

**FROM:** \_\_\_\_\_  
Dr. Jose Fierro  
President/Superintendent

**REVIEWED BY:** \_\_\_\_\_  
Felipe R. Lopez  
Vice President of Business Services/  
Assistant Superintendent

**PREPARED BY:** \_\_\_\_\_  
Mark B. Logan  
Director of Purchasing  
and Contract Administration

**SUBJECT:        Consideration of Approval of Amendment No. 2 to the “Agreement for Program and Construction Management Services” with Tilden-Coil Constructors, Inc.**

**ACTION**

It is recommended that the Board of Trustees approve Amendment No. 2 to the “Agreement for Program and Construction Management Services” between Cerritos Community College District and Tilden-Coil Constructors, Inc. Amendment No. 2 extends the term for Program Management (PM) services an additional two (2) years, from December 15, 2018 to December 14, 2020. Amendment No. 2 does not propose any modifications to the existing Construction Management services agreement with Tilden-Coil.

**FISCAL IMPACT**

The fiscal impact for Amendment No. 2 is as follows:

<b>Item</b>	<b>Monthly Cost</b>	<b>Annual Cost</b>	<b>Total Cost (24 months)</b>
Program Management (PM) fees	\$67,930	\$815,160	\$1,630,320

Funding for this contract amendment will be allocated from the GO Bond.

**REPORT SUMMARY**

Cerritos College annually contracts with various individuals, commercial firms, and other governmental agencies for the purpose of procuring or providing a variety of services.

**SERVICES – AMENDMENT**

**TILDEN-COIL CONSTRUCTORS, INC.**

**SECOND AMENDMENT TO THE AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES**

Requested by: Mr. Felipe R. Lopez, Vice President of Business Services/Assistant Superintendent

Purpose: On December 15, 2010, Cerritos College entered into an agreement with Tilden-Coil Constructors, Inc. (Tilden-Coil) for Program Management/Construction Management (PM/CM) services related to the Measure CC bond program. As a precursor to contracting with Tilden-Coil, a Request for Proposal (RFP) selection committee of 10 college employees reviewed and analyzed eight vendor proposals from which four short-listed contender firms were interviewed. A competitive RFP process was utilized due to the complexity and dollar value associated with awarding a contract for PM/CM services. The RFP process concluded with Tilden-Coil being identified as the best qualified firm, and thereby, most advantageous firm to provide PM/CM services for the District's construction program.

On April 17, 2013, Cerritos College amended the agreement to increase the monthly program management expenditure by \$13,763 from \$54,167 to an updated monthly expenditure not to exceed \$67,930, an additional annual cost not to exceed \$165,156, in order to increase the scope of work to include Measure G bond program projects in the near-term and for future years. Measure G was approved by the voters of the District on November 6, 2012 and includes projects such as the Health and Wellness Complex, Field House, Performing Arts Center, and renovation projects.

Since December 2010, Tilden-Coil has established an excellent reputation with the college for its work on campus projects. Moreover, the firm has become a valued component of the District's building program and, in addition, has developed an intimate knowledge and understanding of the college's operations, processes, and expectations, as well as a full understanding of the overall bond program. At this time, Cerritos College wishes to enter into a second amendment to provide for an extension of the term through December 14, 2020. Approval of this amendment will allow the favorable momentum of the building program to continue and concurrently enable the District to continue to save money, strengthen effectiveness, and create greater efficiencies.

Period: The amended time period will be from December 15, 2018 through December 14, 2020.

#### **NOTICING REQUIREMENTS**

None is required beyond posting of this item on the agenda.

#### **ATTACHMENT(S)**

Overview of Services Provided, Fees, and Other Estimated Costs

Explanation of PM/CM Services

Draft of Amendment No. 2 to Contract No. C10-1127 – Tilden-Coil Constructors, Inc.

Amendment No. 1 to Contract No. C10-1127 – Tilden-Coil Constructors, Inc.

Contract No. C10-1127 – Tilden-Coil Constructors, Inc.

## **Overview of Services Provided, Fees, and Other Estimated Costs**

Tilden-Coil provides all Program Management and Construction Management Services related to Cerritos College's bond program. Payment for and costs related to these services fall under three categories: Program Management, Construction Management, and General Conditions Costs.

It is recommended that Tilden-Coil continue to serve as the college's CM/PM through 2020, overseeing approximately \$55 million in construction projects. Approximately 14 full-time Tilden-Coil staff will be on site, supported by up to 36 part-time staff (both on- and off-site), depending on the phase of the project. Estimated fees for both CM/PM total \$4,325,320 through 2020. In addition, the college is estimated to pay approximately \$4.2 million in general conditions costs, which are the tools, resources, and equipment needed to build a project, but not directly related to the physical construction activities.

### **Program Management (PM) Services**

**Note: PM Services are the only services under proposed Amendment No. 2.**

**Overview: PM Services** cover the complete development process, from concept to close out, of all of the College's GO bond construction program. Since 2010, Tilden-Coil has been the college's representative for an average of \$32M in construction per year, overseeing aspects including design management, coordination, and leadership; DSA coordination, inspection management; labor compliance programs; local hire and outreach; and updates to campus documents, including the Facilities Master Plan and Campus Map. An in-depth list of services is attached.

**Staff:** Two full-time, on-site employees (Program Manager and Program Administrator), and up to 26 part-time staff, depending on project phase (e.g. project managers; project engineers; program executives; preconstruction administrators, coordinators, and staff; and estimators).

**Term:** Amendment No. 2 proposes to extend the term for two years through December 14, 2020.

**Fees:** The monthly PM fee is \$67,930, totaling \$1,630,320 through December 14, 2020.

### **Construction Management (CM) Services**

**Overview: CM Services** are provided based on each construction project. Since 2010, Tilden-Coil has served as the college's CM for all bond construction projects, ensuring all aspects are executed safely, on time, on budget and conforming to all standards and guidelines. CM services provide expertise in building trades including electrical, carpentry, plumbing and general construction. CM services cover day-to-day operations from pre-construction through the project punch list. An in-depth list of services is attached.

**Staff:** The following is a two-year staff projection:

**CM Services, Continued:**

<b>Project</b>	<b># FT</b>	<b>Full-Time Positions</b>	<b># PT</b>	<b>Examples: Part-Time Staff</b>
Health & Wellness Complex – Phase 2	5	Project Manager, Superintendent, and Project Engineer, Admin, and Intern/Engineer in Training	Up to approx. 6 for each project, depending on project phase	Production Director and Administrator Safety Director Building Information Modeling Manager, Engineer, and Technicians
Performing Arts Center	7	Project Manager, Superintendent, Assistant Superintendent, Sr. Project Engineer, and Project Engineer, Admin, and Intern / Engineer in Training		

**Term:** The College entered into the agreement for CM services on December 15, 2010 and services continue on a per-project basis.

**Fees:** The CM fee shall not exceed 4.9% of the project construction costs for any assigned project. The following is a two-year projection based on estimated construction volume:

<b>Project</b>	<b>2019</b>		<b>2020</b>		<b>2019-2020</b>
	<b>Estimated Construction Volume</b>	<b>4.9% Fee (based on Volume)</b>	<b>Estimated Construction Volume</b>	<b>4.9% Fee (based on Volume)</b>	<b>Two-Year Estimate</b>
Health & Wellness Complex – Phase 2	\$10,000,000	\$490,000	\$5,000,000	\$245,000	\$735,000
Performing Arts Center	\$20,000,000	\$980,000	\$20,000,000	\$980,000	\$1,960,000
			<b>Total Fees</b>		<b>\$2,695,000</b>

**General Conditions (GC) Costs**

**Overview:** Cerritos College pays GC costs on a per-project basis. Items included under general conditions are the tools, resources, and equipment needed to build a project, but not directly related to the physical construction activities. Examples include preconstruction services, construction supervision, construction materials/expenses, temporary facilities & storage, equipment & fuel, specialty services (blueprints, surveying, etc.), communications services, and office equipment.

**Staff:** Varies by project.

**Term:** Estimated, itemized GC costs are presented at the start of each project.

**Fees:** The Construction Manager invoices GC costs monthly for the duration of each project. GC costs are supported by an invoice, receipt, employee time sheet, or other acceptable documentation.

<b>Project</b>	<b>2019 Estimated Costs</b>	<b>2020 Estimated Costs</b>	<b>Two-Year Estimate</b>
Health & Wellness Complex – Phase 2	\$875,000	\$415,000	\$1,290,000
Performing Arts Center	\$1,325,000	\$1,585,000	\$2,910,000
<b>Estimated Two-Year Total</b>			<b>\$4,200,000</b>

## **Cerritos Community College Program Management**

### **Summary of Services** (separate from CM services)

- Owner's representative for construction projects completed and ongoing throughout campus including six new buildings, numerous modernizations, infrastructure improvements, site improvements and small projects.
  - 84 separate projects to date. Avg. of \$32M per year.
- Campus Standards management and coordination.
- Design management, coordination, and leadership.
- Design estimates and reconciliation.
- DSA coordination and closeout management.
- Inspection management and coordination.
- Labor Compliance Program coordination.
- Furnishings, Fixtures & Equipment Design coordination.
- Proposal requests, review, coordination, and processing.
- Coordination and management of all consultant agreements.
- Contract administration of bond-related purchase orders (POs), field contracts, consultant and construction agreements.
  - Avg. of \$5.7M and 193 POs per year, in addition to the larger construction projects.
- Invoice and billing review, tracking, and coordination for all bond-related POs, field contracts, consultant, and construction contracts.
  - Avg. of 1,200 invoices per year.
- Flexible staffing resources between Program and Construction Management teams.
- Implementation and management of electronic archives for campus construction closeout documents and Facilities plan room.
- Ongoing updates of the Facilities Master Plan Map, Campus Map, and Campus Utility As-Builts.
- Preconstruction services in advance of and in addition to the Construction Management team being allocated, i.e., value engineering and constructability review.
- Contractor prequalification administration and management.
- Local hire and outreach efforts.
- Bid document outreach.
- Bid management, solicitation, evaluation, and coordination for review and approval.
- Construction contracts administration and preparation for review and approval.
- Construction Management leadership and oversight (safety, quality control, schedule, change orders review savings, request for information (RFIs), design changes, and conflict resolution)
- Consultant additional service review and amendment implementation and coordination.
- Program Budget management, expense report reconciliation, encumbrance and cash flow projections.
- Program Schedule management, updates, and projections.
- President's Construction Updates on a regularly scheduled basis.
- Bond Construction Advisory Committee and Board reports.
- Citizen's Bond Oversight Committee.
- Bond Construction Outreach Committee.
- Assistance with other District updates, i.e., Board of Trustees, Campus Website, etc., as requested.
- Fulltime Program Manager and Program Administrator with part time Program Executive and part time Program Intern (Cerritos alum.).
- Company support from Preconstruction Department, Finance Department, Information Technology Department, and Company Executive Team leadership.
- Profound working knowledge of the campus environment and its people and culture.
- An integral extension of the Facilities Department in executing the Bond Program.
- Process improvements and lessons learned incorporated as building blocks for each subsequent project.

September 14, 2018

## **Cerritos Community College Construction Management**

### **Summary of Services – CM Multiple Prime** (separate from PM services)

- Implementation of the CM Multi-Prime Delivery method (vs. CM Agency method) resulting in better control of the field, time savings and claim reduction with a **total savings of more than \$13.7M** to the College to date (savings broken down below).
- Management of multiple separate trade contractors contracted directly with the District (vs. contracted through a General Contractor)
- We are your builder or “controlling contractor” as defined by Cal OSHA (similar to a General Contractor)
- Direct on site management, supervision, coordination and control of the construction projects.
- Five (5) new buildings completed, two (2) under construction, numerous modernizations, infrastructure improvements, site improvements and small projects completed and ongoing throughout the Campus.
  - 163 separate prime contracts (135 to date + 28 additional projected for the Performing Arts Center).
  - \$165M in prime contracts completed to date with an **approx. savings of \$8.3M** to the College.
  - \$6.3M in purchase orders and small projects over the last 5 years with an **approx. savings of \$700K** to the College.
- Profound working knowledge of the campus and its people.
- Unique and campus specific lessons learned from each project applied to the next.
- Direct ties to and assistance to Program Management in design and inspection management and coordination.
- Flexible staffing resources between projects, Construction Management teams and Program Management team.
  - All salaried staff hours over 40 hours per week are not billed resulting in an additional investment of 3,600 avg. hours per year or approx. \$325K in savings per year for total **approx. savings of \$1.9M** to the College over the past 6 years.
  - Unused general conditions budgeted are returned to the College Program a **savings of \$140K** to date.
- Assistance with Program Budget, Schedule and Construction updates and projections.
- Avg. of 14 full time staff per year between Project Managers, Superintendents, Project Engineers, Project Administrative Assistants and Project Interns.
- Part time Safety Director, Production Director and Project Executive.
  - Three STEM internships to date from the College.
- Company support from Preconstruction Department, Finance Department, Information Technology Department and Company Executive Team leadership.
- Contractor billings preparation of, review and processing
  - Increasing avg. per year of contractor billings totaling an average 400 separate billings per year and \$35M per year for the last two years.
- Management of the Preconstruction processes.
  - Staffing resources are managed to advance preconstruction of future projects during the construction of current projects (vs. the costs of an entirely separate team) an **approx. savings of \$1.5M** to the College to date.
- Value engineering of design documents.
- Detailed constructability review of design documents by the team who builds the project.
- Building Information Modeling and clash detection during Preconstruction to prevent issues from impacting construction in the field.
- Preparation of Multiple Prime contract scopes of work (the contract scope for each trade contractor)
- Management of the Bid Process including bid solicitation, pre-bid conferences, pre-bid coordination and inquiries, bid evaluations, interviews and coordination for review/approval.
- Construction contracts administration.
- Schedule development, management and updating.
- Detailed review, comment and processing of technical submittals.
- Project safety, orientation and inspection program
- RFI’s (Requests for Information) solutions based review, preparation and processing with the Design Team.

- Design changes review, coordination and processing.
- Detailed review and negotiation of change order requests and preparation for Board review.
  - Review savings of approx. 20% with an **approx. savings of \$650K** to the College.
  - 2.0% avg. change orders to date vs. 5% to 6% industry average
    - An additional **approx. savings of \$575K** to the College.
- Quality control program including work to complete list, punchlist development and tracking.
- Conflict resolution.
- Storm water pollution prevention plan implementation and management
- Electronic as-builts of construction documents.
- On site post construction training and warranty management.
- Constantly improving.
- We are a service based organization.
  - We have developed a 162 page document focused on our clients and serving them (TCC Service Model)
  - Our service model is that of supporting our clients and doing what is best, not what is easy.
  - We are not about me or us. We are about you, our clients.
  - We are respectful and care about our clients and their money as if it is our own.
  - We listen to your requests, then adapt, adjust or change and strive to achieve them.
  - We exist to Serve by Shaping Futures, of the campus and of the community.
  - We are not in the business to do one project for a client.
  - 90% of our projects are for repeat clients.

**SECOND AMENDMENT TO  
AGREEMENT FOR PROGRAM AND  
CONSTRUCTION MANAGEMENT SERVICES**

THIS SECOND AMENDMENT TO AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES ("Amendment") is entered into by and between the **Cerritos Community College District** ("District") and **Tilden-Coil Constructors, Inc.** ("CM") to amend the AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES entered into by the parties on December 15, 2010 ("Agreement"), and as amended by the FIRST AMENDMENT on May 23, 2013.

In case of any inconsistencies between the terms and conditions contained in the Agreement and any previous amendments, and the terms and conditions contained herein, the terms and conditions herein shall control. Except as set forth below, all provisions of the Agreement and any amendments remain unchanged and in full force and effect.

WHEREAS, District and CM desire to enter into this Amendment to extend the term of the Agreement, as indicated herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 10.1: The Term of the Agreement is extended for an additional two (2) years from **December 15, 2018**, to **December 14, 2020**.

This Amendment may be executed in duplicative originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

In all other respects, the Agreement is reaffirmed.

This Amendment is effective as of the later of September 19, 2018, or the date fully executed by both parties after approval by the District's Governing Board ("Effective Date").

[SIGNATURES FOLLOW ON NEXT PAGE]



**Tilden-Coil Constructors, Inc.:**

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Typed or Printed Name, & Title*

\_\_\_\_\_  
*E-Mail*

\_\_\_\_\_  
*Tax ID No.*

**Cerritos Community College District:**

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Typed or Printed Name, & Title*

DRAFT

**FIRST AMENDMENT TO  
AGREEMENT FOR PROGRAM AND  
CONSTRUCTION MANAGEMENT SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES ("Amendment") is entered into by and between the Cerritos Community College District ("District") and Tilden-Coil Constructors, Inc. ("CM") to amend the AGREEMENT FOR PROGRAM AND CONSTRUCTION MANAGEMENT SERVICES entered into by the parties on December 15, 2010 ("Agreement").

In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained herein, the terms and conditions herein shall control. Except as set forth below, all provisions of the Agreement remain unchanged and in full force and effect.

**BACKGROUND**

WHEREAS, District and CM desire to enter into this Amendment to extend the term of the Agreement, and increase the compensation amount to reflect an expanded scope of work, as indicated herein;

WHEREAS, the expanded scope of work detailed herein is necessary to include projects funded by the District's Bond Measure G ("Measure G"), which was approved by the voters of the District on November 6, 2012; and

WHEREAS, in order to complete the expanded scope of work the term of the Agreement will need to be extended and the Contract Price for the CM's performance and completion of the Basic Services of the Building Program will need to be increased, both as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 1.3: Replace "the Measure CC Citizen's Oversight Committee" with "the District's Citizens' Bond Oversight Committee" to reflect the fact that there is a single Citizens' Bond Oversight Committee with oversight responsibility for both Measure CC and Measure G.
2. Paragraph 2.1: Replace current subsection (iii) with the following: "(iii) the availability of funding under Measure CC, Measure G and the Projects to be completed utilizing Measure CC, and Measure G proceeds".
3. Paragraph 2.3.1: Insert "Measure G funds" after the first reference to Measure CC funds.
4. Paragraph 2.7: Remove references to "Measure CC" from the Paragraph.
5. Paragraph 8.1.1: Revise the existing Paragraph to insert the following after "CM's performance": "attributed to Measure CC Projects".

6. Paragraph 8.1.1.1: Add a new Sub-Paragraph to read:

Measure G Building Program – Transition Period. The Contract Price for the CM's performance attributed to Measure G Projects and completion of Basic Services shall be a fixed price amount consisting of Thirteen Thousand Seven Hundred Sixty Three Dollars (\$13,763.00) per month for additional staff required for the thirty two (32) month period beginning on April 17, 2013, and ending December 14, 2015 ("Transition Period");

Measure CC and Measure G Building Program. The Contract Price for the CM's performance attributed to Measure CC Projects and Measure G Projects and completion of Basic Services shall be a fixed price combined amount consisting of Sixty Seven Thousand Nine Hundred Thirty Dollars (\$67,930.00) per month for the period beginning on December 15, 2015, and ending December 14, 2018. This Contract Price shall continue to be paid by the District on a monthly basis if, as provided for in Paragraph 10.1 below, the parties mutually agree to extend the Agreement for additional one (1) year terms.

7. Paragraph 8.1.2: Insert "general conditions expenses (for Multiple Prime projects)" after "Riverside and Orange". Replace "Contract Price" with "fee" in the last sentence of the Paragraph.

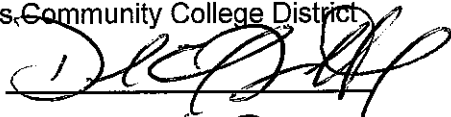
8. Paragraph 10.1: The Term of the Agreement is extended for an additional three (3) years from December 15, 2015, to December 14, 2018. Thereafter, the parties may mutually agree to extend the Agreement for two (2) additional one (1) year terms.

In all other respects, the Agreement is reaffirmed.

This Amendment is effective as of the later of April 17, 2013, or the date fully executed by both parties after approval by the District's Governing Board ("Effective Date").

Cerritos Community College District

By:



Name:

DAVID EL FITTOR

Title:

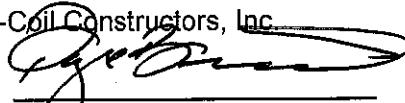
VP BUSINESS SERVICES

Date:

5/23/13

Tilden-Coil Constructors, Inc

By:



Name:

DANYE BRASSARD

Title:

EXECUTIVE VICE PRESIDENT

Date:

4-18-13

Dannis Woliver Kelley

By:



Name:

SAMUEL SANTANA

Title:

ATTORNEY

Date:

5-20-2013

**AGREEMENT FOR PROGRAM AND CONSTRUCTION  
MANAGEMENT SERVICES**

This Agreement for Program and Construction Management Services ("Agreement") is entered into this 15th day of December, 2010 by and between Cerritos Community College District, a California Community College District ("District") and Tilden-Coil Constructors, Inc. ("the CM").

**WHEREAS**, the District is engaged in a building program ("the Building Program") consisting of: (i) modernization, renovation and/or upgrades to facilities; and (ii) development of new capital improvements all of which are situated on the District's Cerritos College campus.

**WHEREAS**, funds to implement the Building Program are derived from State of California legislative appropriations, proceeds of the District's Measure CC General Obligation Bond.

**WHEREAS**, Measure CC was enacted in 2004 by the voters within the jurisdictional boundary of the District.

**WHEREAS**, Measure CC authorizes the District to issue general obligation bonds allocated for the cost of design, construction and related activities for renovation/modernization of existing District facilities and/or development of new capital projects ("Measure CC Projects").

**WHEREAS**, from time-to-time, the District obtains funding for renovation/modernization of existing District facilities and/or for development and construction of new facilities from various sources, including without limitation, legislatively appropriated funds from the California Legislature ("Other Projects"); the Measure CC Projects and the Other Projects are collectively referred to in this Agreement as "the Projects" and singularly as an "Assigned Project."

**WHEREAS**, the District has or will retain architectural services firms (collectively "the Architect") in connection with the planning, development, preparation of Design Documents, bidding and/or construction of the Projects.

**WHEREAS**, in addition to the Architect, the District has or may retain other Consultants to provide services relating to the design, bidding, equipping, and/or construction of the Projects; such other Consultants and the Architect are collectively referred to herein as "the Professional Consultants."

**WHEREAS**, prior to the date of this Agreement, the District contracted with the others to provide certain services in connection with the Projects, including the development and updating of schedules for the various activities necessary to complete construction of the Projects ("the Program Schedule") and the development and updating of budgets for costs to complete planning, design, bidding and construction of the Projects ("the Program Budgets").

**WHEREAS**, as of the date of this Agreement, activities relating to the planning, development of Design Documents, bidding and/or construction for certain Projects are underway and continuing.

**WHEREAS**, in connection with the Projects, the District desires to retain the CM to provide management and planning services in connection with the Building Program and the planning, management and implementation of the Project included within the Building Program.

**WHEREAS**, in or about August, 2010, the District issued a Request for Proposals pursuant to which proposals were sought from construction management firms for the services set forth in this Agreement ("the RFP").

**WHEREAS**, the CM submitted a response dated September 22, 2010 to the RFP ("the RFP Response").

**WHEREAS**, the District desires to retain CM to provide and perform services in connection with the Building Program and the design, bidding and construction of the Projects as assigned from time-to-time by the District to the CM under this Agreement; the specific terms and conditions for an Assigned Project will be as set forth in the Task Order in substantially the form attached hereto as Exhibit A.

**WHEREAS**, the CM is a professional building program, project and construction manager, duly qualified and capable of providing the Basic Services described herein in accordance with the terms hereof.

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

## **AGREEMENT**

### **1 BASIC SERVICES; GENERAL**

- 1.1 General. CM shall provide Basic Services and authorized Additional Services, as more particularly enumerated in this Agreement and in the Task Order for the Assigned Project. The CM acknowledges and agrees that notwithstanding this Agreement and the terms hereof: (i) the District shall have the sole, exclusive and unrestricted discretion to obtain project or construction management services for any Project from entities or individuals other than the CM for any of the Projects; (ii) if the District exercises such discretion, the CM shall have no right to provide project or construction management services for such Project(s) nor shall the CM have any right to any compensation, expenses or other payment relating to such other Project(s); and (iii) the District's exercise of such discretion shall not be deemed the District's breach or default under this Agreement.
- 1.2 Completion of Basic Services. All Basic Services and authorized Additional Services shall be performed and completed by employees of the CM. To the extent that the District has established a Project Budget and/or a schedule for completion of the design, bidding and construction of an Assigned Project, the Basic Services of the CM shall include confirmation that the Project Budget and schedule for an Assigned Project are sufficient and reasonable for the Assigned Project. If in the course of performing Basic Services for an Assigned Project, the CM determines that the Project Budget or schedule established by the District are insufficient for the Assigned Project, the CM shall notify the District Representative of such determination, along with specific recommendations for measures to conform the Project Budget or schedule of an Assigned Project with the Project Budget or schedule for the Assigned Project established by the District. The CM's Basic Services shall include the implementation of remedial measures as directed or authorized by the District. The scope of Basic Services to be provided by the CM for an Assigned Project shall be in accordance with the Task Order issued by the District for the Assigned Project.
- 1.3 Meetings and Conferences. The CM acknowledges that the CM's completion of Basic Services under this Agreement involves the input or collaboration of a number of parties, including without limitation, the Architect, the Professional Consultants, the

District's personnel, District shared governance committees, end-users, academic and operational departments of the District, the District's Board of Trustees, the Measure CC Citizen's Oversight Committee and the community at large. The CM agrees that although not specifically enumerated in this Agreement, the scope of the CM's Basic Services includes its attendance and participation in meetings and conferences relating to the Building Program and with the various parties engaged in an element of the design, bidding or construction of an Assigned Project as requested or directed by the District. The CM's Basic Services includes the CM's taking, transcribing and/or distribution of minutes of such meetings, as directed or authorized by the District.

- 1.4 Relationship of CM to Other Project Participants. CM's services hereunder shall be provided in conjunction with contracts between the District and: (i) the Architect; (ii) the Contractor(s); (iii) the Project Inspector; (iv) Test/Inspection Service Providers; and (v) Professional Consultants.
- 1.5 Project Inspector; Test/Inspection Services. If requested by the District, the Basic Services of the CM for an Assigned Project shall include the CM's assistance to the District in the selection and retention of the Project Inspector and/or Test/Inspection Service Providers for the Construction Phase of an Assigned Project. Regardless of the extent of the CM's Basic Services for an Assigned Project relating to the selection or retention of the Project Inspector or Project Test/Inspection Service Providers, the Basic Services for each Assigned Project shall include the CM's coordination and scheduling of the services of the Project Inspector and Test/Inspection Service Providers with the progress of construction during the Construction Phase of an Assigned Project. The CM is not, however, responsible for the completeness or accuracy of the work product or services provided by the Project Inspector or Test/Inspection Service Providers.
- 1.6 CM Project and Construction Management Team. CM will establish a project and construction management team appropriately staffed to perform the Basic Services for each Assigned Project. CM's personnel and the specific roles, authority and responsibility of the CM's personnel are subject to the reasonable approval of the District; if any of the CM's District-approved personnel are removed from an Assigned Project, the District shall have the reasonable right of approval of the CM's replacement personnel. For each Assigned Project, the CM shall designate in writing a Project Manager who shall be reasonably satisfactory to the District and who shall have the overall responsibility for performance of CM's obligations hereunder and be authorized to act on behalf of the CM in discharge of CM's obligations in connection with such an Assigned Project. All of the Basic Services for an Assigned Project shall be performed by the CM's Project Manager for the Assigned Project or by other employees of the CM acting under the direction and control of the CM's Project Manager for the Assigned Project.
- 1.7 Regulatory Agencies. The Basic Services of the CM shall include coordination, management and scheduling of the services of the Architect and District Consultants with the procedures or processes for the issuance of approvals, permits and other authorizations from regulatory agencies relating to the design, bidding or construction of an Assigned Project. The foregoing shall include without limitation, and as applicable to an Assigned Project, the approvals, permits and other authorizations issued by the Division of State Architect ("DSA"), the California Community Colleges Chancellor's Office, State of California Department of Finance, State of California Public Works Board, the Cities of Artesia, Bellflower, Cerritos, Downey, Hawaiian

Gardens, La Mirada, Norwalk, Bell Gardens, Lakewood, Long Beach, Santa Fe Springs, and/or South Gate and the County of Los Angeles.

- 1.8 CM Standard of Care. CM shall provide the Basic Services and authorized Additional Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. CM's services hereunder shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and timely completion of the design, bidding and construction of an Assigned Project. The CM shall be liable to the District for all losses, costs, expenses, damages or other liabilities arising out of the failure or refusal of the CM to complete the Basic Services for the Building Program or an Assigned Project in accordance with the foregoing.
- 1.9 Document Management and Controls. The CM is responsible for management and control of document generation, transmission and archiving for the Building Program and each Assigned Project, as more particularly set forth herein. As used herein, "documents" refer to all drafts, copies and originals of Drawings, Specifications, Schedules, Applications, Requests, Change Orders, Change Order Requests, Bulletins, Reviews, Estimates, RFIs, RFI responses, Submittals, Logs, correspondence, transmittals, faxes, calculations, memos, reports, notes and other materials of a written, graphic or electronic nature which relate in any manner to the Building Program, an Assigned Project or the design, bidding or construction of an Assigned Project.
- 1.9.1 District Processes and Procedures. The CM's generation, transmission and archival of documents relating to an Assigned Project shall conform to the processes and procedures established by the District, including modifications thereto implemented from time-to-time by the District.
- 1.9.2 Web-Based Management and Control of Documents. The District's document management and control processes and procedures may, at some time during the term of this Agreement, utilize internet based management and controls. The District will provide the CM and its personnel with access to such software and training materials without cost or charge to the CM. The CM is responsible, without adjustment of the Contract Price due the CM for an Assigned Project to provide or acquire computer hardware equipment and other devices necessary for use of the District provided software. The CM and its personnel shall use the District provided software solely and exclusively in connection with the discharge of the CM's obligations relating to an Assigned Project and not for any other purpose or other project. The Basic Services of the CM includes training the personnel of the CM and the personnel of the CM's Sub-Consultants to use the software and the use, updating and management of documents for each Assigned Project.
- 1.10 CM Personnel and Resources.
- 1.10.1 CM Staffing.
- 1.10.1.1 CM Staff. The CM shall provide all necessary staff personnel to complete the Basic Services for the Building Program and each Assigned Project, including without limitation, clerical, accounting and other functions necessary to timely and fully complete performance of the Basic Services and authorized Additional Services. The CM's staff and designated titles set forth in Exhibit A hereto are accepted by the District as of the commencement of the

Term of this Agreement. The CM acknowledges that a material consideration in the District's decision to enter into this Agreement with the CM is the CM's commitment of the staff members identified in Exhibit A. A material obligation of the CM under this Agreement is the CM's commitment of the staff members identified in Exhibit A for the duration of the Term of this Agreement. Such personnel shall not be replaced except in the event of the District's request for replacement, the CM's termination for cause or personal decision of a staff member. Replacement personnel of the CM shall be subject to the prior approval of the District, which may be granted, conditioned or denied in the sole discretion of the District. A periodic staffing review will commence between the District and the CM every six months for the duration of this Agreement.

1.10.1.2 CM Staff On-Site. The CM personnel identified in Exhibit A and all necessary support staff for completion of the then current Basic Services for the Building Program and each Assigned Project shall be present at the District's Administrative offices or such other location requested by the District as necessary to complete the Basic Services hereunder in a timely and complete manner.

1.10.1.3 Access to Services. The CM shall grant the District and the District's employees, agents and representatives full access to the services being provided or procured through others pursuant to this Agreement.

1.10.2 Furniture, Furnishings, Equipment, Facilities and Services to Complete Basic Services. Furniture, furnishings, equipment, facilities and services (collectively "Administrative Support Items") shall be provided, furnished or acquired by the District and the CM as set forth herein.

1.10.3 District Provided Administrative Support Items. The District will provide for use by the CM, without charge, cost or expense to the CM, the following Administrative Support Items: limited number of computers, printers, software, postage, shipping expenses, internet services, telephone services, blueprints/plans, furniture, furnishings, equipment and facilities. The CM shall use Administrative Support Items provided by the District for the sole and exclusive purpose of the CM's discharge of its obligations under this Agreement. If the CM uses Administrative Support Items provided by the District for any other purpose or if the CM wastes or abuses Administrative Support Items provided by the District for, the CM shall reimburse the District for the value or the costs of Administrative Support Items used for such other purposes or which are wasted/abused by the CM.

1.10.4 CM Provided Administrative Support Items. Except for the Administrative Support Items provided by the District as set forth above, without adjustment of the Contract Price due the CM hereunder, the CM shall obtain or otherwise secure the use of all Administrative Support Items necessary for discharge of its obligations under this Agreement.

## 2

2.1 Review of District Provided Information. The CM and its personnel engaged in providing the Basic Services shall review information provided by or through the District relating to the Building Program and the Projects in order to obtain a full understanding of: (i) nature and extent of existing information relating to existing physical facilities and utility service support serving existing physical facilities; (ii) the District's Education Master Plan, including modifications thereto incorporated as a result of or in connection



with the Projects; (iii) the availability of funding under Measure CC and the Projects to be completed utilizing Measure CC proceeds; (iv) the District's budget and time objectives for the Projects.

2.2 Education/Facilities Master Plans. CM shall review the District's existing Facilities and Education Master Plans and other written materials made available by the District to CM which relate to the District's Facilities or Education Master Plans to fully understand the nature, extent and intent of the Facilities/Education Master Plans as they relate to or affect the Projects.

2.3 Program Budget and Program Schedule.

2.3.1 Program Budget. Within sixty (60) days of the date of this Agreement, the CM shall review the existing Program Budgets and confirm to the District that the budget amounts allocated therein are reasonable and adequate for completion of: (i) design, bidding and construction of the Projects; (ii) design, bidding and construction of Interim Housing facilities; and (iii) relocation and related services to/from Interim Housing and the Projects. If the CM determines that the current existing Program Budgets are insufficient to complete (i), (ii) or (iii) above, the CM shall make recommendations to the District for modification to all or portions of the Program Budgets. The CM shall implement recommendations for modification of the Program Budgets accepted by the District and directed or authorized by the District.

2.3.2 Program Schedule. Within sixty (60) days of the date of this Agreement, the CM shall review the existing Program and confirm to the District that: (i) all Projects (including Secondary Effects and Interim Housing) subject to this Agreement are reflected in the Program Schedule; (ii) incorporate measures and sequencing to expedite completion of the Design Documents for the Projects and to minimize construction-related disruptions or limitations to District operations and activities; (iii) the durations indicated therein for activities necessary to complete the design, bidding and construction of each of the Projects are sufficient and reasonable. If the CM determines that (i), (ii) or (iii) above cannot be confirmed and that modifications to the Program Schedule are necessary in order to so confirm, the CM shall make recommendations to the District for modification to all or portions of the Program Schedule. The CM shall modify the Program Schedule as directed or authorized by the District.

2.4 Building Program Accounting and Budgets.

2.4.1 Program Budget Monitoring. During the Term of this Agreement, the CM shall routinely and regularly monitor the expenditure of funds to complete design, bidding and construction of the Building Program Projects for adequacy of funds for remaining activities to complete design, bidding and construction of all Building Program Projects. A material obligation of the CM under this Agreement is the CM's written notice to the District upon the CM's determination that the then remaining balance of the Program Budget is insufficient or likely to be insufficient to complete design, bidding and construction of the then remaining Building Program Projects so that the District may timely consider alternatives to design, bidding or construction of the Building Program Projects to conform anticipated actual costs with costs reflected in the Program Budget.

2.4.2 Building Program Accounting.

2.4.2.1 General. The CM shall maintain books and records of revenue received and expenses incurred to complete planning, design, bidding and

construction of the Building Program Projects. Personnel utilized by the CM to perform accounting and related functions under this Agreement shall be skilled, trained and experienced in maintaining accounting books and records relating to design, bidding and construction of public works projects. Accounting books and records developed and maintained by the CM hereunder shall be: (i) consistent with generally accepted accounting principles applied in a consistent manner; (ii) District policies; and (iii) available at all times to the District for inspection, review or reproduction. Accounting books and records maintained by the CM shall be in accordance with District policies and requirements. Additionally, the CM shall assist with audit preparation.

2.4.3 CM and District Accounting Programs. If the District maintains its own independent accounting functions relating to design, bidding and construction of the Building Program Projects, the CM and District shall cooperate with the other in establishing procedures and processes to: (i) avoid inconsistent or conflicting entries, information and other data in the different accounting systems of the District and the CM relating to the Projects; and (ii) to reconcile entries, information and other data. The District and the CM shall meet and confer at least annually, more frequently as required by circumstances or as requested by the District, to review and reconcile entries, information and other data in the accounting books and records maintained by the CM and the District relating to the Building Program Projects.

2.4.3.1 Cash Flow Reports. The CM shall develop and maintain procedures for cash flow analysis of anticipated expenditures necessary to complete planning, design, bidding and construction of the Projects consistent with the Master Program Schedule. The cash flow analysis shall incorporate District requirements, including without limitation, functions to sort revenue received and expenditures incurred on a Project-by-Project basis and by funding source (i.e., Measure CC funds, State of California Capital Projects/Deferred Maintenance funds, etc.). At the commencement of the Term of this Agreement, the CM's cash flow analysis shall be developed to reflect anticipated annual expenditures for over the ensuing two (2) year period. Annually, during the Term of this Agreement, the CM shall review and update the cash flow analysis for the then ensuing one (1) year period. The CM shall monthly, or with such other frequency directed by the District, prepare Cash Flow Reports reflecting the Building Program cash status.

2.4.3.2 Expense Records. The CM shall maintain records of expenditures incurred to complete planning, design, bidding and construction of the Projects. Records of expenditures must incorporate functions required by the District including without limitation, sorting expenditures by the following: (i) per Project; (ii) per Project year to date; (iii) cumulative per Project (iv) Projects year to date; and (v) by categories of expenditures.

2.4.3.3 Billings and Payment Verification. Within thirty (30) days of the date of this Agreement, the CM shall review existing procedures of the District for: (i) submittal of billings, invoices or statements requesting payment for services or work in connection with planning, design, bidding or construction of the Projects ("Vendor Billings") to the CM and the District; (ii) the CM's review and verification of the proper amount due on the Vendor Billings; (iii) communications between the CM and the District's administrative/accounts payable personnel to facilitate the disbursement of payments due on Vendor Billings by the District as

verified by the CM. Upon completing such review, the CM shall notify the District in writing of the CM's acceptance of such procedures or the CM's recommendations for modifications thereto. If the CM recommends modifications accepted by the District, the CM shall implement such modifications as directed or authorized by the District. The foregoing excludes billings of the CM under this Agreement or other agreements between the CM and the District. The CM's services hereunder shall be completed in a timely and prompt manner so that the District can complete disbursement of amounts due on Vendor Billings without incurring interest or other charges, costs or expenses for late payments of amounts due under Vendor Billings. The CM shall be liable to the District for all incurred interest or other charges, costs or expenses resulting from the CM's failure to timely complete its review and verification of the amount due on the Vendor Billings. The CM's verification of the amount due on a Vendor Billing shall be deemed the CM's certification to the District that: (i) the CM has reviewed the payment requested; (ii) the CM has verified that services/goods for which payment is requested have been provided; (iii) the services/goods provided are in accordance with applicable requirements and (iv) the amount verified is properly due from the District. The CM's services under the preceding shall not include the issuance of warrants or other means of payment to Vendors nor transmittal of payments to Vendors; such activities are the responsibility of the District, provided, however, the CM may be directed to assist the District in completing such activities.

## 2.5 Standards and Procedures.

2.5.1 District Standard Materials/Equipment. If the District has established District standards for materials/equipment and other items to be incorporated into the Projects ("District Standard Materials"), within sixty (60) days of the date of this Agreement, the CM shall review the District Standard Materials. Upon completing such review, the CM shall notify the District in writing of the CM's acceptance of the District Standard Materials or the CM's recommendations for modifications thereto. If the CM recommends modifications accepted by the District, the CM shall update/revise the District Standard Materials to implement such modifications as directed or authorized by the District. Annually during the Term of this Agreement, the CM shall review the then current District Standard Materials for purposes of updates/revisions thereto. Modifications to the District Standard Materials shall be submitted to the District Representative for review, comment and acceptance. Upon District acceptance of modifications to the District Standard Materials, the CM shall update/revise the District Standard Materials to incorporate such modifications.

2.5.2 Project Professional Services. If the District has established procedures for the identification of professional services necessary for completing the design, bidding and construction phases of the Projects, including without limitation, Architects, other Design Consultants, Project Inspection services, Special Test/Inspection Services, and soils/geo-technical service, within thirty (30) days of this Agreement, the CM shall complete its review of such procedures. Upon completing such review, the CM shall notify the District Representative in writing that: (i) the CM determines that the existing procedures are sufficient and adequate for the District to timely obtain such services at fair and reasonable prices; or (ii) the CM recommends modifications to such procedures

in order to enhance the opportunities for the District to timely obtain such services at fair and reasonable prices. The CM shall modify the procedures for selection and retention of professional services necessary to complete the design, bidding and construction of the Projects in accordance with such recommendations of the CM which are accepted by the District.

2.6 Bidding and Construction Procedures.

2.6.1 General. To facilitate and expedite completion of the bidding and construction process for the Project and to establish consistency in procedures utilized to complete the bidding and construction processes for the Projects, the CM shall review and update written procedures for bidding Projects and administration of the Construction Contracts awarded by the District for the Projects ("Bidding Guidelines").

2.6.2 Bid and Contract Documents. The CM shall review the District's standard forms of Bid and Contract Documents; based on this review and the Bidding Guidelines, the CM shall make recommendations to the District relating to modifications of the District's standard forms of Bid and Contract Documents for conformity to the Bidding Guidelines or to enhance the bidding process. The CM shall assist the District and the Professional Consultants in incorporating modifications to the District's standard forms of Bid and Contract documents accepted by the District. During the Term of this Agreement and prior to issuance of documents to bidders for a Project, the CM shall review the then current versions of the District's Bid and Contract Documents for updates/revisions. The CM shall make recommendations for updates/revisions to the then current version of the District's standard Bid and Contract Documents for adaptation to meet the requirements of the Project being bid.

2.6.3 Construction Procedures. The CM shall review the District's existing procedures and processes for administration of the Construction Contracts, including without limitation measures to: (i) efficiently administer the Construction Contracts; (ii) complete Project construction for the price bid; and (iii) to expedite completion of Project construction. Construction Phase procedures subject to the foregoing include without limitation: Project meetings, the submission and processing of Submittals, Requests for Information processing, processing and disbursement of payments to contractors, procedures for handling and responding to contractor inquiries, Project schedule review, coordination of test/inspection procedures and procedures relating to development and completion of Punch list items and the close-out of Construction Contracts. During construction of the Projects, the CM shall monitor the activities of the Architect, Contractor, Professional Consultants and others engaged in any construction or construction-related activity for conformity to the District's requirements, processes and procedures. If in such monitoring, the CM determines that there is a failure of compliance with District requirements, processes and procedures, the CM shall notify the District Representative in writing of such determination and provide the District Representative with recommendations for measures to correct or eliminate such failure(s) of compliance. The CM shall implement such measures as directed or authorized by the District.

2.7 Measure CC Website. During the Term of this Agreement, the CM shall provide the District webmaster and/or District Public Information Officer with updated/revised content for incorporation into the Measure CC webpage relating to the Projects and/or the Building Program. The frequency of such updated/revised content will be

determined by the District in the sole discretion of the District, provided that except in the event of emergencies or other exigent circumstances, the CM will not be required to provide updated/revised content more frequently than monthly. Notwithstanding the District's acceptance of the CM's Measure CC updated/revised content, the District shall have the sole discretion to modify the Measure CC webpage content at any time during the Term of this Agreement, to use all, some or none of the CM's updated/revised content or to modify the CM's updated/revised content.

- 2.8 Labor Relations. During the Term of this Agreement, the CM shall assist the District in maintaining harmonious labor relations between the District and the various consultants, vendors, contractors and others providing work, labor, materials or services to design, bidding or construction of the Projects. The CM shall routinely monitor the status of the Projects to mitigate any potential adverse impact of such disputes, disagreements or controversies to the timely completion of design, bidding and construction of the Projects.

### 3 BASIC SERVICES; DESIGN PHASE OF AN ASSIGNED PROJECT

#### 3.1 Design Phase Management.

3.1.1 General. The Basic Services of the CM during the Design Phases of an Assigned Project includes the CM's scheduling, management and coordination of the services, work product, and other related activities and functions of the Architect, the Architect's Design Consultants and the District Consultants so that: (i) the progress of development and completion of the Design Documents for an Assigned Project conforms to the District's schedule requirements; (ii) the Design Documents incorporate and reflect District established requirements for the Assigned Project; and (iii) that the different services and work product of the various participants to the Assigned Project are coordinated and consistent. The CM acknowledges that this Agreement does not set forth in detail all of the activities, actions and other services of the CM necessary to complete and discharge the responsibilities described above. The CM agrees that notwithstanding the absence of detailed descriptions of the activities, actions and other services of the CM, the CM's Basic Services hereunder includes all such activities, actions and services of the CM necessary or appropriate to complete the foregoing described obligations of the CM.

3.1.2 Selection and Retention of Architect for Assigned Project. If the District has not selected and retained an Architect for an Assigned Project, as requested or directed by the District, the CM shall assist the District in: (i) development of documents, and implementation of, procedures and processes for issuance of requests for proposals/qualifications to potential architectural services firms and their proposed Design Consultants; (ii) review and evaluation of proposals submitted in response to such requests; (iii) participate with the District in interviews of potential architectural services firms for an Assigned Project; and (iv) recommendations to the District for the selection of an Architect for an Assigned Project. As requested by the District, the CM shall assist in the negotiation of terms and conditions as well as preparation of the contract between the District and the Architect for an Assigned Project.

3.1.3 Architect Billings. The Basic Services of the CM shall include the CM's review of billing statements submitted to the District by the Architect for an Assigned Project for fees and costs related to the Assigned Project. The CM's review of such billings shall: (i) be completed in a timely manner so that the District can make payment of the undisputed amount determined to be due on each such

billing within the time established by law or by the terms of the contract between the District and Architect for an Assigned Project; (ii) include verification of the amount properly due the Architect; and (iii) written recommendation to the District Representative of the amount properly due the Architect on each billing statement. If the CM determines that any portion of an Architect's billing statement reflects fees, expenses or other charges are not due the Architect, the Basic Services of the CM includes the CM's establishment of the basis for such determination and the CM's participation in discussions and other communications with the Architect and/or the District to fully resolve any claim or dispute arising out of or related to any such determination.

- 3.2 Review of Design Documents: General. The CM, including the CM's Project Manager for an Assigned Project shall review the Design Documents prepared by the Architect for the Assigned Project during the Design Documents Phase of an Assigned Project to: (i) obtain a complete understanding of the design intent and scope of the Assigned Project; (ii) verify that the Design Documents reflect conformity to the District's requirements for the Project, including without limitation, budget, schedule and occupancy requirements; and (iii) verify that the progress in completing Design Documents for the Assigned Project conforms to the schedule established for the Assigned Project. If the CM is unable to verify the matters described in (ii) or (iii) above, the CM shall notify the District Representative in writing of such inability and in such written notice, the CM shall set forth the reason(s) for its inability to so verify and provide recommendations for specific measures to conform the Design Documents to the District's requirements and/or schedule for the Assigned Project. The CM shall implement such measures as directed or authorized by the District. The CM acknowledges that the obligations and responsibilities of the CM hereunder to review Design Documents prepared by the Architect for an Assigned Project: (i) does not set forth specific intervals of the Design Documents development at which the CM must conduct reviews of the Design Documents; and (ii) is on-going throughout the Architect's development of Design Documents for an Assigned Project, until DSA has reviewed the Design Documents and issued a construction permit therefor.

3.3 DSA Reviews/Permitting.

- 3.3.1 General: Design Schedule. The CM shall develop schedules acceptable to the District Representative and the Architect relating to the completion of iterations of the Design Documents for an Assigned Project and the submittal of such Design Documents to DSA for review and issuance of the construction permit for an Assigned Project ("the Design Schedule"). A material obligation of the CM under this Agreement is the management and coordination of the services/work product production of the Architect in a manner so that the Design Schedule for an Assigned Project is complied with by the Architect. If the progression of the development and completion of the Design Documents for an Assigned Project falls behind the Design Schedule, the CM shall identify measures to conform the progress of Design Documents development and completion to the Design Schedule. The CM shall implement such measures as directed or authorized by the District.

- 3.3.2 DSA Reviews. The CM shall review then current DSA rules, regulations and other regulatory materials to determine the extent of alternatives to the traditional development of completed Design Documents for a project followed by submittal to DSA for review and issuance of the Construction Permit, including without limitation, the "collaborative DSA review process" described at Education Code §81133.1. The CM shall make recommendations to the

District Representative for engaging in alternative means of DSA review of the Design Documents for an Assigned Project and DSA's issuance of a construction permit for an Assigned Project.

- 3.4 Value Engineering. The CM's review of Design Documents for an Assigned Project shall include value engineering ("Value Engineer Review") at the intervals noted in the Task Order for an Assigned Project if such services are indicated in the Task Order for the Assigned Project. If, upon completing its Value Engineer Review of the Design Documents, the CM believes that Work of the Assigned Project depicted in the Design Documents, construction processes/procedures, specified materials/equipment or other aspects of the Design Documents can be modified to reduce Construction Costs and/or the time for achieving Final Completion of the Assigned Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Assigned Project, the CM shall identify the same in writing ("the Value Engineering Recommendations") for review and acceptance by the District. The CM shall submit the Value Engineering Recommendations to the District Representative for review, consideration and acceptance by the District. The District shall have the sole and exclusive discretion to accept some, all or none of the CM's Value-Engineering Recommendations. If the District accepts any of the CM's Value Engineering Recommendations, the CM shall review the Design Documents modified by the Architect for confirmation that the District accepted Value Engineering Recommendations are incorporated into the Construction Documents to be issued on behalf of the District for bidding and construction of the Assigned Project. If the CM determines that the Architect has not incorporated into the Design Documents the Value Engineering Recommendations accepted by the District, the CM shall advise the District of measures to ensure that the Construction Documents incorporate the District accepted Value Engineering Recommendations. The CM shall implement such measures to obtain the Architect's compliance as directed or authorized by the District.
- 3.5 Constructability Review. If indicated in the Task Order for an Assigned Project, at the intervals noted in the Task Order, the CM shall conduct Constructability Reviews of the Design Documents to ascertain whether the Assigned Project, as depicted in the Design Documents: accurately and completely reflect the District's use/occupancy and Project Budget objectives for the Assigned Project. The CM's Constructability Reviews do not supersede the responsibility of the Architect to provide correct and coordinated Design Documents for the Assigned Project. The CM shall submit written Constructability Review comments ("Constructability Comments") to the District Representative for review and consideration by the District. The District shall have the sole and exclusive discretion to accept some, all or none of the CM's Constructability Comments. If the District accepts any of the CM's Constructability Comments, the CM shall review the Design Documents modified by the Architect for confirmation that the District accepted Constructability Comments are incorporated into the Design Documents issued on behalf of the District for bidding and construction by Contractors. If the CM determines that the Architect has not incorporated into the Design Documents the Constructability Comments accepted by the District, the CM shall advise the District of measures to ensure that the Design Documents issued for bidding by Contractors incorporate the District accepted Constructability Comments. The CM shall implement such measures as directed or authorized by the District.

- 3.6 District Review of Value Engineering Recommendations and Constructability Review Comments. Upon receipt of the CM's Value Engineering Recommendations and the CM's Constructability Comments, the District shall promptly complete review of the same. Upon the District's completion of such reviews, the CM and the District Representative shall meet and confer, as necessary, to determine which of the CM's Value Engineering Recommendations and Constructability Comments are to be incorporated by the Architect into the Design Documents for the Assigned Project.
- 3.7 Construction Budget: Estimate of Construction Costs. The CM shall review the District's Construction Budget for the Assigned Project, review Estimates of Construction Costs prepared by others for the Project, and/or prepare Estimates of Construction Costs.
- 3.7.1 CM Review and Acceptance of Construction Budget. The Basic Services of the CM for each Assigned Project shall include the CM's review of the District established Construction Budget for the Assigned Project prior to the CM's commencement of any other Basic Services for the Assigned Project. If, based upon such review, the CM accepts the Construction Budget, the CM's Project Manager for the Assigned Project shall notify the District Representative in writing of the CM's acceptance of the Construction Budget. If, based upon such review, the CM believes that the Construction Budget is insufficient to cover the costs to construct the Assigned Project or if the CM believes that the Construction Budget exceeds costs necessary to construct the Assigned Project, the CM's Project Manager for the Assigned Project shall notify the District Representative in writing of such determination, along with recommendations for adjustment of the Construction Budget or modification of requirements of the Assigned Project so that the cost to construct the Assigned Project conforms to the Construction Budget. In such event, the CM's Project Manager shall review the District's modifications of Assigned Project requirements and/or the District's adjustments of the Construction Budget; if acceptable, the CM's Project Manager shall notify the District Representative in writing of the CM's acceptance of the modified Assigned Project and/or Construction Budget. The process for the District's modification of the Assigned Project and/or the Construction Budget shall continue until the CM accepts the District's Construction Budget and the Assigned Project requirements. Upon the CM's acceptance of the Construction Budget and the Assigned Project requirements, the Basic Services of the CM and the CM's obligations hereunder include without limitation, completing construction of the Assigned Project in conformity to the Construction Budget and Assigned Project requirements.
- 3.7.2 CM Estimate. If indicated in the Task Order for an Assigned Project, the CM shall prepare and submit to the District Representative the CM's Estimate(s) of Construction Costs for the Assigned Project at the interval(s) noted in the Task Order. If indicated in the Task Order for an Assigned Project, upon completion of the CM's Value Engineering and Constructability Reviews for the Assigned Project, the CM shall prepare the Final Estimate of Construction Costs which shall reflect modifications to the Design Documents resulting from District accepted Value Engineering Recommendations and District accepted Constructability Review Comments for the Assigned Project. The CM's Final Estimate of Construction Costs shall be prepared and submitted to the District Representative in accordance with the time-frames set forth in the Task Order for the Assigned Project. All of the CM's Estimates of Construction Costs shall:
- (i) be in the format with such detailed breakdown of estimated costs for



construction of the Assigned Project as directed by the District Representative; (ii) be organized by the standard specifications sections established by the Construction Specifications Institute; and (iii) be based upon the then current market conditions for labor, materials and equipment in the locality of the Assigned Project necessary to complete construction of the Assigned Project in accordance with the Design Documents. If the CM's Final Estimate of Construction Costs for an Assigned Project, exceeds the Construction Budget established by the District for the Assigned Project by five percent (5%) or greater, the CM shall make recommendations to the District for measures to reduce the Estimate of Construction Costs to conform with the Construction Budget for the Assigned Project. If the CM's Final Estimate of Construction Costs for an Assigned Project is less than the Construction Budget for the Assigned Project by five percent (5%) or more, the CM shall make recommendations to the District for items to incorporate into the Assigned Project to conform the CM's Estimate of Construction Costs with the Construction Budget for the Assigned Project.

3.7.3 Verification of Others' Estimate(s) of Construction Costs. Whether or not the Basic Services of the CM for an Assigned Project includes the CM's preparation of Estimate(s) of Construction Costs, the Basic Services of the CM for each Assigned Project shall include the CM's review of Estimate(s) of Construction Costs for an Assigned Project prepared by others. Such review shall include, without limitation, confirmation by the CM that the Estimate(s) of Construction Costs: (i) accurately and completely reflect the scope of work depicted in the then existing Design Documents for the Assigned Project; (ii) reflect the then current marketplace prices for labor, materials and other items or services necessary for completing construction of the Assigned Project in accordance with the then existing Design Documents for the Assigned Project; and (iii) conformity (within five percent (5%)) to the Construction Budget for the Assigned Project. If the CM determines that it cannot confirm any of the foregoing, the CM shall notify the District Representative in writing of such determination, along with recommendations for modification of the Design Documents for the Assigned Project so that the CM can confirm that such Estimate(s) of Construction Costs conform to the requirements noted in (i), (ii) and (iii) above.

3.8 Labor/Materials Marketplace Survey. If indicated in the Task Order for an Assigned Project, the CM shall survey the existing labor and materials marketplace conditions in the locality of the Assigned Project to ascertain the availability of suitable labor and materials necessary to complete Project construction within the time established by the District. The CM shall provide the District Representative with a written evaluation of the extent of available and suitable labor/materials to complete construction of the Assigned Project within the District's Construction Budget and time objectives for an Assigned Project and whether in the CM's opinion the CM anticipates that the extent of available and suitable labor/materials will adversely impact the costs/time for completing construction of the Assigned Project. If the CM concludes that the extent of available and suitable labor/materials may have an adverse impact on costs/time for completing construction of the Assigned Project, the CM's written evaluation shall include recommendations for measures to mitigate or eliminate such potential adverse impacts to costs/time. The CM shall implement such measures as directed or authorized by the District.

- 3.9 Bidding and Construction Strategy. At or about the time that the Architect for an Assigned Project achieves fifty percent (50%) completion of the final "for construction" Design Documents, the CM shall meet and confer with the District Representative to develop an overall strategy for bidding and constructing the Assigned Project, taking into account factors affecting time and/or costs for completing construction of the Assigned Project. The CM shall conduct such interviews and participate in meetings and conferences with the Architect, District staff and others as necessary to develop a bidding and construction strategy for the Assigned Project consistent with the foregoing objectives. The CM shall submit its written bidding/construction strategy for the Assigned Project to the District Representative for review and acceptance by the District. The CM shall modify its written bidding/construction strategy for the Assigned Project as necessary to obtain the District's acceptance thereafter. The CM shall implement the bidding/construction strategy accepted by the District Representative for an Assigned Project.

#### 4 BASIC SERVICES; BIDDING PHASE OF AN ASSIGNED PROJECT

- 4.1 Review and Assembly of Bid Documents. The CM shall review and recommend modifications to the District's standard forms of bid and contract documents for each Assigned Project. The CM shall assist the District in assembly and issuance of bid and contract documents for each Assigned Project.
- 4.2 Authority to Bid. The CM shall review approvals theretofore obtained by or on behalf of the District relating to authority of the District to engage in bidding the Assigned Project for construction. The CM shall confirm to the District the authority of the District to engage in the bidding process for construction of the Assigned Project; if there are limitations to the District's authority to bid the Assigned Project the CM shall advise the District of the same and assist the District in removing such limitations.
- 4.3 Advertisements. The CM shall assist the District in development and placement of advertisements and other notices required by applicable law for bidding and constructing an Assigned Project. The CM shall also make recommendations to the District Representative for placement of notices and issuance of other communications for the purpose of publicizing the availability of the Assigned Project for bidding by Contractors. The CM shall assist the District in placing such notices and issuing communications for such purposes.
- 4.4 Contractor Pre-Qualification. The CM shall make recommendations to the District relative to pre-qualification of potential bidders for construction of an Assigned Project. If the District elects to engage in the pre-qualification process for an Assigned Project, the CM shall assist the District in: (i) development of pre-qualification criteria and the pre-qualification application; (ii) development and placement of an advertisement in a newspaper of general circulation in Los Angeles County of the availability of pre-qualification applications; (iii) develop and implement a program to inform potential bidders for the Assigned Project of the pre-qualification process and to encourage potential Contractors to engage in the pre-qualification process; (iv) review and evaluate responses to the pre-qualification application; and (v) make recommendations to the District for selection of the Contractors deemed qualified to submit Bid Proposals for the Assigned Project.

- 4.5 Dissemination of Bid Documents to Contractors. The CM shall establish a system for dissemination of Bid Documents to Contractors and for maintaining records of the identities/addresses/telephone-fax numbers/email addresses of the Contractors who have obtained Bid Documents for an Assigned Project. All such records shall be available to the District for review, inspection and/or reproduction upon request of the District.
- 4.6 Contractors' Campaign. The CM shall, by all appropriate means of communication, advise Contractors of the availability of the Assigned Project for bidding. The CM shall endeavor to maximize the participation of qualified Contractors whose principal place of business is situated in Los Angeles County. The CM shall maintain records of contacts made and communications transmitted to/received from potential bidders for the Assigned Project. All such records shall be available for review and/or reproduction by the District upon request.
- 4.7 Pre-Bid Conference(s). The CM shall conduct pre-bid conferences, including the job walk(s), if one is required or scheduled in the Bid Documents. The pre-bid conference shall include without limitation: (i) description of the Assigned Project; (ii) description of the process for bidding and award of the Contract(s) for construction of the Assigned Project; and (iii) requirements relating to bonds, insurance coverages and similar administrative requirements. The job walk shall provide bidders with an overview of the Site of the Assigned Project and an understanding of the physical limitations and constraints affecting the Work of the Assigned Project or portions thereof. The CM shall record and transcribe minutes of the pre-bid conferences and job walk(s). Minutes maintained by the CM shall be issued to all bidders who have theretofore obtained the Bid Documents, the District, the Architect and other parties as directed by the District Representative.
- 4.8 Opening/Reading of Bid Proposals. The CM shall assist the District in the public opening and reading of Bid Proposals for an Assigned Project. Upon completing the public opening and reading of Bid Proposals, the CM shall summarize the results of bidding; the summary shall include identities of the Bidders, the amount proposed by each Bidder, including amounts proposed for Alternate Bid Items, if any, included in the bidding and the identification of the apparent low bidder(s).
- 4.9 Review of Bid Proposals; Recommendations for Award of Construction Contract. The CM shall review submitted Bid Proposals to determine: (i) whether the bidder submitting the Bid Proposal is a responsible bidder; and (ii) whether the Bid Proposal is responsive to material bidding requirements. CM shall make recommendations to the District regarding: (i) rejection of a Bid Proposal based upon the "non-responsibility" of the bidder; (ii) rejection of a Bid Proposal for non-responsiveness to material bidding requirements; (iii) rejection of a Bid Proposal for any other reason; (iv) rejection of all Bid Proposals; and (v) award of Construction Contract for the Assigned Project. To the extent that the bidding for an Assigned Project includes Alternate Bid Items, the CM shall make recommendations for the Alternate Bid Items, if any, to be included in the scope of the Construction Contract awarded by the District for the Assigned Project. The CM shall make recommendations to the District Representative for award of the Construction Contract for the Assigned Project. As requested by the District, the CM shall assist the District in preparing the Construction Contract for execution and other related administrative tasks in connection with the Construction Contract awarded by the District for an Assigned Project.

**5 BASIC SERVICES; CONSTRUCTION PHASE**

- 5.1 Administration and Coordination of Construction Contract and Construction. CM will provide administrative, management and related services necessary to administer the Construction Contract for an Assigned Project, including, without limitation: (i) receive, review and forward to the District and the Architect the Contractor(s)' Certificates of Insurance and Bonds along with commentary as to the extent to which the same comply with requirements of the Construction Contract; (ii) advice and recommendations to the District for issuance of Notice(s) to Proceed directing commencement of construction of the Assigned Project or portions thereof, including issuance of the Notice(s) to Proceed on behalf of the District; (iii) scheduling, coordinating and conducting pre-construction and construction meetings; recording, maintaining and distributing minutes thereof; (iv) in consultation with the Architect, develop and implement procedures for the submittal and processing of Submittals; (v) in consultation with the District and the Architect, develop and implement procedures for the handling and disposition of the Contractor's requests for information or clarifications; (vi) establish and implement procedures for the transmittal and receipt of communications, drawings and other information between CM, Architect and the Contractor relating to construction of the Assigned Project; (vii) assist the District in selection and retention of Test/Inspection Service Providers and the Project Inspector; (viii) review the Contractor's Construction Schedules and implement provisions of the Construction Contract relating to the Contractor's obligations for development, maintenance, updating and compliance with the Construction Schedule for the Assigned Project; and (ix) establish Site staging, lay down and storage areas. The CM's Basic Services relating to Assigned Project communications shall utilize forms, processes and other measures implemented by the District in connection with construction of the Assigned Project, including without limitation, any web-based document control management system implemented by the District for the Assigned Projects.
- 5.2 Construction Phase Meetings and Conferences. The CM shall conduct meetings and conferences during the Construction Phase of an Assigned Project.
- 5.2.1 Pre-Construction Conference. The CM shall conduct a Pre-Construction Conference after award of the Contract for an Assigned Project and prior to the date for commencement of Assigned Project construction at the Site to address matters relating to: (i) scope and other requirements of the Assigned Project; (ii) the schedule for completion of the Assigned Project; (iii) administrative matters, including the submission and processing of payment requests, requests for information, Submittals and other similar matters; (iv) prevailing wage rates, Certified Payroll Records and other matters relating to the employment of labor; (v) test and inspection requirements; and (vi) other matters relating to the Assigned Project.
- 5.2.2 Regular Construction Conferences. During the course of construction of an Assigned Project, the CM shall conduct Regular Construction Conferences on a weekly basis. The Regular Construction Conferences shall address at least the following: (i) Project Progress Schedule reviews, updates and look-aheads; (ii) outstanding and open matters from prior Construction Conferences; (iii) coordination of installation activities; and (iv) other matters relating to the construction of the Assigned Project.
- 5.2.3 Special Construction Conferences. As required by the circumstances of construction of the Assigned Project, the CM shall call and conduct Special

Construction Conferences to address matters not subject to the agenda or subject matter of Regular Construction Conferences.

5.2.4 Minutes of Conferences. The CM shall maintain and issue minutes of Construction Phase Meetings and Conferences to the Contractor, the District, the Architect, the Project Inspector and others as directed or authorized by the District. The CM shall, within five (5) days after the completion of a Regular or Special Construction Conference, issue minutes of such meeting or conference. Minutes prepared by the CM shall accurately and completely reflect the discussions and conclusions reached on each separate agenda item considered during the course of a meeting or conference. If there are objections or corrections requested to any minutes of a meeting or conference issued by the CM, the CM shall review such objections or correction requests and address the same at the next Regular Construction Conference.

5.3 Monitoring of Construction Costs; Cost Reports. CM will monitor on-going Construction Costs and advise the District of the financial condition of the Assigned Project by: (i) development of Project cash flow reports, forecasts and other financial reports for the Assigned Project, including those reflecting variations between actual Construction Costs and the Construction Budget and estimated costs of unperformed activities of the Assigned Project; (ii) maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis; (iii) monitoring and advising the District of costs pertaining to potential, pending and completed Changes; and (iv) advising and making recommendations to the District for adjustments to the Construction Budget relative to actual or anticipated Construction Costs. The CM shall prepare and submit cost reports of each Assigned Project to the District Representative on a monthly basis; provided that if the District Representative reasonably determines that more frequent cost reports for an Assigned Project are required, the CM shall comply with the directive(s) of the District Representative. The information compiled by the CM and reports generated by the CM relating to Construction Costs of the Assigned Project shall be in such detail, format and in accordance with processes/procedures required by the District. In addition, the extent of detail and the nature of the format of such reports, the information compiled by the CM and reports generated by the CM shall specifically indicate the original Contract Price of the Construction Contract, the extent of adjustment of the Contract Price by Change Orders approved by the District and the extent of potential further adjustment of the Contract Price as of the date of the CM's report based upon the Changes or potential Changes known at the time of the CM's preparation of a cost report.

5.4 Applications for Progress Payments. CM will participate in the review and disbursement of Progress Payments to the Contractor and in consultation with the District, Project Inspector and the Architect, make recommendations for the disbursement of Progress Payments to the Contractor as follows: (i) CM will assist in the development of procedures for submittal, review, processing and disbursement of Progress Payments to Contractor, along with associated forms and reporting systems; (ii) based upon CM's observations and evaluations of each Application for Progress Payment, CM will review and certify to the District the amount due on each such Application for Progress Payment; CM's certifications constitute a representation to the District that, based on CM's observations at the Site, the data in each Application for Progress Payment, and to the best of CM's knowledge, information and belief, the Work has progressed to the point indicated in the Application for Progress Payment

and the quality of the Work is in generally in accordance with the Contract Documents; (iii) CM's representations relative to Applications for Progress Payment are subject to an evaluation of the Work for conformity with the requirements for the Substantial Completion, results of subsequent tests, inspections and other procedures, minor deviations from requirements correctable prior to completion and any specific qualifications expressed by CM in its certification. CM's issuance of a Certificate pursuant to the preceding shall be a representation that the Contractor is entitled to payment in the amount so certified. The CM's review of Applications for Progress Payment shall be undertaken and completed in a timely manner so that the District can meet its obligations to make Progress Payment due the Contractor within the time permitted by applicable law without incurring interest liability or other penalties/liabilities. If the CM fails to timely complete its review of any of the Contractor's Applications for Payment and the failure to timely complete such review results in the District incurring interest liability or other penalties/liabilities, the CM shall be liable to the District for all such interest liability or other penalties/liabilities. The District may withhold such amount from the Contract Price then or thereafter due the CM for the Assigned Project. The CM's liability pursuant to the foregoing shall be in addition to, and not in lieu of, all other liabilities of the CM to the District for losses, costs, damages or any other liability of the District arising out of the CM's failure to timely complete review of a Contractor's Application for Progress Payment.

- 5.5 Substantial Completion; Punchlist. In consultation with the Architect, Project Inspector and the District, the CM will assist in ascertaining the achievement of Substantial Completion of an Assigned Project. If upon inspection of the Work of an Assigned Project, the CM determines that Substantial Completion has not been achieved, the CM will assist the Architect in noting the conditions of the Assigned Project and the measures necessary to achieve Substantial Completion of the Assigned Project. Upon the Contractor achieving Substantial Completion of the Assigned Project, the CM will participate with the District, Project Inspector and the Architect to inspect the Work completed to note Punchlist items to be completed as a condition to achieving Final Completion.
- 5.6 Request(s) for Information ("RFI"). Based upon the processes and procedures established by the District for the submission, review and response to the Contractor(s)' RFIs, the CM shall implement such processes and procedures during construction of an Assigned Project. In addition to such processes and procedures, the CM shall maintain a log of RFIs ("RFI Log") which sets forth at least the following: (i) sequential numbering of RFIs; (ii) dates of: submission of each RFI, transmittal of the RFI to the Architect, the Architect's response to the RFI and the transmittal of the Architect's response to the Contractor; and (iii) actual or potential cost/time impact of each RFI and the response to each RFI. The CM's RFI Log shall include an assessment of the responsibility for any time or cost impacts arising out of a RFI or the response thereto. The RFI Log shall be available for review, inspection and/or reproduction by the District upon request.
- 5.7 Submittals. Based upon the processes and procedures established by the District and the Construction Documents for an Assigned Project relating to the submission, review and evaluation of the Contractor(s)' Submittals, the CM shall implement such processes and procedures during construction of an Assigned Project. In addition to such processes and procedures, the CM shall maintain a log of Submittals ("Submittal Log") for an Assigned Project which sets forth at least the following information: (i) sequential numbering or other means of tracking Submittals; (ii) the dates of:

submission of a Submittal to the CM from a Contractor, the CM's transmittal of each Submittal to the Architect, the Architect's response to the Submittal and the CM's transmittal of the Architect's Submittal response to the Contractor; and (iii) brief summary of Architect's Submittal response, including the requirement, if any, for revised or additional Submittals. The Submittal Log shall be available for review, inspection and/or reproduction by the District upon request.

5.8 Project Progress.

5.8.1 Contractor's Schedules. CM shall review the Contractor's Construction Schedules and updates thereof for: (i) verification of conformity to the requirements established in the Construction Contract for the Assigned Project; (ii) verification that all necessary activities to complete construction of the Assigned Project in accordance with the DSA reviewed Design Documents and the Construction Contract for the Assigned Project are reflected in the Contractor's Schedules; (iii) verification that the duration for construction activities are reasonable; and (iv) if required by the terms of the Construction Contract for an Assigned Project, verification that the Contractor's Schedules incorporate requirements for manpower and other resources necessary for the Contractor's construction of the Assigned Project. If the CM, upon review of the Contractor's Schedules is unable to verify any of the matters set forth above, the CM shall notify the District Representative in writing of such inability, along with recommendations for actions of the Contractor or modifications to the Contractor's Schedules so that the CM can verify such matters. The CM shall implement such measures as directed or authorized by the District.

5.8.2 Progress Records. CM will maintain records of the progress of construction of Project construction, including written progress reports and photographs reflecting the status of construction and percentage completion of the Assigned Project. CM will maintain daily records during construction of the Assigned Project showing weather conditions, personnel of the Contractor and its Subcontractors at the Site, work accomplished, problems encountered and other matters materially affecting the Assigned Project, completion of the Assigned Project or Construction Costs to complete construction of the Assigned Project.

5.8.3 Substantial Completion and Final Completion. Upon request of the Contractor, CM will, in conjunction with the District Representative, Project Inspector and the Architect determine that Substantial Completion and Final Completion have been achieved. Upon determining that Substantial Completion/Final Completion has been achieved, the CM shall issue Certificates of Substantial Completion and Final Completion, as applicable.

5.9 Labor Compliance Program ("LCP"). If LCP requirements apply to an Assigned Project, Basic Services of the CM relating to implementation of the LCP for an Assigned Project shall include the following:

5.9.1 Review of LCP. Review the LCP approved by the Department of Industrial Relations to fully understand the requirements established by the LCP and by applicable law, code, regulation or rule relating to the LCP.

5.9.2 Pre-Construction Conference. Assist the District's LCP Administrator in conducting pre-construction conference(s) with the Contractor and Subcontractors to discuss and answer questions regarding federal and state labor law requirements and procedures applicable to the Assigned Project, including, but not limited to, record keeping, wage rate determinations,

apprenticeship requirements, required form filing(s) and other matters relating to compliance with requirements of the LCP.

5.10 [Reserved]

5.11 Site Observations.

5.11.1 CM On-Site. During construction of the Assigned Project and at substantially all times during which there are construction activities at the Site, CM shall have its Project Manager or other authorized representative at the Site, and when construction of the assigned project is by multiple prime contractors the CM shall observe Site construction activities and to coordinate the activities of the Prime Contractors. CM shall maintain at the Site the Drawings, Specifications, approved Change Orders, Submittals, applicable codes, rules and regulations and other written, graphic or electronic materials relating to the Assigned Project.

5.11.2 Construction Quality. The CM shall guard the District against defects and deficiencies in construction and workmanship of the Assigned Project on the basis of its Site observations, and shall establish and implement hereunder a quality control program to monitor construction workmanship.

5.11.3 Rejection of Work. Whenever in the ordinary course of discharging its services hereunder CM shall discover or observe patent conditions of defective or deficient construction or workmanship of the Assigned Project which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, CM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District in writing. In other circumstances where defective or deficient Work is observed by CM, the District shall be notified in writing by the CM of such conditions and if directed by the District, the CM shall stop or reject such Work. CM's responsibilities hereunder shall be limited to defective or deficient work of an apparent and patent nature.

5.12 Site Safety.

5.12.1 District Safety Program. Prior to any performance of Work at the Site, the CM shall review the District's safety requirements for the Assigned Project and verify that the Contractor implements a safety program in conformity with the District's requirements during construction of the Assigned Project.

5.12.2 Contractor Safety Programs. CM shall review safety programs of the Contractor for conformity with requirements of the Construction Documents and applicable law; CM shall monitor the Contractors' compliance with their respective safety programs and advise the District of measures, if any, necessary or appropriate to obtain the Contractors' compliance. By undertaking the obligations hereunder, CM shall not be deemed to have assumed responsibility for the adequacy or sufficiency of safety programs implemented by Contractor, but the CM is responsible for verifying that the Contractor has established a safety program, that the safety program established by the Contractor is in compliance with the Construction Documents and applicable law, rule or regulation and that the Contractor implements its safety program during construction of the Assigned Project.

5.12.3 Safety Violations; Safety Conditions. The CM shall promptly notify the District Representative in writing of all CM observed instances of a Contractor(s)' failure to comply with applicable safety requirements or safety programs. In the event of a safety violation or other unsafe conditions on or about the Site of the



Assigned Project which have an immediate potential or actual adverse effect on life or property, the CM is authorized, without prior notice to the District or prior directive of the District, to take all actions deemed necessary and appropriate by the CM under the then existing circumstances to prevent such actual or potential adverse effect.

5.13 Changes and Claims.

5.13.1 Coordination of Changes. CM will coordinate and disseminate correspondence, Drawings and other written materials by and between the Contractor(s), the District, Project Inspector, Test/Inspection Service Providers and the Architect relating to Changes to the Work of an Assigned Project. CM will coordinate: (i) the Architect's preparation of modifications to the Design Documents as necessary for the Contractor to implement a District authorized change; and (ii) the Contractor(s)' performance of Changes authorized by the District. CM will maintain a log or other written records to monitor the pendency and disposition of Changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular Change or Change Order or the cumulative effects thereof on Construction Costs or time for completing construction of the Assigned Project. If requested by the District, the Change Order Log shall include an evaluation of the underlying reason(s) for implementing a Change or Change Order. The Change Order Log maintained by the CM shall be available for review, inspection and reproduction upon request of the District.

5.13.2 Processing of Changes and Change Orders. CM will assist the District and the Architect in evaluation of requests by Contractor(s) for issuance of Change Orders, assist in negotiations with Contractor(s) relative to Change Order proposals and the adjustment of Contract Price or Contract Time under the Construction Contract for an Assigned Project. CM will make recommendations to the District and the Architect for handling and disposition of the Contractor's proposals relative to Change Orders. If a Change to a Construction Contract is approved or authorized by the District, CM will assist the District and the Architect in the preparation of a Change Order reflecting such approved or authorized change to the Construction Contract. The CM is not authorized, without the prior written consent and approval of the District, to effectuate or authorize any Change to the Work of an Assigned Project. The CM shall be liable to the District for all direct and consequential costs, losses or damages resulting from the CM's direction or authorization to effectuate a Change to the Work of an Assigned Project without the prior direction and authorization of the District.

5.13.3 Claims Handling. CM will assist the Architect in the review, evaluation and processing of claims asserted by Contractor; CM will make recommendations to the District as to merit, handling and disposition of Contractor(s)' claims. Except in the event that the CM is alleged to have caused or contributed to the circumstances giving rise to a Contractor claim or other Contractor demand for compensation, services of the CM to prepare documentation or provide testimony in a mediation, arbitration or judicial proceeding arising out of such a claim or demand for compensation shall be deemed Additional Services. If the CM is alleged to have caused or contributed to a Contractor claim, the CM's claims handling services, including without limitation, claims analysis, assistance in preparing briefs/graphic materials in connection with negotiations or dispute resolution proceedings relating to a Contractor claim and participation in negotiations or dispute resolution proceedings relating to a

Contractor claim shall be deemed part of the CM's Basic Services under this Agreement.

## **6 BASIC SERVICES; POST-CONSTRUCTION PHASE**

- 6.1 Review and Transmittal of Contractor Closeout Documents. The CM shall receive from the Contractor(s) the closeout documents and items to be submitted by the Contractor(s) under the terms of the Construction Contract(s) upon completion of their obligations under the Construction Contract(s) ("Close-Out Submittals"). The CM shall review each Contractor's Close-Out Submittals to determine conformity with requirements of each Construction Contract; if the CM determines that any Contractors' Close-Out Submittals are not in conformity with requirements of the Construction Contract, the CM shall make recommendations to the District for measures to secure compliance with the requirements of the Construction Contract. If complete and in accordance with the terms of the Construction Contract, the CM shall deliver to the District Representative all of the Contractors' Close-Out Submittals, except for the Contractors' as-built drawings which the CM shall transmit to the Architect for preparation of the Record Drawings. The CM shall monitor the Architect's preparation and completion the Project Record Drawings.
- 6.2 CM Project Records. Within thirty (30) days of the date after Final Completion of an Assigned Project, the CM shall assemble and deliver to the District all of the records maintained by the CM during the Construction Phase of the Assigned Project.
- 6.3 Contractor's Post-Construction Obligations. If a Contractor is obligated under the terms of the Construction Contract to provide work, labor, materials or services after completing construction of the Assigned Project, the CM shall monitor such Contractor's post-construction activities for conformity with requirements of the Contract. The CM shall make recommendations, as necessary, for securing the Contractor's compliance with post-construction obligations. The CM shall implement such recommendations as directed or authorized by the District Representative.
- 6.4 Project Reports. The CM shall monitor the filing of DSA reports and other actions required by applicable law, rule or regulation to be undertaken by the Architect, Project Inspector and Contractor(s) during construction of an Assigned Project and upon completing construction of the Assigned Project. If the Architect, Project Inspector or any Contractor(s) have not filed reports or taken other actions required during construction of the Assigned Project or upon completing construction of the Assigned Project, the CM shall make recommendations to the District for measures to secure compliance by the Architect, Project Inspector or Contractor(s) with regard to such requirements. The CM will assist the District in completion and submission of reports and other actions required to be undertaken by the District during construction of the Assigned Project or upon completing construction of the Assigned Project pursuant to applicable law, rule or regulation.

## **7 ADDITIONAL SERVICES**

- 7.1 District Right to Direct Additional Services. Without invalidating this Agreement or any provision hereof, the District, may by a written instrument duly executed by the District Representative on behalf of the District, authorize or direct the CM to perform Additional Services which are not included within the scope of the Basic Services set forth herein.

- 7.2 Compensation to the CM for Additional Services. If the District directs or authorizes the CM to perform Additional Services, the CM shall be compensated for such Additional Services on a lump sum, fixed price if mutual agreement therefor is reached between the District and the CM. If the District and the CM are unable to reach mutual agreement as to the lump sum, fixed price due the CM for District authorized/directed Additional Services, compensation to the CM for such Additional Services shall be based upon: (i) CM personnel reasonably necessary to complete the Additional Services; (ii) time of the CM's personnel reasonably necessary to complete the Additional Services; and (iii) the personnel rates for the CM's personnel engaged in the Additional Services. The foregoing notwithstanding, if any Additional Services are required or appropriate as a result of the CM's default or breach in the performance of the CM's obligations hereunder or other malfeasance of the CM, no compensation shall be due from the District to the CM for such Additional Services.

## 8 CM COMPENSATION

- 8.1 Contract Price. The Contract Price due the CM under this Agreement consists of two components: (i) the Contract Price for completion of Building Program Basic Services; and (ii) the Contract Price for each Assigned Project.
- 8.1.1 Building Program. The Contract Price for the CM's performance and completion of Basic Services shall be the fixed price lump sum amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000).
- 8.1.2 Assigned Project Contract Price. The compensation due the CM for Basic Services for each Assigned Project shall be as set forth in the Task Order for each Assigned Project. Payment of the Task Order Contract Price for an Assigned Project will be made by the District in accordance with the terms hereof. The Contract Price includes the fee of the CM and any Sub-Consultant to the CM, personnel expenses of the CM and sub-consultants, inclusive of all benefits and burdens, travel for personnel of the CM and sub-consultants to and from the Site, travel within the Counties of Los Angeles, Ventura, Kern, San Bernardino, Riverside and Orange, insurance and other overhead costs associated with or arising out of performance and completion of Basic Services for an Assigned Project. The Contract Price due the CM for any Assigned Project shall not exceed 4.9% of the Construction Costs of the Assigned Project plus any additional services agreed to by the CM and the District.
- 8.2 Reimbursable Expenses. Unless authorized in advance in writing by the District, there shall be no expenses, costs or other charges arising out of or related to providing Basic Services or authorized Additional Services under this Agreement ("Reimbursable Expenses") which are reimbursable to the CM. If any Reimbursable Expense is approved in advance by the District, the CM's reimbursement shall be limited to the actual costs, without mark-ups or multiples.
- 8.3 Additional Services. If the District shall authorize or direct CM to perform or provide Additional Services described generally in this Agreement, CM shall be compensated in accordance with paragraph 7.2.
- 8.4 District Payments.
- 8.4.1 CM Billings to District. During the Term of this Agreement, the CM will submit monthly billings for payment of the Contract Price due under each pending Task Order for an Assigned Project. If the compensation due the CM under a Task

Order is based on time incurred by the CM's personnel, the CM's billings shall: (i) identify each member of the CM's personnel who performed any Basic Services or authorized Additional Services in the preceding month; (ii) a detailed description of the services, tasks or other activities for each time entry; (iii) time entries shall be in increments of no more than one-half hour; and (iv) limited by the "not to exceed" amount(s) noted in the Task Order for the Assigned Project, or portions thereof. If the compensation due the CM under a Task Order for an Assigned Project is a lump sum fixed price, the CM's monthly billings shall be for the portion of the lump sum, fixed price due for the immediately preceding month, as set forth in the Task Order for the Assigned Project. If requested by the District, the CM shall provide reasonably satisfactory substantiating data for payment requested by the CM.

8.4.2 Allocation of Assigned Project Contract Price. The Contract Price for an Assigned Project is allocated to each Phase of the Basic Services as described in the Task Order for each Assigned Project. The portion of the Contract Price for each Phase or portion of Basic Services for an Assigned Project shall be limited by the allocation thereof as set forth in the Task Order for an Assigned Project.

8.4.3 District Payments to CM. Within thirty (30) days of receipt of CM's billing invoices, District will make payment to CM of undisputed amounts of the Contract Price due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due CM hereunder because of any penalty assessment, liquidated damages or other amounts withheld by the District from payment to the Architect or the Contractor. The District may, however, withhold or deduct from amounts otherwise due CM hereunder if CM shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after CM has fully cured its failure(s) of performance, less costs, damages or losses sustained by the District as a result of such failure(s) of performance of material obligations hereunder. If at any time the District does not pay to CM all sums invoiced, District shall within thirty (30) days of the CM's submission of its billing invoice, provide CM with written documentation describing the basis for the District's withhold or deduction of the Contract Price under a Task Order and shall pay the balance of CM's invoice not subject to withholding or deduction.

## 9 INSURANCE AND INDEMNITY

### 9.1 CM Insurance.

9.1.1 Workers Compensation and Employers Liability Insurance. The CM shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts under which the CM may be liable. The CM shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee, which arises out of the employee's employment by Consultant. The Employer's Liability Insurance required of the CM hereunder may be obtained by the CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by the CM hereunder.

- 9.1.2 Commercial General Liability and Property Insurance. The CM shall purchase and maintain Commercial General Liability and Property Insurance as will protect the CM from the types of claims set forth below which may arise out of or result from the CM services under this Agreement and for which the CM may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the CM's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the CM, or (b) by another person; (iii) claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to the CM's obligations under this Agreement; and (vi) for completed operations. District shall be an additional named insured to the Consultant's Commercial General Liability insurance policy.
- 9.1.3 Professional Liability Insurance. The CM shall procure and maintain professional liability insurance covering claims arising out of the performance of services under this Agreement.
- 9.1.4 Coverage Amounts. Minimum coverage amounts for policies of insurance obtained by the CM for each Assigned Project shall be as follows:

Insurance Policy	Minimum Coverage Amount
Workers' Compensation	In accordance with applicable law
Employer's Liability	One Million Dollars (\$1,000,000)
Commercial General Liability (including coverage for automobile liability and property casualty)	One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate
Professional Liability	Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate

9.1.5 Policy Endorsements; Evidence of Insurance. Prior to commencing performance of Basic Services for an Assigned Project, the CM shall deliver Certificates of Insurance to the District Representative which evidence each of the policies of insurance in the minimum coverage amounts required in connection with the Assigned Project. All policies of insurance required hereunder shall be issued by insurer(s) authorized to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance, whether by endorsement or otherwise, shall provide that such policy will not be materially modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.

9.2 District General Liability Insurance. District shall obtain and maintain General Liability Insurance covering District for claims of bodily injury, death or property damage arising out of an Assigned Project.

9.3 Indemnity.

9.3.1 Consultant Indemnity of District. The CM shall indemnify, defend and hold harmless the Indemnified Parties from all claims, demands, liabilities, actions

and causes of action arising out of this Agreement, including without limitation, claims for bodily injury, death, physical property damage and demands, losses, liabilities or other claims arising out of the CM's services hereunder or the negligent, willful acts omissions or other conduct of CM's Consultants, the employees, agents or representatives of the Consultant, a Sub-Consultant to the Consultant or the employees, agents or representatives of a Sub-Consultant. The Indemnified Parties are: the District, the District's Board of Trustees and each individual member thereof and the employees, officers, agents and representatives of the District. The CM's obligations hereunder shall survive termination of this Agreement and the completion of Basic Services, until barred by the applicable statute of limitations.

- 9.3.2 District Indemnity of Consultant. The District shall indemnify, defend and hold harmless the CM from all claims arising out of this Agreement, including without limitation, claims for bodily injury (including death) and physical property damage which arise out of the negligent or willful acts or omissions of the District.

## 10 TERM OF AGREEMENT; TIME

- 10.1 Term. The Term of this Agreement shall commence on December 15, 2010 and shall terminate sixty (60) months thereafter on December 15, 2015. Notwithstanding expiration of the Term, if at such time, there are remaining Basic Services or authorized Additional Services to be performed by the CM in connection with an Assigned Project under a Task Order issued prior to expiration of this Agreement, the CM shall continue to diligently perform and complete all such remaining Basic Services or authorized Additional Services for the Assigned Project subject to such a Task Order; notwithstanding expiration of this Agreement, the District will continue to make payment for the Basic Services and authorized Additional Services performed in connection with an Assigned Project after expiration of this Agreement in accordance with the terms of the Task Order for such an Assigned Project.
- 10.2 Time. All of the Basic Services and authorized Additional Services set forth in the Task Order for an Assigned Project shall be completed by the CM in a prompt and diligent manner. If a schedule for completion of Basic Services in connection with an Assigned Project is agreed upon between the District and the CM, the CM's performance and completion of Basic Services shall be in accordance with such schedule. The CM shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the CM to complete Basic Services for an Assigned Project in accordance with an agreed upon schedule, provided that the CM's liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the CM.

## 11 TERMINATION; SUSPENSION

- 11.1 Termination for Default. Either the District or CM may terminate this Agreement upon seven (7) calendar days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this

Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to CM if: (i) CM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by CM or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CM or any of CM's property on account of CM's insolvency; or (ii) if CM disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due CM, if any, shall be based upon Basic Services, authorized Additional Services and Reimbursable Expenses incurred or provided prior the effective date of the District's termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due, if any, shall be made by District only after completion of the Construction Phase of the Project. CM shall remain responsible and liable to District for all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of CM's default hereunder, to the extent that such losses, damages or other costs exceed any amount due CM hereunder for Basic Services or authorized Additional Services.

- 11.2 District's Right to Suspend. The District may, in its discretion, suspend all or any part of the construction of an Assigned Project, work under a Construction Contract or CM's services under a Task Order provided, however, that if the District shall suspend construction of an Assigned Project, work under a Construction Contract or CM's services under a Task Order for an Assigned Project for a period of sixty (60) consecutive days or more and such suspension is not caused by CM or the acts or omissions of CM, upon rescission of such suspension, the Contract Price will be subject to adjustment to provide for actual costs and expenses incurred by CM as a direct result of the suspension and resumption of construction of the Assigned Project or construction under a Construction Contract or CM's services under the Task Order for an Assigned Project.
- 11.3 District's Termination of Agreement or Task Order for Convenience of the District. The District may, at any time, upon seven (7) days advance written notice to CM terminate, in whole or in part, this Agreement or a Task Order for an Assigned Project for the District's convenience and without fault, neglect or default on the part of CM. In such event, the Agreement or Task Order (or portions thereof as designated by the District) shall be deemed terminated seven (7) days after the date of the District's written notice to CM or such other time as the District and CM may mutually agree upon. In such event, the District shall make payment of the Contract Price for the Agreement or the Assigned Project to the CM for services provided through the date of termination plus actual costs incurred by CM directly attributable to such termination. Except as set forth herein, no other payment or compensation shall be due the CM upon the District's termination of this Agreement or a Task Order pursuant to the preceding.
- 11.4 CM Suspension of Services. If the District shall fail to make payment of undisputed portions of the Contract Price for an Assigned Project when due CM hereunder, CM may, upon seven (7) calendar days advance written notice to the District, suspend further performance of services hereunder until payment of the undisputed portions of the Contract Price in full is tendered by the District. In such event, CM shall have no liability for any delays or additional costs to construct the Assigned Project due to, or arising out of, such suspension. Except as expressly set forth herein, the CM shall have no other right to suspend its performance and completion of Basic Services in

accordance with the terms of this Agreement and the Task Order for an Assigned Project.

## 12 MISCELLANEOUS

- 12.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or CM. In the event of conflict or inconsistency between the provisions of this Agreement and the RFP Response, the terms of this Agreement shall prevail.
- 12.2 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of CM and the District. Neither CM nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 12.3 Authority. The individual(s) executing this Agreement on behalf of CM warrant and represent that she/he is authorized to execute this Agreement and bind CM to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and, subject to approval and ratification by the District's Board of Trustees, to bind District to all terms hereof.
- 12.4 Notices. Notices under this Agreement shall be addressed and delivered as follows:

If to District:  
 David El Fattal, Vice President of Business Services  
 Cerritos Community College District  
 11110 Alondra Blvd.  
 Norwalk, CA 90650-6203

If to CM:  
 Dayne Brassard, Executive Vice President  
 3612 Mission Inn Ave  
 Riverside, CA 92501

- 12.5 Disputes.
- 12.5.1 Continuation of CM Services. Except in the event of the District's failure to make payment of undisputed portions of the Contract Price due the CM for an Assigned Project, notwithstanding any disputes between District and CM arising hereunder or under a Task Order for an Assigned Project, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 12.5.2 Mandatory Mediation. All claims, disputes and other matters in controversy between the CM and the District arising out of or pertaining to this Agreement or a Task Order shall be submitted for resolution by non-binding mediation conducted under the auspices of the Judicial Arbitration and Mediation Services ("JAMS"). The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the CM commencing arbitration proceedings pursuant to Paragraph 12.5.3 below.
- 12.5.3 Arbitration. All claims, disputes or other matters in controversy between CM and District arising out of or pertaining to an Assigned Project or this Agreement



which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted under the auspices of JAMS. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the CM only if it is supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. The District and CM hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the arbitration award if, after review of thereof, the Court determines either that the arbitration award is not supported by substantial evidence or that it is based on an error of law. If any claim or dispute is asserted by the Architect or a Contractor or the District relating to an Assigned Project and arising in whole or in part out of this Agreement, CM and District agree that any arbitration proceedings initiated between CM and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or Contractor.

- 12.5.4 CM Compliance with Government Code §900 et seq. The foregoing dispute resolution procedures notwithstanding, neither the provisions of this Agreement or any Task Order issued hereunder, shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the CM's submission of claims to the District. The CM's strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the CM's initiation of any other dispute resolution procedure or proceeding.

## 12.6 Definitions.

- 12.6.1 Contractor. The entity or individual under direct contract to the District for construction of an Assigned Project. As necessary by the context of usage, the term "Contractor" shall include Trade Contractors.
- 12.6.2 Construction Contract. A Contract for Construction of an Assigned Project.
- 12.6.3 Design Documents. The Drawings, Specifications, calculations and other work product and Instruments of Service prepared by or on behalf of the Architect for an Assigned Project. Design Documents include surveys, soils reports and other documents prepared for the Assigned Project by a licensed Architect or registered Engineer, whether under contract to the Architect or District.
- 12.6.4 Architect. The Architect is the firm or individual retained by the District in connection with an Assigned Project to provide architectural and related design services in connection with the Assigned Project. References to the Architect include Design Consultants retained by the Architect to prepare or provide any portion of the Design Documents for an Assigned Project.
- 12.6.5 Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or a Subcontractor to the Contractor or suppliers illustrating some portion of the work of an Assigned Project.
- 12.6.6 Site. The physical area for construction and activities relating to construction of an Assigned Project.
- 12.6.7 Project Budget. The Project Budget is the cost allocated by the District for design, bidding and construction of an Assigned Project by Contractors, exclusive of fees and costs of the Architect, CM and District Consultants, Site acquisition costs and the costs of furniture, furnishing and/or equipment for the Assigned Project which are not included in the scope of the Construction

- Contract for the Assigned Project. The Project Budget established by the District may be modified by the District from time-to-time.
- 12.6.8 Construction Cost Estimates. Construction Cost Estimates are estimates of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative cost as necessary to complete construction of an Assigned Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of bids for construction of the Assigned Project and Changes to the Assigned Project during construction of the Assigned Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Assigned Project Budget, if any.
- 12.6.9 Construction Budget. The "Construction Budget" is the portion of the Project Budget allocated for construction of the Assigned Project.
- 12.6.10 Construction Costs. The costs of labor, materials, equipment (inclusive of the Contractor's general administrative and overhead costs/profit) necessary to complete construction of an Assigned Project.
- 12.6.11 Construction Schedule. A Construction Schedule is the written or graphic description of the scheduling, sequencing and interrelationships of activities necessary to complete construction of an Assigned Project.
- 12.6.12 Construction Documents. The Contract Documents issued by or on behalf of the District under a Construction Contract of all or a portion of an Assigned Project. Construction Contract Documents include all modifications issued by or on behalf of the District.
- 12.6.13 Substantial Completion. Substantial Completion is when the Work of a Construction Contract for an Assigned Project has been completed and installed and the Assigned Project can be used or occupied for its intended purposes, subject only to minor corrections, repairs or modifications.
- 12.6.14 Final Completion. Final Completion is when all of the Work of a Construction Contract for an Assigned Project has been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Contractor has completed all other obligations to be performed on its part under the Construction Contract.
- 12.7 Time. Time is of the essence in the performance and completion of obligations under this Agreement and each Task Order issued hereunder.
- 12.8 Entire Agreement. This Agreement, the RFP Response (including without limitation, the CM's Pricing Matrix submitted with the RFP Response) and the Task Orders issued by the District are all of the documents forming a part of the Agreement. The foregoing constitute the entire agreement and understanding between the District and CM concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement or a Task Order issued pursuant to this Agreement shall be modified or amended except by a subsequent writing executed by the District and CM.

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

"DISTRICT"  
CERRITOS COMMUNITY COLLEGE  
DISTRICT

"CM"  
TILDEN-COIL CONSTRUCTORS, INC

By: [Signature]  
Title: VICE PRESIDENT BUSINESS SERVICES  
Date: 12/15/10

By: [Signature]  
Title: Executive Vice President  
Date: 12/15/10