

MADERA UNIFIED SCHOOL DISTRICT
REQUEST FOR PROPOSALS
FOR
CONSTRUCTION MANAGEMENT SERVICES

The **Madera Unified School District** ("District") is seeking statements of proposals from qualified construction management firms for professional services to act as Construction Manager ("CM") and to provide construction management services initially for the District's New High School Project ("Project"), and possibly other projects as assigned. The CM will be expected to provide professional construction management consulting services to support District's Project.

The Project work may include, but is not necessarily limited to, new construction, improvements and upgrades funded by general obligation bonds, state funding, and/or other sources. The CM should be experienced with projects that use design-bid-build, as well as alternative construction delivery methods like design-build, CM multi-prime and lease-leaseback.

This Request for Proposals ("RFP") describes the Project, required Scope of Services, consultant selection process, and minimum information that must be included in the proposal. This RFP will request each Proposer to concisely state its qualifications and its plan for how the CM and District will develop a constructive and effective partnership. The successful Proposer will be required to enter into an Agreement for Construction Project Management Services substantially in the form attached hereto as "Attachment A." Attachment A and the scope of work may be revised to fit the District's needs.

Proposals must be received no later than 4:00 pm on Friday, June 16, 2017, at the office of:

MADERA UNIFIED SCHOOL DISTRICT
Facilities Planning and Construction Management Department
1205 South Madera Avenue
Madera, CA 93637
Attn: Rosalind Cox
Director of Facilities Planning and Construction Management

Proposers shall submit one (1) unbound original, one (1) electronic copy (PDF or flash drive), and six (6) copies of the proposal.

Questions regarding this request must be submitted in writing to Rosalind Cox, at rosalindcox@maderausd.org

1. INTRODUCTION

This Request for Proposals is for professional services for construction management services. The CM shall not serve as a general construction contractor for any portion of the Project. The full contracted scope of work shall be negotiated with the selected firm(s) based on the services proposed by firm and/or required by the District and will be based on the Agreement for Construction Project Management Services ("CM Agreement") substantially in the form attached hereto as Attachment A. It is critical that the CM is successfully able to blend the authority delegated to the CM by the District with the District's non-delegable responsibilities to form a constructive and effective working relationship. The CM is encouraged to view a more detailed description of the CM's anticipated duties in the Scope of Services described in section 4 and Exhibit A of the draft CM Agreement.

2. DISTRICT BACKGROUND

The Madera Unified School District serves the community of Madera. The District currently serves approximately 19,900 students in grades Kindergarten - 12th in the District's 25 schools and are directed by a seven member Governing Board.

3. PROJECT DESCRIPTION

3.1 Project Background/Description

The District's Project shall consist of services related to the management and administration of the construction of a new high school located at Martin Street and Road 26 to be funded by the 2014 general obligation bond funds, state funding, and other funds of the District. Construction costs are estimated to be \$135,000,000.

The District's new high school is made up of single and two-story buildings which house standard classrooms, science classrooms, career technical education classrooms, administrative space, library/media center, health clinic, cafeteria, gymnasium, locker/shower, performing arts theater, aquatics complex, play courts, playfields, parking and ancillary facilities. Approximate total square footage is 260,000 sf. Site acreage is approximately 57 acres. The new high school will house 2,200 students, with master planned future growth to 2,500 students.

The plans are currently under review at DSA. The District anticipates using a lease-leaseback (LLB) contract to deliver the project, but reserves the right to select an alternative project delivery method if deemed in its best interest. It is the District's hope to begin both on-site and off-site work while DSA is completing its fire, life and safety reviews.

3.2 Fee Estimate

The School Board desires to compare two strategies for fee structure and scope of work. They are limited scope and full service. Proposer must provide a fee estimate and description of services for both of these strategies. Based on its knowledge of the District's needs and the Project demands, the Proposer should give a recommendation as to the best strategy (limited scope or full service) to deliver a successful project.

1. Fees for Limited Scope Management Services

The first strategy will allow the District to select specific services that it deems beneficial to the successful completion of the Project. Please refer to Exhibit A Scope of Work of the CM Agreement. Proposers are encouraged to provide fees for any limited scope services they would provide. Proposers are encouraged to include additional services that they see as critical to delivering a successful project. Please provide an explanation as to rationale and need for any additional services that the Proposer lists.

2. Fees for Full Service Construction Management

The second strategy is full service. Proposer should include a summary of its proposed fee methodology and an associated fee schedule. Please provide a detailed list of any services that the Proposer will provide that are above and beyond the scope of work listed in Exhibit A of the CM Agreement. Please provide an explanation as to the rationale and need for full service.

The fee proposal shall include hourly rates for anticipated positions within the CM organization structure. The fee proposal should also include an estimate of personnel hours and cost to complete each phase of the scope of work. All direct costs, handling charges and profit/overhead shall be included in the hourly billing rate. Any proposed reimbursable expenses should also be listed. A not-to-exceed fee shall be negotiated with the successful Proposer as described in Article V of the draft CM Agreement.

3.3 Term

The initial term of the CM Agreement will be for the duration of the Project (approximately 7/1/17-12/31/19).

4. SCOPE OF REQUIRED SERVICES

Although the full scope of work shall be negotiated in the professional services agreement, CM will be expected to fulfill, at a minimum, the services described in the Scope of Services attached hereto as Exhibit A of the CM Agreement.

5. INSTRUCTIONS FOR SUBMITTING PROPOSAL

5.1 General

Each proposal shall include a description of the type, technical experience, background, qualifications and expertise of the Proposer's firm. The description shall show that the firm possesses the demonstrated skills and professional experience to perform the general functions of the Project and fulfill the goals and vision of the District. Proposals shall demonstrate the Proposer's ability to develop and implement a creative approach to construction management and in particular the lease-leaseback delivery method.

5.2 Contents

a. Executive Summary (limit: 2 pages)

Provide an overview of the entire proposal describing the general approach or methodology the Proposer will use to meet the goals and fulfill the general functions required in this RFP. The summary should also include an outline of the firm's management style and business approach.

b. Table of Contents (limit: 1 page)

c. Identification of the Proposer (limit: 1 pages)

- i. Legal name and address of company.
- ii. Legal form of company (corporation, partnership, etc.).
- iii. Address and phone number of the office that will be primarily responsible for providing services for this Proposal.
- iv. California Business License Number.
- v. Name, title, and signature of the person(s) authorized to submit the qualifications on behalf of the firm.

d. Staffing Resources (limit: 2 pages)

i. Firm Staffing and Key Personnel

- (a) Provide total number of professional staff employed by the firm.
- (b) Identify the number of person(s) that will be principally responsible for working with the District. Indicate the role and responsibility of each individual. If the Proposer is chosen as a finalist, the principal individual(s) must attend the interview and in-person presentation. One or more of these individuals will be expected to maintain a working office on the Project site.
- (c) Provide brief biographies or resumes of individuals that will be working directly with the District. (These can be added as addenda.)

e. Fiscal Stability (limit: 1 page - not including supporting documentation)

The Proposer should provide evidence of corporate stability including:

- i. A current report from any commercial credit rating service such as Dunn and Bradstreet or Experian; or

- ii. A letter from a financial institution stating a current line of credit; and
 - iii. Latest audited financial statement and/or annual report that has been certified by a CPA. This information will remain confidential and is not subject to public disclosure.
- f. Experience and Technical Competence (limit: 5 pages)
- i. Experience
 - (a) The Proposer shall provide a description of how the Proposer's experience, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP.
 - (b) The Proposer shall state the number of years the firm has conducted business. Proposer must have at least five (5) years of experience in providing the required scope of construction management services for public clients, preferably school districts. Please provide three (3) references to support the number of years of experience with public clients. Include the name, address, and phone number of each reference.
 - (c) The Proposer should provide evidence that the firm has experience and expertise in construction project design review and evaluation, construction mobilization and supervision, price and contractor evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of construction projects.
 - ii. Project Specific Experience
 - (a) The Proposer shall provide a description of the five (5) most relevant construction management contracts, including alternative delivery methods such as design-build and lease-leaseback, held by the firm, preferably involving school construction projects for K-12 facilities involving general obligation bond funds and state funding, community colleges, or four year colleges and universities, within the last eight (8) years, one page per project, to include:
 - A. Role of the firm (e.g., limited scope/ full service etc.)
 - B. Dollar value of the project
 - C. Dollar value of the CM fee

- D. Change order amount/rate
- E. Any time extension required
- F. Project description
- G. Staffing
- H. Duration of project
- I. Relationship to client
- J. Client contact name, position, entity name, telephone number, fax number and e-mail address for each project.

(b) If any of the following has occurred, please describe in detail:

- A. Failure to enter into a contract or professional services agreement once selected.
- B. Withdrawal of a proposal as a result of an error.
- C. Termination or failure to complete a contract.
- D. Debarment by any municipal, county, state, federal or local agency.
- E. Involvement in litigation, arbitration or mediation.
- F. Conviction of the firm or its principals for violating a state or federal antitrust law by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of violating any other federal or state law related to bidding or professional services performance.
- G. Knowing concealment of any deficiency in the performance of a prior contract.
- H. Falsification of information or submission of deceptive or fraudulent statements in connection with a contract.
- I. Willful disregard for applicable rules, laws or regulations.

Information regarding any of the above may, at the sole discretion of the District, be deemed to indicate an unsatisfactory record of performance.

iii. Technical Competence (limit 1 page)

- (a) Description of in-house resources (i.e., computer capabilities, software applications, modem protocol, modeling programs, etc.) for services like scheduling, budgeting, cost estimating and document control.

- (b) Ability to draw upon multi-disciplinary staff to address the services requested in this RFP. Please list commonly used sub-consultants.
- (c) Describe the firm's quality control systems, including ability to monitor sub consultants, if any.

g. Proposed Method to Accomplish the Work (3 pages)

Describe the technical and management approach to the construction management partnership with the District. Proposer should take into account the scope of the Project goals of the District, and general functions required. In reviewing the Scope of Services described in Exhibit A of the CM Agreement, the Proposer may identify additional necessary tasks and is invited to bring these to the District's attention within the discussion of its proposed method to accomplish the work.

Proposer may use this section to provide more detail to their recommendation of the best fee structure strategy.

h. Insurance (limit: 1 page - not including supporting documentation)

Proposer shall provide a letter from insurance company indicating ability to provide insurance according to Article XIV of the attached CM Agreement.

THE SUBMISSION OF A PROPOSAL INDICATES THAT THE PROPOSER SHALL PROVIDE THE ABOVE ENUMERATED INSURANCE REQUIREMENTS IF SELECTED.

i. Litigation (limit: 1 page)

Provide litigation history for any claims filed by your firm or against your firm related to the provision of program or project or construction management services in the last ten (10) years.

j. Other Information (limit: 1 page)

This section shall contain all other pertinent information regarding the following:

1. Demonstration of record of staffing tasks efficiently and completing projects on time and within the allocated budget.
2. Description of community involvement. Please list strategies that your team would use to encourage community involvement, workforce development, and/or utilizing existing community resources.

3. Description of any previous involvement with the District.

k. Appendices (limit: none)

6. PRE-SUBMITTAL ACTIVITIES

6.1 Questions Concerning Request for Proposal

In order to control information disseminated regarding this RFP, firms interested in submitting proposals are directed **not** to make personal contact with members of the Board of Trustees and District Administration, with the exception of the individual listed in Section 7.4 below.

All questions, interpretations or clarifications, either administrative or technical must be requested in writing and directed to the contact person listed in Section 7.4 below. All written questions will be answered in writing and conveyed to all firms on the Proposer's List via an addendum. Oral statements regarding this RFP by any persons should be considered unverified information unless confirmed in writing. To ensure a response, questions must be received in writing by the scheduled date given in Section 9 of this RFP (the Schedule of Events).

6.2 Revision to the Request for Proposal

The District reserves the right to revise the RFP until the date specified in Section 9 of this RFP (the Schedule of Events). Revisions to the RFP shall be mailed to all Proposers that have timely submitted a Letter of Interest. The District expressly reserves the right to extend the date by which proposals are due.

7. SUBMITTAL REQUIREMENTS

7.1 General

It is strongly recommended that the Proposer submit proposals in the format identified in this section to allow the District to fully evaluate and compare the proposal. All requirements and questions in the RFP should be addressed and all requested data shall be supplied. The District reserves the right to request additional information which, in the District's opinion is necessary to assure that the Proposer's competence, number of qualified employees, business organization and financial resources are adequate to perform according to contract.

7.2 Preparation

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability and experience to perform work of this type. Expensive bindings and promotional materials, etc., are not necessary or desired. However, technical literature that supports the Project approach and work plan should be forwarded as part of the Proposal. Emphasis should be concentrated on completeness, approach to the work and clarity of proposal.

7.3 Format

Proposals shall adhere to the required format for organization and content as set forth above in Section 5.2. Proposals must be divided into the individual sections and organized as set forth therein, and should not exceed the maximum number of pages specified. Tabs should be provided for each of the sections as well. The full RFP shall not exceed 19 pages excluding front and back covers, tabs, appendices and supporting documentation.

The proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer.

7.4 Date, Time and Place of Submission

The proposal must be received **no later than 4:00 p.m. on Friday, June 16, 2017**, at the office of:

MADERA UNIFIED SCHOOL DISTRICT
Facilities Planning and Construction Management Department
1205 South Madera Avenue
Madera, CA 93637
Attn: Rosalind Cox
Director of Facilities Planning and Construction Management

Submission of proposals by facsimile or e-mail is not acceptable. The Proposer is entirely responsible for the means of delivering the proposal to the appropriate office on time. Delays due to internal routing of misdirected proposals or due to verbal directions given by District staff shall be the responsibility of the Proposer. The proposal must be completed and delivered in sufficient time to avoid disqualification for lateness due to difficulties in delivery. **LATE PROPOSALS WILL NOT BE ACCEPTED.**

Modifications of proposals received after the deadline specified in this section will not be considered.

7.5 Number of Copies

One (1) unbound original, (1) electronic copy (PDF on flash drive), and six (6) copies of proposal shall be submitted to the District contact person identified in Section 7.4.

7.6 Packet Submission

Proposals shall be submitted in sealed packages with the following information clearly marked on the outside of the package:

- a. Name of Proposer
- b. RFP: Construction Management Services, New High School
- c. Sealed Cost Estimate (in separate, sealed envelope)

8. EVALUATION AND AWARD OF CONTRACT

8.1 Responsiveness to RFP

All proposals shall be reviewed to verify that the Proposer has met the minimum requirements of the RFP. Proposers are encouraged to follow the format of the RFP in order to facilitate District review. The District reserves the right to reject any proposal which is non-responsive or fails to meet the minimum requirement of this RFP.

8.2 Evaluation and Award of Contract

It is the District's intent to select a firm best evidencing demonstrated competence and professional qualification to perform the described services. The District reserves the right to reject all proposals at any time up to entering a contract award. The District makes no representation that participation in the Request process will lead to an award of contract or any consideration whatsoever.

Certain firms may be selected to make a brief presentation and oral interview after which a final selection will be made. However, the District reserves the right to select a firm based on proposal review only.

Upon selection of a firm, the District will endeavor to negotiate a mutually agreeable professional services agreement with the selected firm. In the event that the District is unable to reach agreement, the District will proceed, at its sole discretion, to negotiate with the next firm selected by the District. The District reserves the right to contract for services in the manner that most benefits the District including awarding more than one contract if desired.

8.3 Selection Criteria

Firms submitting proposals are advised that all proposals will be evaluated to determine whether the firm that will meet the needs of the District. Evaluation will include, but not be limited to the following criteria:

- a. Proposed Fee Schedule (40 pts)
 - i. The ability to provide high quality services in a cost effective manner. District will have the discretion to base its score on the information provided for either or both the limited scope and full service fee proposals.
- b. Experience (40 pts)
 - i. Experience in working with California K-12 school districts.
 - ii. Firm's overall capability, stability and available resources.
- c. References (Company and Personnel assigned to project) (15 pts)
 - i. Ability to complete tasks within a timely and efficient manner.

- ii. Ability to deliver projects within budget and on time.
- d. Responsiveness/Quality of Proposal and Best Fit with the District (5pts)
 - i. Understanding the goals of the district and this project.
 - ii. Experience and fit of project team assigned to the project.
 - iii. Ability to be strong advocates for the district

8.4 Selection Process

a. Initial Screening – Phase I

The District Superintendent or his designee will appoint a Selection Committee composed of district staff and individuals experienced in program and construction management services to screen applicants and select firms for oral interviews.

b. Oral Interviews – Phase II

A panel composed of District staff, individuals experienced professional engineering services and the District Superintendent or his designee will interview firms selected for oral interviews. Oral interviews will be conducted to “confirm” the selection of the CM firm which ranked the highest in the initial screening process. However, the district reserves the right to award the RFP to any of the interviewed firms.

8.5 Finalization of Contract Terms with Firm(s) to Serve as Program/Construction Management Firms

Staff will finalize contract terms with CM. Assuming mutually agreeable contract terms can be reached, staff will present contract for Board approval.

9. SCHEDULE OF EVENTS

The District anticipates the following timeline for the process of selecting a CM:

<u>Action</u>	<u>Date</u>
Release of Request for Proposal	May 25, 2017
Last Day to Submit Questions for Clarification Received by the District on or before 4:30:00 PM	June 6, 2017
Final Response/Addendum Issued by District	June 10, 2017
RFP due no later than 4:00:00 PM	June 16, 2017
Interview of Finalist(s)	June 22-23, 2017
Award of RFP for Construction Management Services	June 27, 2017

10. GENERAL PROVISIONS

10.1 Additional Services

The District may elect, at any time, to amend any contract awarded hereunder to require the selected firm to provide additional services. In this case, the selected firm and the District will agree mutually on the scope and fees associated with any additional services.

10.2 Addenda

The District may modify this RFP or any of its deadline dates set forth in Section 9 of the RFP prior to the date fixed for submission of proposals by issuance of an addendum to all firms who have submitted a Letter of Interest within the required timelines.

10.3 Alternative Proposals

Only one final proposal, which may include options for limited scope and full service construction management, is to be submitted by each Proposer. Multiple proposals will result in rejection of all proposals submitted by the Proposer.

10.4 Withdrawal of RFP

The Proposer may withdraw its RFP submitting a written or facsimile request signed by the Proposer's authorized representative, prior to the time and date specified for proposal submission to the contact person set forth above in Section 7.4: Proposals may be withdrawn and resubmitted in the same manner if done so before the proposal submission deadline. Withdrawal or modification offered in any other manner will not be considered.

10.5 Reservations

The District reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

The District may reject any or all proposals and may waive any immaterial deviation in a proposal. The District's waiver of an immaterial defect shall in no way modify the RFP documents or excuse the Proposer from compliance with the other provisions of this RFP.

The District reserves the right not to award a contract if the District, in its sole discretion, deems the responses received pursuant to this RFP lacking in any respect or insufficient to meet the District's requirements and needs.

The District reserves the right to select a qualified firm with or without interviews.

10.6 Disposition of Proposals

Proposals become the property of the District and may be returned only at the District's option and at the Proposer's expense. Information, excluding Proposer's financial information, contained therein shall become public documents subject to the Public Records Act.

10.7 Exceptions to this RFP

The Proposer shall certify that the Proposer takes no exceptions to this RFP.

10.8 Non-Discrimination

The District does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.

10.9 Prevailing Wages

Proposers are aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. Proposer must agree to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws to the extent applicable.

10.10 Tobacco and Drug-Free Workplace Policy

The District and all District projects are "tobacco" and "drug free" workplaces and, as such, require that all persons on District Property be subject to the requirements mandated by California Government Code section 8350, et seq. when on Project site.

10.11 Fingerprinting Requirements

The Proposer shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. The Proposer shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1.

10.12 Non-Collusion Affidavit.

The Proposer shall execute and attach to its proposal the Non-Collusion Affidavit form attached hereto as Attachment B.

11. PROPOSAL PROTESTS

Only vendors who submitted a proposal in response to this RFP may file a protest. The following instructions must be followed by a Proposer who wishes to challenge the District's selection and award of any contract pursuant to this Request for Proposals:

Any protest must be submitted in writing to the Associate Superintendent, Sandon Schwartz, 1902 Howard Road, Madera CA 93637, before 3:00 p.m. on the fifth (5th) business day following the District's notification of its intention to award a contract pursuant to this RFP.

Protests must contain the following specific information:

- Protestor's name, address, tele. no. and email address;
- Date on which protestor's Response was submitted to the District;
- Protestor's *specific, detailed basis for the protest*, which must be *supported by facts and/or documentation*. Protests based on hearsay, feelings or opinions not supported by facts, will be deemed invalid.

The protestor shall send a copy of the initial protest document and any attached documentation to all other parties that may be affected financially by the outcome.

The District will review and evaluate the protest for validity, including, if required, review by outside counsel. The District and/or counsel will provide a response within ten (10) days of review of the protest letter.

If upon review, the proposal protest is found to be frivolous or lacking validity, the protest will be rejected and the protesting party may be deemed ineligible to participate in future District bidding or contracts.

By submitting a Proposal, each Proposer agrees that failure to comply with the process in this section is a failure to exhaust administrative remedies and Proposer will be barred from further legal action against the propriety of District's selection and award.

ATTACHMENT A

DRAFT AGREEMENT FOR CONSTRUCTION PROJECT MANAGEMENT SERVICES BETWEEN MADERA UNIFIED SCHOOL DISTRICT AND CONSTRUCTION MANAGER

This Agreement (“Agreement”) is made between the MADERA UNIFIED SCHOOL DISTRICT (“District”) and CONSTRUCTION MANAGER (“Construction Manager”). District or Construction Manager may be referred to individually as a “Party,” or collectively as the “Parties.”

RECITALS

A. District released a request for proposals for certain construction management services associated with the construction of District's New High School Project (“Project”).

B. The District conducted a competitive procurement per the District's Request For Proposals (“RFP”), to select a construction management firm to provide construction management services prior to and during the construction of the Project ("Construction Management Services"). The services described in Exhibit A, attached hereto and incorporated herein, shall constitute the "Work."

C. The Construction Manager is and has represented itself as competent to perform the Work described herein and desires to enter into this Agreement with the District for the completion of the Work in accordance with all applicable laws and regulations, including all applicable District Board policies, and the terms and conditions set forth in this Agreement.

D. The Construction Manager has represented that it has the personnel and resources necessary to successfully complete the Work for the Project within the required schedule.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Section 1. The foregoing Recitals are incorporated herein and made a part hereof for all purposes as if fully set forth, and constitute additional promises, representations and warranties of the Parties.

Section 2. Each and every provision of the documents listed below is incorporated into this contract by this reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- (a) Amendment(s) to this Agreement, if any;

- (b) This Agreement;
- (c) The RFP; and
- (d) Construction Manager's proposal submitted in response to RFP.

ARTICLE II REPRESENTATIONS AND RESPONSIBILITIES

Section 1. Construction Manager shall provide the materials, equipment, products and labor to perform professional construction management services, as more specifically described in the Scope of Work set forth in Exhibit A, attached hereto and incorporated herein. Construction Manager represents that it has the capabilities and skills to complete the Work.

Section 2. Construction Manager represents that it has the capabilities and skills in coordination and management of multiple construction trades, bidding management and bid evaluation in compliance with all applicable federal and state laws and regulations, construction supervision, progress payment management, cost negotiations, quality control, project close-out, project scheduling, budget management and cost control, and general management and administration of construction projects. Construction Manager agrees to provide its best skill and judgment in furthering the interests of District in the management of the successful construction of the Project.

Section 3. Construction Manager acknowledges that District is planning to use either the Design-Bid-Build or Lease-Leaseback delivery method and has represented significant experience, with the management of public construction projects using both of these delivery methods. Construction Manager represents it understands the oversight, management and communication that is normally required with both of these delivery methods and will incorporate such diligence and skill in the performance of the Work.

Section 4. All Work under this Agreement shall be performed in a technically sound manner and in accordance with prevailing professional standards applicable to the Work required herein. In executing this Agreement and providing services hereunder, the Construction Manager agrees it will exercise the ordinary care and skill expected in the industry, and that it shall assume overall responsibility for ensuring that the Work is completed in a satisfactory manner and in compliance with all requirements of this Agreement and all applicable federal, state and local laws and regulations, including District Board policies.

Section 5. Construction Manager is qualified to do business under the laws of the State of California, and has all requisite corporate power and corporate authority to carry on its business as now being conducted.

Section 6. Construction Manager shall at all times enforce strict discipline and good order among Construction Manager's employees and subcontractors and shall not employ any unfit person or anyone not skilled in work assigned to Construction Manager under this Agreement.

Section 7. This Project is to be developed in an interactive, team-oriented, collaborative approach together with District, Construction Manager, and the architect that the District selects for the project. (“Designer”). Construction Manager agrees to use best efforts to cooperate with the Designer and District, and utilize Construction Manager's professional skill, efforts and judgment in furthering the interests of District in a professional, efficient and economical manner.

Section 8. Construction Manager shall not make or participate in making or in any way attempt to use Construction Manager's position to influence a governmental decision in which Construction Manager knows or has reason to know Construction Manager has a financial interest other than the compensation promised by this Agreement. Construction Manager represents that Construction Manager has diligently conducted a search and inventory of Construction Manager's economic interests, as defined in the regulations promulgated by the California Fair Political Practices Commission, and has determined that Construction Manager does not, to the best of Construction Manager's knowledge, have an economic or organizational interest which would conflict with Construction Manager's duties under this Agreement. Construction Manager agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity which might create a conflict with the rendering of services under this Agreement. Construction Manager will immediately advise the District if Construction Manager learns of an economic or organizational conflict of interest, or other prohibited conflict of interest of Construction Manager during the term of this Agreement. No member, officer, or employee of a local public body, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE III BASIC SERVICES

Section 1. Construction Manager’s basic services to be provided during the Pre-Construction and Construction Phases shall provide comprehensive project and construction management services, including but not limited to the services set forth in Exhibit A.

ARTICLE IV INDEPENDENT CONTRACTOR

Section 1. Construction Manager shall be an independent contractor for District and not an employee. Construction Manager understands and agrees that it and all of its employees shall not be considered officers, employees or agents of District, and are not entitled to benefits of any kind normally provided employees of District, including but not limited to, state unemployment compensation or workers’ compensation. Construction Manager assumes full responsibility for the acts and omissions of its employees or agents related to the Pre-Construction Services and Construction Management Services contemplated by this agreement. Construction Manager assumes full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes, for employees performing Pre-Construction Services and Construction Management Services.

**ARTICLE V
COMPENSATION AND PAYMENT**

(The language provided herein is an example only and will be finalized based on RFP submission.)

Section 1. Preconstruction Phase.

(a) The "Preconstruction Phase" shall include all work performed from the execution of this Agreement up to and including the month in which the District issues an advertisement for bids for work to be completed on the new school site (if a bid project delivery method is selected) or the month in which an agreement is ratified (if a non-bid project delivery method is selected such as design-build or Lease-Leaseback). The issuance of an advertisement for bids for work to be completed on the new school sites (if a bid project delivery method is selected) or the month in which an agreement is ratified (if a non-bid project delivery method is selected such as design-build or Lease-Leaseback) shall begin the "Construction Phase").

(b) During the Preconstruction Phase, Construction Manager shall invoice the District at the hourly rates below for all preconstruction services provided. For the work to be completed on each site the total of Construction Manager's billings for performing all Work in the Preconstruction Phase shall not exceed ___% of the total estimated amount of the construction contract with the general contractor for that site.

Section 2. Construction Phase.

(a) The "Construction Phase" shall include all work performed from the month following issuance of an advertisement for bids for work to be completed on the new school site (if a bid project delivery method is selected) or the month in which an agreement is ratified (if a non-bid project delivery method is selected such as design-build or Lease-Leaseback up to and including the date the District has recorded a Notice of Completion for the new school sites.

(b) During the Construction Phase, Construction Manager's fee shall be based upon the value of the contract awarded to the general contractor for completion of the work required by the DSA approved plans and specifications on each site.

- (i) ___% of the value of construction contracts awarded which are in excess of \$9,000,001.
- (ii) ___% of the value of construction contracts awarded which are between \$1,500,001 and \$9,000,000.
- (iii) ___% of the value of construction contracts awarded which are between \$1,500,000 and \$600,000 – 5%.
- (iv) For such contracts which are below \$600,000 – service shall be provided at the hourly rates described below.

(c) If the value of the Preconstruction Services plus the Construction Manager's fee for work performed during the Construction Phase exceeds ___% of the value of construction contracts (which would only occur if the value of the construction contracts were below \$9,000,001) then the Construction Manager's fee for the Construction Phase of the work shall be reduced proportionately so that in no event the Construction Manager's fee exceeds ___% of the value of the construction contracts for completion of the work required by the DSA approved plans and specifications on each site. The total compensation for the preconstruction and construction phases described below for either the new school site shall not exceed ___% of the contract awarded to the general contractor for construction work on that site. The Construction Manager's fee rates (described in subsection (b) above) are based upon the value of the work to be performed at each Site being considered separately from the value of the work to be performed at the other site (regardless of whether the work is performed under a single construction contract.)

Section 3. Post-Construction Phase. The Post-Construction Phase shall begin at the end of the Construction Phase (discussed above). Construction Manager shall bill the District for services provided during this phase at the rates discussed below.

Section 4. General Provisions Applicable to All Phases.

(a) Hourly Rates. For Preconstruction and Post Construction Phases, Contractor shall bill District at the following rates:

Principal	\$170/hr
Associate	\$155/hr
Sr. Project Manager	\$140/hr
Project Manager	\$120/hr
Project Engineer	\$65/hr

(b) Construction Manager shall only be paid for Work completed. The compensation stated in Article V of this Agreement shall be paid in monthly installments based on progress reports submitted by the Construction Manager as described herein.

(c) In order for the District to process monthly payments to the Construction Manager, Construction Manager shall furnish monthly invoices on or about the first (1st) day of each month. The format of such invoice shall be mutually approved by the District and Construction Manager. Such invoices shall include a detailed and accurate progress report describing all Work performed the previous month, accurate and up to date percentages of progress toward the completion of all deliverables, and information on all payments to subcontractors made the previous month, if any. District and Construction Manager shall hold a monthly invoice meeting to discuss the progress report submitted to allow District to confirm any requested payments for Work completed. Upon certification of the completion of the Work described in the monthly invoice and any reimbursable direct costs, District shall pay the associated monthly payment within thirty (30) calendar days after the date of receipt of an approved invoice. Invoices shall reference the Agreement number and Project title. Construction Manager shall sign and certify the invoice in the following manner:

“I hereby certify, under penalty of perjury, that the above invoice and all accompanying information is just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from the District nor any other source.”

(d) District shall have the right to withhold payment for any Work (or portion thereof) not performed in accordance with this Agreement or the other contract documents incorporated into this Agreement, or for any Work not supported by appropriate documentation or other information. District shall notify the Construction Manager of any such withholding and provide the Construction Manager the opportunity to correct the Work in question, correct or supplement the invoice, as applicable, or provide a written explanation for any performance issues in the event such issues are a result of circumstances outside of the control of Construction Manager. District may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment made by District to the Construction Manager to such extent as may be necessary to protect District from loss or damage, or to compensate District for any damages caused by, resulting from or arising out of, including but not limited to, any failure to perform the Work in accordance with this Agreement. So long as District is not in default in making payment for undisputed amounts due Construction Manager, notwithstanding any claim, dispute or other disagreement between the Construction Manager and District arising out of the Project or this Agreement, pending resolution of the same in accordance with the Agreement, the Construction Manager shall continue to diligently provide and perform the Work. Payment will not be unreasonably withheld by the District.

(e) Neither payment of amounts due by District nor acceptance of any such payment by the Construction Manager shall constitute a waiver of any claim by District for errors or omission in invoices or payments.

(f) District shall have the right to subsequently correct any payment error made by withholding or subtracting amounts from future monthly payments or paying for underpayments, as appropriate.

ARTICLE VI DISTRICT RESPONSIBILITIES

Section 1. The District shall provide full and complete information regarding the requirements of the Project, which shall set forth the District’s objectives, constraints and criteria.

Section 2. The District shall designate a representative (“District’s Representative”) to act on the District’s behalf with respect to the Project. The authorized Representative shall render decisions promptly to avoid unreasonable delay in the progress of the Construction Manager’s services and shall expeditiously process Construction Manager payment applications and change order documentation and shall make all required payments in a timely manner.

Section 3. The District shall furnish tests, inspections and reports as required by applicable law or the Project documents.

Section 4. If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, the District shall give prompt notice thereof to the Construction Manager.

ARTICLE VII PROJECT SCHEDULE

Section 1. The Parties to this Agreement understand and agree that execution of this Agreement by District is not a Notice to Proceed (“NTP”) for the Work of this Agreement. The Construction Manager may not commence any Work prior to receipt of the NTP from District. Any Work performed or expenses incurred by the Construction Manager prior to the Construction Manager's receipt of the NTP shall be entirely at the Construction Manager's risk. Work performed and expenses incurred after issuance of the NTP will be eligible for reimbursement under the terms of this Agreement.

Section 2. Work shall commence upon receipt of the NTP referenced above. The Work shall be performed in accordance with the project schedule to be attached hereto and incorporated herein as Exhibit B ("Project Schedule"). Upon issuance of the NTP, Construction Manager shall provide a Project Schedule for the Pre-Construction Services to the District within ten (10) calendar days, which will be inserted as Exhibit B.

Section 3. This Agreement may be extended in the event the Construction Manager and District mutually agree through a written contract amendment. Such a written amendment may be used to extend the performance period of service for the Work, or to add required work to the Work set forth in Exhibit A. In the event additional work is added to the Work, the Parties may mutually agree to modify the Compensation in Article V above and payment for any such additional work shall be completed in accordance with the terms and conditions of this Agreement.

Section 4. Except as otherwise provided in this Agreement, if Construction Manager obtains knowledge that an actual or potential situation will delay or threaten to delay the timely performance of the Work in accordance with the Project Schedule, and/or delay the completion of the Work by the time specified above, Construction Manager shall give written notice thereof to the District within ten (10) calendar days, including all relevant information concerning the actual or potential delay, so that the Parties can meet to discuss and determine an appropriate course of action.

ARTICLE VIII CONTRACTOR PERSONNEL

Section 1. District's selection of the Construction Manager for the performance of the Work was based in part upon a consideration of the qualifications and experience of Construction Manager's Project Manager and other Key Personnel listed in its response to the RFP. The Construction Manager shall assign personnel to the Project in accordance with the organization and staffing plan submitted with its proposal, to the extent such personnel remain employed by Construction Manager. The names of the Key Personnel and their areas of

participation and responsibility under this Contract were submitted as a response to the RFP and are incorporated into this Agreement by this reference.

Section 2. The Construction Manager shall be responsible for the performance of all of the Work under this Agreement and shall utilize the professional expertise and experience of the Key Personnel as specified in this Article VIII.

Section 3. The District Project Manager, or designee, at its sole discretion, shall have the right to demand the removal by the Construction Manager of any of the Key Personnel. Any replacement of the Key Personnel due to such removal shall not be done without written approval by District.

Section 4. To the extent they remain employed by Construction Manager, the Construction Manager shall not replace or remove its Project Manager or any of the other Key Personnel during the Contract term without the prior written approval of the District Project Manager, or designee. If the Construction Manager replaces or removes any Key Personnel in violation of this Article VIII, such action shall be considered a breach of contract by District and District shall have the right to pursue all remedies available to District under this contract, any incorporated documents and any applicable laws, regulations or District Board Policies.

Section 5. In the event the Construction Manager is unable to provide the services of, or replaces, any of the Key Personnel, the Construction Manager shall be responsible for providing other personnel for the performance of the specific items of work involved, whose expertise and experience are equivalent or higher to that which would have been provided by the originally listed personnel. The Construction Manager shall submit any such substitute Key Personnel to the District Project Manager, or designee, for its prior review and approval which shall not be unreasonably withheld. The Construction Manager shall be solely responsible for any additional costs it incurs due to the substitution of personnel or subcontractors.

Section 6. Construction Manager must obtain prior approval for adding new subcontractors or removing existing subcontractors. Construction Manager shall use the required District form to obtain approval to add new subcontractors, replace existing subcontractors and/or remove existing subcontractors. To add staff or subcontractors, an approved Personnel Request Form signed by the Contract Manager shall suffice as approval. A formal Agreement amendment shall not be required to add staff or new subcontractors.

Section 7. Any and all subcontracts entered into by Construction Manager shall contain all the applicable provisions of this Agreement.

ARTICLE IX WAGES

Section 1. Where required by law, Construction Manager shall have the sole responsibility for paying each employee or subcontractor engaged in work on the Project a wage rate not less than the prevailing wage rate, regardless of any contractual relationship alleged to exist between the Construction Manager or any employees or subcontractors.

Section 2. Where required by law, Construction Manager shall have the obligation of complying with all requirements of the California Labor Code, including all applicable requirements related to compliance with Department of Industrial Relations regulations and rules.

Section 3. This Section 3 and its subparts shall apply to the extent Construction Manager is or becomes subject to prevailing wage laws. Construction Manager and any of its subcontractors shall keep an accurate payroll record which shows the name, address, social security number, correct work classification (in accordance with the wage decision), both straight and overtime worked each day and week, and hourly rate of pay, gross wages earned, deductions made and net wages paid to each journeyman, apprentice, worker or other employee paid by the Construction Manager and all of its subcontractors in connection with the Work.

(a) These payroll records shall be certified and shall be made available to the District's labor compliance officer as required under State Law. These records shall be maintained during the course of the Work. The Construction Manager and all of its subcontractors shall, on projects utilizing state bond funds, furnish certified payroll records to the Department of Industrial Relations' Compliance Monitoring Unit (CMU) monthly (or more often if required by DIR) in a format acceptable to that entity. Construction Manager shall take all necessary steps to register with DIR, including but not limited to filing a form PWC 100. Contractor shall, on the District's behalf, notify DIR within five days of the award of this Agreement.

(b) The Construction Manager and all of its subcontractors shall make the certified payroll records available for inspection by District or DIR representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

(c) The District shall notify the Construction Manager in writing of any discrepancies or violations that are discovered during such inspections. Written notification pursuant to this Section shall include the actions that will be necessary to resolve the discrepancies and/or violations. The Construction Manager shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower tier subcontractors.

(d) The Project will not be accepted as complete by the District nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.

ARTICLE X OWNERSHIP OF DOCUMENTS

Section 1. Construction Manager understands and agrees that all materials and work produced during the completion of the Work, including all drawings, details, reports and estimates, shall become the property of District and cannot be used without the District's express written permission Pursuant to Education Code section 17316.

Section 2. All electronic files, software, licenses, programs, equipment manuals, and databases prepared or obtained by the Construction Manager in the course of performing Work under this Contract and requested in writing by District shall be delivered to and become the property of District at the termination of this Agreement, for whatever cause. The Construction Manager and its subcontractors shall convey and transfer any copyrightable interests or licenses in such requested materials to District upon completion of all services under this Agreement and upon payment in full of all compensation due to the Construction Manager in accordance with the terms of this Agreement.

Section 3. The Construction Manager represents that it has secured all necessary licenses, consents, or approvals to use the components of any intellectual property, including computer software used in providing services under this Contract, and that District has full legal title to and the right to reproduce such materials. The Construction Manager agrees to defend, indemnify, and hold District harmless for any loss, claim, or liability in any way related to a claim that District is violating Federal, State, or local law, or any contractual provisions, relating to trade names, licenses, franchises, patents, or other means of protecting interests in products or inventions used by Construction Manager in performing the Work. The Construction Manager shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked materials, equipment, devices, or processes used on or incorporated in the services and materials produced under this Agreement. In the event any such materials, equipment, devices, or processes are held to constitute an infringement and their use is enjoined, the Construction Manager, at its sole expense, shall either (1) secure for District the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for District; or (2) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

Section 4. The Construction Manager agrees that all reports, communications, electronic files, databases, documents and information that it obtains or prepares in connection with performing this Agreement shall be held in the strictest confidence and treated as confidential material and shall not be released or published without the prior written consent of District; provided, however, that the contractor may refer to this Project in connection with its promotional literature in a professional and commercially reasonable manner and in compliance with any District established marketing restrictions. The provisions of this subsection shall not apply to information in whatever form that comes into the public domain. The provisions of this paragraph also shall not restrict the Construction Manager from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency, or other entity with proper jurisdiction, or if it is reasonably necessary for the Construction Manager to defend itself from any suit or claim. In the event of any such disclosure of information by Construction Manager, Construction Manager shall provide immediate notice to District prior to the disclosure.

Section 5. The Construction Manager shall advise District of any impending patent suit and provide all information available. The Construction Manager shall defend any suit or proceeding brought against District based on a claim that any product, or any part thereof, furnished under this Agreement, constitutes an infringement of any patent; and, the Construction Manager shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against District. In case said product, or any part thereof, is in such suit

held to constitute infringement and use of said product or parts is enjoined, the Construction Manager shall, at its own expense and at its option, either procure for District the right to continue using said product or part, or replace same with non-infringing product, or modify it so it becomes non-infringing. This Article X, Section 5 shall not apply in the event District mandates use of a product for which Construction Manager cannot guarantee the rights of use and such warning has been provided in writing to the District.

Section 6. Construction Manager shall maintain complete and accurate records with respect to actual hours expended each month, payment to subcontractors and allowable costs incurred under this Agreement. All such records shall be maintained on generally accepted accounting principles (GAAP) and shall be clearly identified. Construction Manager shall provide reasonable access to the representatives of District, or its designees, including representatives of the applicable government agencies if this Agreement is funded in whole or in part with state or federal funds, to such books and records and any other books, documents, papers, or records of the Construction Manager that are related to this Agreement. District, the State, the State Auditor, DoD or any duly authorized representative of the federal government having jurisdiction under federal laws or regulations shall have the right to examine and audit such books and records and to make transcripts or copies from them as necessary. Construction Manager shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement, during the course of this Agreement, and for a period of five (5) years from the date of final payment under this Agreement. This Article must be included in any subcontract entered into as a result of this Agreement.

ARTICLE XI COMPLIANCE WITH APPLICABLE LAWS

Section 1. Construction Manager agrees to comply with all federal, state and local laws, rules, regulations and ordinances, and District policies that are now or may in the future become applicable to this Project or to Construction Manager, its employees or subcontractors engaged in any services performed under this Agreement, or accruing out of the performance of such services. District shall not be responsible for any Construction Manager costs incurred by Construction Manager as a result of such compliance, unless mutually agreed to in writing by the Parties. Construction Manager's failure to so comply shall constitute a material breach of this contract.

ARTICLE XII NECESSARY LICENSES

Section 1. During the entire performance period of this Agreement, the Construction Manager shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Agreement, including maintaining an active applicable business license. In the event Construction Manager fails to keep in effect at all times all required license(s) and permit(s), District may, in addition to any other remedies it may have, terminate this Contract immediately notwithstanding Article XV herein. District shall not be responsible for any Construction Manager costs incurred by District as a result of such compliance, unless mutually agreed to in writing by the Parties.

ARTICLE XIII INDEMNITY

Section 1. To the fullest extent permitted by law, and subject to the limitations of Civil Code § 2782, with respect to all Work of the Construction Manager in performance of this Agreement, the Construction Manager agrees to protect, defend, indemnify and hold the District, its governing board, officers, employees and agents (excluding the Project inspector, architect, or other design professionals) (“Indemnified Parties”), free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, fees, charges, professional fees, including but not limited to attorneys’ fees and court costs, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, reasonable fees incurred in investigating or resisting the same or causes of action of every kind and character (hereinafter collectively "Claims") in connection with or arising directly or indirectly out of any act or omission related to the performance of this Agreement by the Construction Manager or any subcontractor. Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, disease, or death of any person (including employees of the Construction Manager, its agents, representatives, or subcontractors), or any loss or damage to or destruction of property, that arises or is claimed to arise out of, or results directly or indirectly from, any act or omission of the Construction Manager, its subcontractors, agents, representatives, employees, or any other person for whom the Construction Manager is legally or contractually responsible, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. Notwithstanding the foregoing, Construction Manager’s defense and indemnity obligations shall apply to the proportionate extent of Construction Manager’s fault, and not the extent arising from the active negligent acts or willful omissions, whether actual or alleged, of the Indemnified Parties.

Section 2. The Construction Manager shall provide District with prompt notice of all Claims covered by this Article, and shall investigate, respond to, and to the extent required by Article XIII, Section 1 above, assume the defense of, and fully defend all such Claims. The Construction Manager shall also provide District with monthly reports on the status and disposition of such Claims.

Section 3. The indemnity obligations of Construction Manager under this Article XIII shall be in effect whether or not the Construction Manager maintains or fails to maintain insurance as required by this Agreement, and shall survive the expiration or termination of this Agreement.

ARTICLE XIV INSURANCE

Section 1. Construction Manager shall maintain no less than the following coverages at all times during performance of the Work:

(a) General Liability (including operations, products and completed operations, as applicable): \$2,000,000 per occurrence for bodily injury, personal injury & property damage. If commercial general liability insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(c) Workers Compensation: As required by the State of California.

(d) Employers' Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.

(e) Professional Liability: The Construction Manager shall maintain limits of no less than \$5,000,000 per occurrence.

Section 2. Construction Manager shall be responsible for ensuring all subcontractors have adequate insurance to cover their operations performed under this Agreement. Construction Manager shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors, or any deficient insurance held by a subcontractor in the event of a claim suffered by District.

Section 3. Endorsements and insurance policies shall include the following language: "This policy shall not be cancelled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District, and the date of cancellation or reduction shall not be less than thirty (30) days after the date of receipt of notice." With exception of Professional Liability insurance, endorsements shall clearly state that the District as an "Additional Insured" under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by any such entities.

Section 4. With respect to Professional Liability, when it is required, coverage must be maintained, and evidence provided, for two (2) years following the termination of this Agreement. Construction Manager will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself. All policies required shall be issued by companies who hold a current policyholder's alphabetic and financial-size category rating of not less than A-VII, in accordance with A.M. Best. Carriers must be qualified to do business in California and maintain an agent for service of process within California.

Section 5. Construction Manager shall furnish District with certificates of insurance and required endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by District before work commences. Acceptance by District of a certificate or endorsement that varies from the requirements in this Article shall not constitute a waiver by District of strict compliance with the provisions herein.

Section 6. Construction Manager is responsible for ensuring that its carrier(s) send District updated certificates of insurance throughout the term of the Agreement.

Section 7. The commercial general liability and automobile liability policies maintained by the Construction Manager pursuant to this Agreement shall be primary to any insurance or self-insurance maintained by District.

Section 8. Failure to provide and continue in force any insurance as described this Article XIV shall be deemed a material breach of this Agreement.

ARTICLE XV TERMINATION

Section 1. District may terminate this Agreement, in whole or in part, at any time by written notice to the Construction Manager upon a determination by District that termination of the Contract is in the best interest of District. The Construction Manager shall be paid only for the value of its services (including any additional services agreed to by the District as outlined in Contractor's proposal) provided performed up to the time of termination.

Section 2. District may, by written notice of default to the Construction Manager, terminate the whole or any part of the Contract in any one of the following circumstances:

(a) If the Construction Manager fails to perform services within the time specified or any extension thereof; or

(b) If the Construction Manager fails to perform any of the provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms, and in either of these two later circumstances does not commence cure of such failure within a period of ten (10) calendar days after receipt of written notice from District specifying such failure.

(c) Should District terminate the Contract in whole or in part due to the default of Construction Manager as provided for in this Article XV, Section 2, District may procure, upon reasonable terms and in a reasonable manner as determined by District, services and materials similar to those so terminated so as to carry out the intent of the Contract. The Construction Manager shall be liable for all reasonable costs and damages incurred by District in procuring such similar service and materials. District may utilize payments due Construction Manager towards reimbursement of District's cost and damages.

(d) If after notice of termination of this Contract it is determined for any reason that the Construction Manager was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article XV, Section 1 above, and the Construction Manager shall be reimbursed for reasonable costs incurred under the terms of this Article XV.

Section 3. In the event of termination for convenience or cause, Construction Manager shall promptly deliver to District all documents, including but not limited to all plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, estimates, and computer software (in source code and object form code), pertaining to the Construction Manager's services performed through and including the effective date of termination.

**ARTICLE XVI
DISPUTES**

Section 1. If either Party possesses a claim or dispute with respect to the duties and responsibilities required under this Agreement, that Party shall give the other written notice and demand an informal conference to meet and confer for settlement of the issues in dispute. Notice shall be given within fifteen (15) calendar days of knowledge of the claim or dispute. Upon receipt of a Party's demand, the other Party shall schedule a meet and confer conference, to take place within thirty (30) calendar days, at a time and location convenient to all Parties. Senior representatives of District and Construction Manager, with the authority to settle on the Party's behalf, will attend the meet and confer conference, in good faith, in an attempt to resolve any controversy or claim between the Parties. Attendance at this conference shall be a condition precedent to the initiation of mediation or a civil action.

Section 2. If the dispute remains unresolved after such meet and confer conference, either Party may seek resolution through referral to non-binding mediation. The mutually agreed to mediator must have a minimum of five (5) years' experience in the delivery of large construction projects (value of \$20 million or more), including construction related to public entities.

Section 3. If the dispute remains unresolved following non-binding mediation, then before seeking judicial resolution of the dispute in an appropriate court of the State of California, Construction Manager must comply with Government Code section 900 *et seq.*

Section 4. In the event of a dispute between the Parties as to performance of the Work or the interpretation of the project documents, including this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute as expeditiously as possible and in accordance with this Article XVI. Pending resolution of any dispute, Construction Manager agrees to continue the work diligently to completion as if no dispute existed.

**ARTICLE XVII
NOTICES**

Section 1. All notices under this Agreement shall be in writing and shall be given by electronic mail (e-mail), facsimile transmission or U.S. mail to the addresses listed below. E-mail and facsimile transmissions shall be documented by the sending party with transmission receipts and the transmissions will be deemed received on the date of transmission with delivery confirmation. Transmissions by U.S. mail shall be deemed to have been received forty-eight (48) hours after deposit in the U.S. mail in registered or certified form with postage fully prepaid.

If to CM:	[Contact]
	[Construction Management Firm]
	[Address]
	Phone:
	Fax:
	Email:

If to District: Rosalind Cox
Madera Unified School District
1205 South Madera Avenue
Madera, CA 93637
Phone: (559) 675-4548
Email: rosalindcox@maderausd.org

**ARTICLE XVIII
MISCELLANEOUS**

Section 1. This Agreement shall be governed by and construed in accordance with the laws of the state of California and the Parties acknowledge that the Work is taking place within the County of Madera.

Section 2. This Agreement constitutes the entire agreement between the Parties and may be modified only by a written amendment executed by the Parties.

Section 3. Time is of the essence for all provisions of this Agreement.

Section 4. Due to the specific skills and experience required to complete the Work, and the competitive procurement upon which the selection of the Agreement was based for the completion of the Work, the obligations of the Construction Manager pursuant to this Agreement shall not be assigned by the Construction Manager. If the Construction Manager assigns, transfers, conveys, sublets or otherwise disposes of the Agreement or its right, obligations, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever, and the Agreement may, at the option of District, be terminated, revoked or annulled, and District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the Construction Manager, and to its purported assignee or transferee.

Section 5. Failure of District or Construction Manager to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

Section 6. Neither the Parties nor their respective counsel shall be deemed the drafters of this Agreement for purposes of construing its provisions. The language in all parts of this Agreement shall in all cases be construed according to fair meaning, not strictly for or against any of the Parties.

Section 7. Each and every provision of law and language required by law or any applicable regulation, including laws and regulations required for DoD funded projects, shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the contract shall be physically amended to make such insertion or correction.

Section 8. The Construction Manager's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Construction Manager has, unless exempt, complied with all applicable nondiscrimination program requirements.

Section 9. Construction Manager warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any District employee or evaluators of proposals received in response to the RFP. In the event of any violation of this Article XIX, Section 9, District shall have the right to immediately terminate this Agreement notwithstanding any requirements of Article XV herein.

Section 10. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 11. This Agreement is subject to ratification by the District's governing board.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CONSTRUCTION MANAGER:

DISTRICT:

CONSTRUCTION MANAGER

MADERA UNIFIED SCHOOL DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

A. In General

Under the general direction of the Superintendent, the CM will:

(1) Provide for the planning, development, design, engineering and completion of the Project.

(2) Manage and supervise professional consultants contracted by the District for the full array of architectural, construction, and any other necessary services related to the Project.

(3) Perform other related duties as assigned by the Superintendent or Chief Business Official.

B. Specific Responsibilities and Essential Duties

Phase IA: Preconstruction Phase

- Review design documents for constructability, scheduling, clarity, consistency, and coordination.
- Submit recommendations regarding the constructability and value engineering.
- Review Contractor's constructability comments and assist in implementing these comments into the design documents.
- Review value engineering recommendations and assist facilities dept. in selecting cost choices presented by Contractor entity.
- Verify incorporation of value engineering comments in bid documents.
- Prepare a detailed estimate of Project construction costs to be updated periodically.
- Provide recommendations for effective and efficient separation of the Project into separate work categories and bid packages.
- Review project construction phasing and scheduling for feasibility.
- Provide recommendations and assist the District with the decision as to which furniture, fixtures and equipment should be furnished and installed by the District.
- Assist in the desired outreach services in accordance with District policy. Work with the design and construction team to ensure good bid coverage for all trade work.
- Recommend and assist the facilities team in coordinating all agency approvals.
- Assist the District in aligning funding, obtaining Board approvals that meet the project schedule.
- Review the project estimates prepared by the Contractor.
- Assist in the owner in responsibility matrix of the Owner, Architect, and Contractor.

Phase IB: Bid Phase

- Assist in reviewing Contractor's competitive bidding process for all subcontracted work.

- Assist in out-reach and solicitation and review of all bids in accordance with District policy.
- Assist the District in scheduling, estimating and solicitation of bids for all District-furnished and installed furnishings and equipment.

Phase II: Construction Phase

- Maintain contact with potential bidders.
- Assist in preparation of construction contracts and ensure execution by successful bidders.
- Attend and participate in meetings with trade contractors, architect, District, and/or other interested parties to assist in identifying most cost effective solutions to specific construction hurdles.
- Assist the District in timely decision making to prevent possible delays.
- Facilitate work coordination solutions.
- Coordinate construction activities with DSA Inspector.
- Maintain documents on project site.
- Review, monitor and reconcile construction costs.
- Maintain accounting records.
- Review and provide recommendations for pay apps.
- Review in a timely manner change order requests to find the most cost effective strategy to keep change order costs down.
- Assist the District in determining the lowest responsive/responsible bidder for equipment quotations.
- Monitor progress of Project and submit written progress reports monthly.
- Coordinate final inspection of work.
- Coordinate with utility companies and local entities (i.e. City and/or County) to ensure proper service.
- Assist in the developing and execution of the scope for FF&E in the following areas: procurement, delivery and installation.
- Review plans and specs to identify any scope gaps between construction and FF&E specs.
- Assist in developing strategies for mitigating any gaps between construction and FF&E scopes.
- Review plans and specs to identify and help mitigate any potential gaps between **owner furnished/contractor installed** products.
- Coordinate delivery and installation of all Owner furnished equipment and required FF&E for the project.
- Assist in the development and execution of strategies for move-in and occupancy.
- Assist the District in the coordination with all local jurisdictions and utility companies to ensure proper service at occupancy.
- Upon completion assist the District in review and approval of all project close-out documentation including DSA certification.

Phase III: Post-Construction Phase

- Collect and organize on behalf of the District: all operations and maintenance data for equipment, record drawings for projects, warranties and bonds for equipment, keys, tools, list of construction trade contractors, vendors and other providers of services on the Project, and guaranties and warranties from all trade contractors.
- Assist District in obtaining occupancy permit.
- Assist District with any warranty problems or claims.
- Assist District with obtaining final DSA approval and certification.
- Assist in transfer as-built drawings to Architect of Record for the preparation of record drawings.
- Validate final pay applications

EXHIBIT B
PROJECT SCHEDULE

[TO BE INSERTED]

ATTACHMENT B

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____(Title) of _____(Firm), the party making the foregoing bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____(Date), at _____(City), _____(State).

By: _____

Printed Name: _____

Date: _____

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