and otherwise shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding work.