

## MASTER AGREEMENT FOR CONSTRUCTION MANAGEMENT (CM) SERVICES

This Agreement for Construction Management (CM) Services ("Agreement") is dated **DATE/YEAR** for reference purposes only and is made by and between **SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT**, a California unified school district ("District") and **CONSULTANT** ("CM").

**WHEREAS**, the District has a program of construction of various works of improvement and modernization funded by the District's various bond measures, State bonds and various other capital project funding ("Program"). Specific works are designated within the Program ("Project").

**WHEREAS**, the District desires to retain CM to provide project and construction management and planning services along with related work product in connection with the Program and its Projects as more particularly described herein.

**WHEREAS**, CM is a professional project and construction manager, qualified and capable of providing the services and work product contemplated herein for the District's Program, 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.

**1.1 Scope.** CM shall provide Basic Services consisting generally of project and construction management and planning services along with related or required work product to meet the District's objectives as more particularly set forth herein and listed in **Exhibit A – Table of Basic Services**.

**1.2 Work Authorizations.** The Project to be performed by CM shall be enumerated in a Work Authorization. Such Work Authorization shall set forth the specific scope of work, related allowable fee, scheduled term, any special conditions for that Project, and whether the work is defined as Basic Services or Additional Services.

#### 2 CM COMPENSATION

**2.1 Contract Price.** The District shall pay CM the Not-to-Exceed Contract Price of **\$XXX,XXX** for the Basic Services. Such price represents the total maximum allowable fee, payment of which will be made by the District in accordance with the terms hereof. The Contract Price includes CM's fee, personnel expenses, inclusive of all benefits and burdens, fees of any sub-consultant or subcontractor to CM, insurance, other overhead costs and all other direct and indirect expenses incurred in the performance of this Agreement and as further defined in the RFP/RFQ and/or proposal.

**2.2 Additional Services.** If the District shall approve or direct CM to perform or provide Additional Services described generally in Article 3 of the Conditions to this Agreement, CM shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule attached hereto as **Exhibit B – Hourly Rate**

**Schedule.** CM shall obtain in advance the District’s approval of the nature and extent of costs reasonably and necessarily incurred by CM in providing such additional services.

**2.3 District Payments.**

**2.3.1 Allocation of Contract Price.** The District’s payment of the Contract Price for Basic Services for a Work Authorization shall be paid monthly on a Time and Materials basis.

**2.3.2 Payment for Additional Services.** District shall pay CM for authorized Additional Services monthly on a Time and Materials basis.

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

**2.3.4 District Payments to CM.** Within thirty (30) days of receipt of CM’s properly submitted billing invoices for work as described in the Scope of Services, District will make payment to CM of undisputed amounts due for Basic Services and authorized Additional Services. No deductions shall be made or withheld from payments due CM hereunder on account of any penalty, assessment, liquidated damages or other amounts withheld by the District from payment to the Architect or the Contractor(s). The District may, however, withhold or deduct from amounts otherwise due CM hereunder if CM shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after CM has fully cured its failure of performance, less costs, damages or losses sustained by the District as a result of such failure of performance of a material obligation hereunder.

**3 Term.** The initial term of this Agreement shall commence December 1, 2016 and shall terminate on December, 31, 2019. In the event that an assigned Project is not completed or the District shall not have issued Final Payment to the Contractor(s) as of the Termination Date specified herein through no fault or neglect of the CM, the Termination Date may be extended in the District’s sole discretion. In such event, Basic Services provided by CM following the Termination Date shall be in accordance with the Rate Schedule attached hereto as **Exhibit B – Hourly Rate Schedule**. If the Project is not completed by the Termination Date and delayed completion of the Project is caused in whole or in part by the acts, omissions or other conduct of the CM, the Termination Date shall be extended commensurate with the number of calendar days attributed to the CM (“Extended Termination Date”). Between the original Termination Date and the Extended Termination Date, the CM shall continue to provide or perform the Basic Services at no additional cost to the District.

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

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

*The limits may be provided through a combination of primary and umbrella/excess liability policies.*

## 5 Miscellaneous

- 5.1 Governing Law; Interpretation.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or CM.
- 5.2 Successors; Non-Assignability.** This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors and assigns of 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. This Agreement may not be orally amended, modified or terminated.
- 5.3 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 Education, to bind District to all terms hereof and authority granted to enter into this Agreement.
- 5.4 Notices.** Notices under this Agreement shall be addressed and delivered as follows:

If to District:  
Santa Monica-Malibu Unified School District  
c/o Carey Upton, Chief Operations Officer  
2828 Fourth Street  
Santa Monica, CA 90405

If to **CONSULTANT**:

- 5.5 Entire Agreement.** This Agreement, the accompanying Conditions and the documents enumerated below, if any, are all of the documents forming a part of the Agreement:
- |           |                         |
|-----------|-------------------------|
| Exhibit A | Table of Basic Services |
| Exhibit B | Hourly Rate Schedule    |

The foregoing constitutes 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 shall be modified or amended except by writing executed by the District and CM.

- 5.6** Nothing contained in this Agreement shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against CM.

**5.7** Nothing in this Agreement shall be deemed to require, or authorize, or permit CM to perform any act which would constitute design services, testing or technical or inspection services, or the practice of architecture, professional engineering, certified public accounting or law. The recommendations, advice, budgetary information and schedules to be furnished by CM under this Agreement are for the sole use of the District and shall not be deemed to be warranties or guarantees. It is expressly understood that CM is not a guarantor or insurer of the Contract Documents, including the plans and specifications, or of any Work which is to be performed and managed by others.

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

**“CONSULTANT”**

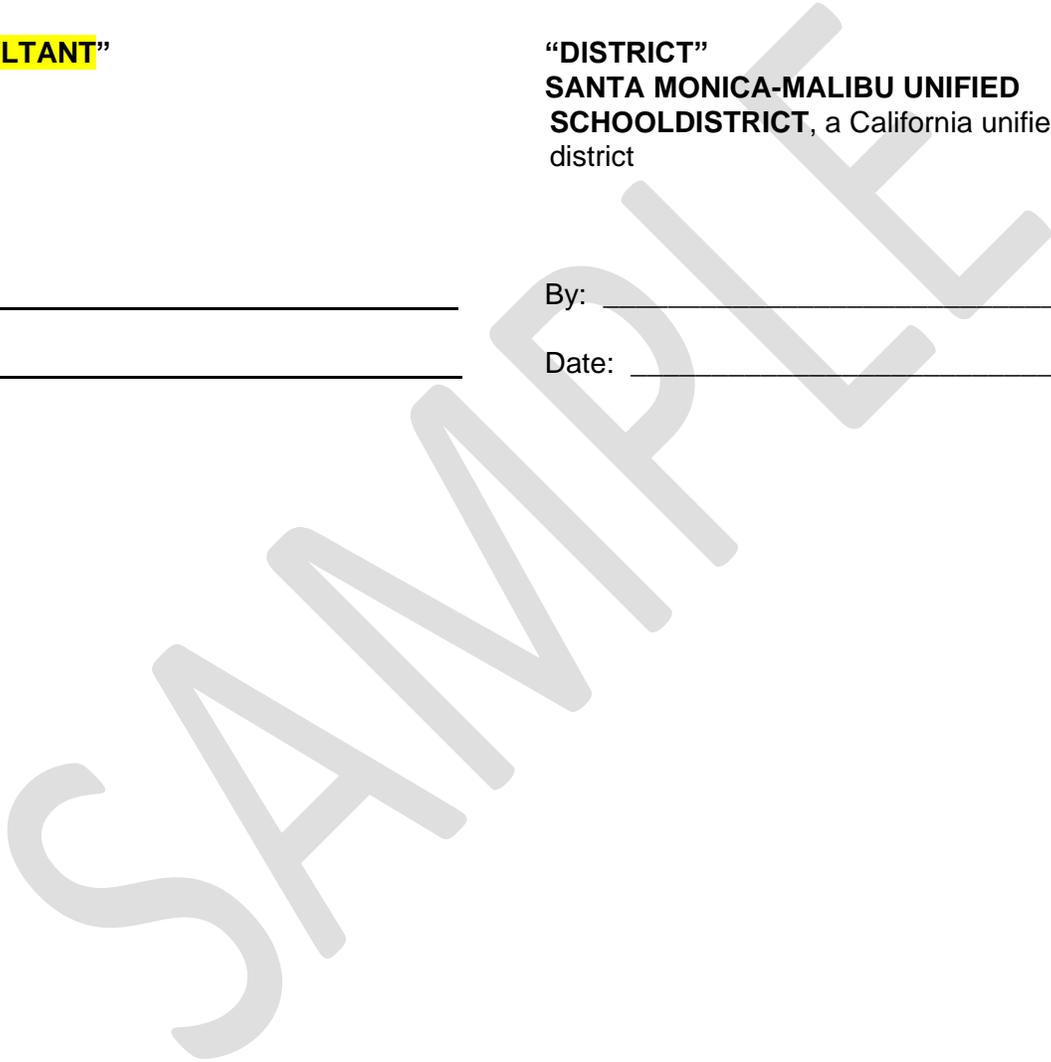
**“DISTRICT”**  
**SANTA MONICA-MALIBU UNIFIED**  
**SCHOOLDISTRICT**, a California unified school district

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## CONDITIONS OF AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

### ARTICLE 1 RELATIONSHIP OF PARTIES

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

**ARTICLE 2 BASIC SERVICES**

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

**2.0.1 Designated Personnel.** CM shall provide the following designated personnel for the term of the Agreement:

**TBD**  
**TBD**

**2.0.2 CM’s Project Executive or Principal-in-Charge.** The CM’s Project Executive or Principal-in-Charge 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 services hereunder.

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

**2.1 Design Consultant Selection**

**2.1.1** Assist District with development of design procurement documentation. Assist District with outreach to appropriate design consultants. Assist District with selection of design consultants.

**2.1.2** Assist District with determination of appropriate project delivery method and structure.

**2.1.3** Assist District with determination of scope of work, order of projects, and budget and schedule for individual campus projects.

**2.1.4** Coordinate site access and project discussions with site administrators.

**2.2 Pre-Construction/Design Phase.**

**2.2.1 Review of Project Requirements.** Provide preliminary evaluation of the Project budget requirements. With the Architect’s assistance, prepare preliminary estimates of Construction Cost for early schematic designs based on area, volume, and other standards. Assist the District and the Architect in achieving mutually agreed upon Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.

**a) Cash Flow Tracking System.** With the District’s assistance, provide a detailed cash flow tracking system for all Projects and their funding sources. System must be approved and accepted by the District. Update the cash flow spread sheet bimonthly or as required by the District.

**b) Construction Project Management Plan.** Develop a Project Management Plan, including considerations of budget, design, operational requirements and schedule for the overall Project. In conjunction with the District, identify and develop alternatives for sequencing, management or planning of Project construction and design for more efficient or economic means of achieving the District’s Project objectives. Based upon Project delivery and design standards defined by the District, develop for the District’s approval an overall optimum Construction Project Management Plan, including schedule of critical milestones for all defined Projects.

**c) Project Controls.** Develop and implement Project management controls, utilizing the system designated by the District, including planning, scheduling, communications, budgeting, progress reporting and problem identification, tracking and resolution.

- d) **Monthly Reports.** Provide for the District's review and acceptance, a monthly report for the Project. This report shall status the progress of the overall Project as well as all project elements that are under construction. Assist the District in providing all construction-related Board of Education agenda items. Examples: Amendments, Change Orders, Notices to Proceed, Notices of Completion, Authorization to Bid, Awards of Contract, etc.
- e) **Project Schedule.** Provide for the District's review and acceptance, and periodically update, a Project schedule that coordinates and integrates the CM's services, the Architect's services and the District's responsibilities with anticipated construction schedules.

### 2.2.2 Constructability Review.

- a) Provide plan review comments of Design Documents during Schematic Design and Design Development Phases to determine conformity with the general scope of Work identified by the District, the District's construction standards and design guidelines, the Architect's professional standard of care, and for clarity, consistency and coordination of the various components of the Design Documents. Advise on site use and improvements, selection of materials, building systems and equipment and methods of project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs of materials, preliminary budgets and possible economics.
- b) Perform a constructability review of Design Documents at 30% and at 80% completion of the Construction Document phase to determine conformity with the general scope of Work identified by the District, the District's construction standards and design guidelines, the Architect's professional standard of care, and for clarity, consistency and coordination of the various components of the Design Documents. CM shall maintain a written log or other documentation of comments, recommendations or other notations generated in the course of its constructability review, and all such materials shall be available to the District for review or reproduction upon the District's reasonable request. Upon completion of its constructability review, CM shall provide the District with a comprehensive final report on a sheet-by-sheet basis of its review, findings and recommendations. In consultation with the District, a determination will be made by the CM for the items reflected in its final constructability report which are to be incorporated into the Design Documents. CM will thereafter monitor the Architect's revisions of the Design Documents for the purpose of ensuring that constructability review comments and recommendations are accurately and completely incorporated into the Design Documents.
- c) The constructability review conducted by CM hereunder is distinguished from the actions, responsibilities and work product of the Architect; CM's constructability review and the comments or recommendations resulting therefrom are advisory to the District and the Architect. The CM's constructability review shall, however, represent CM's best professional judgment that the Design Documents meet the scope of Work, design and construction guidelines established by the District for the Project or by applicable, law, code, regulation or ordinance and are suitable for bidding and construction. Subject to the foregoing limitations, by performing the constructability review and its comments or recommendations resulting therefrom, CM shall not be deemed to have assumed responsibility for the Project design or the contents of the Design Documents.

- d) CM shall provide value analysis of the Design Documents prepared in the Schematic Design Phase and the Construction Documents Phase of the Architect's Contract with the District for the Project and the proposed materials, equipment, systems and other items depicted therein to evaluate and make recommendations to the District for alternatives, deletions or amendments which pertain to anticipated construction costs, useful life, maintenance and operational costs or efficiency of operations. CM shall provide the District with written value analysis recommendations, cost/benefit analyses of value engineering recommendations and in consultation with the District, determine the extent to which the CM's value analysis recommendations are to be incorporated into the Design Documents. Where value analysis recommendations are to be incorporated into the Design Documents, CM shall monitor the Architect's incorporation of such recommendations to ensure that they are completely and accurately incorporated into the Design Documents. Value analysis recommendations shall represent CM's best professional judgment that the form, fit and function of various items and components as depicted in the Design Documents are not materially affected by such recommendations and that the District will be benefited by incorporation of such recommendations by reduced construction costs, reduced operational costs or maintenance costs and/or extended useful life.
- e) Review the Architect's 100% contract document submission and provide written comments on the coordination of the various disciplines, including civil, structural, architectural, mechanical, electrical, HVAC, plumbing, and landscape.

**2.2.3 Interim Housing.** Provide for the District's review and acceptance, schedules and coordination pertaining to moving, relocation, temporary housing and storing of District's material prior to the construction phase of the Projects.

**2.2.4 Construction Cost Estimate.** CM shall review the construction cost estimate prepared by the Architect and the District's construction budget for the Project at the completion of Schematic Design, Design Development and 70%-90% Construction Document phases. Based upon Design Documents revised to incorporate any constructability review comments and value engineering recommendations ("Construction Documents"), the CM will prepare a detailed construction cost estimate; if requested by the District and as an additional service. Provide ongoing estimates for all proposed changes to the Program and/or its projects. Where the CM's construction cost estimate varies from the Architect's estimate or the District's construction budget, CM shall reconcile such difference and make recommendations for modifications of the Project scope, work depicted in the Construction Documents, or other measures so that the construction cost estimate conforms with the District's Project construction budget. CM shall make recommendations for items, systems or products whether or not depicted in the Construction Documents as suitable for bidding as alternate additives or deductions. Since CM has no control over cost of labor, materials, or equipment, or over the contractor's method of determining prices & profit, or over competitive bidding or current market conditions, the opinion of probable construction cost provided in this Article is made on the basis of professional experience and qualifications. The opinion represents CM's best judgment as a professional construction consultant familiar with the construction industry. However, CM cannot and does not guarantee the bids, negotiated prices or that the construction cost will not vary from any cost estimate or the opinions of probable cost prepared by them.

**2.2.5 Project Safety.** CM shall review safety programs of the Contractors for conformity with requirements of the Construction Contracts and applicable law; CM shall monitor the Contractors' compliance with safety programs and advise the District of measures, if any, necessary or appropriate to obtain the Contractors' compliance. CM's responsibilities for monitoring of safety programs shall not extend to direct control over or charge of the acts

or omission of the Contractors. By undertaking the obligations hereunder, CM shall not be deemed to have assumed responsibility for the adequacy or sufficiency of safety programs implemented by Contractors.

- 2.2.6 Project Construction Schedule.** Identify Project Construction Schedules within the Master HVAC Project Schedule. Provide a preliminary Project Construction Schedule for each set of Bidding documents. Require that each Contractor develop a Project Construction Schedule providing for all major elements such as phasing of construction times of commencement and completion required for each Contractor.
- 2.2.7 Long Lead Items.** Investigate and recommend a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect. Expedite and coordinate delivery of these purchases with the District.
- 2.2.8 Labor Analysis.** Analyze the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Make recommendations for actions designed to minimize adverse effects of labor shortages.
- 2.2.9 Public Relations.** CM will assist the District in public relations activities including preparation of the Project information, and attending internal and public meetings as required, including site meetings and Board meetings as required by the District. CM will assist the District in developing and implementing communication with the District's constituents and the community it serves.
- 2.2.10 Hazardous Materials Abatement.** CM, in cooperation with the District's consultants, shall assist the District with the coordination of any abatement processes.
- 2.2.11 State Applications.** The CM, in cooperation with the District and Architect, shall assist the District with the preparation, tracking and updates regarding current and anticipated applications with State agencies for funding.
- 2.2.12 Permits.** Assist the District in obtaining building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various Contractors. Assist the District in verifying that the District has paid applicable fees and assessments. Assist in obtaining approvals from authorities having jurisdiction over the Project.

### **2.3 Bidding Phase.**

- 2.3.1 Pre-qualification of Bidders.** CM will assist and make recommendations to the District regarding:
  - a) Process, procedures and criteria for pre-qualification of potential Contractors to bid upon the Construction Contract to be awarded by the District for the Project;
  - b) Establishment of qualification criteria for the Construction Contract;
  - c) Solicitation and development of Contractor's interest in the Project;
  - d) Issuance of Pre-Qualification questionnaires to potential bidders;
  - e) Review potential bidders' responses to Pre-Qualifications questionnaires; and
  - f) Recommendations to the District for selection of contractors deemed qualified to submit bids for the Construction Contract.
- 2.3.2 Development and Issuance of Contract and Bid Documents.** Based upon the Design Documents developed and prepared by the Architect, CM will assist and make recommendations to the District for development, preparation and issuance of Contract Documents for the Construction Contract and Bid Documents for bidding the Construction Contract for Project Construction. CM will assist in the preparation of General Conditions and other supplementary conditions as necessary for the Construction Contract and review applicable portions of the Design Documents, including Specifications for content, consistency and coordination. CM will assist the District in complying with applicable legal

requirements for the advertisement and solicitation of Bid Proposals from Contractors. CM will assist in the establishment of bidding schedules.

**2.3.3 Bidding Process.** During the bidding for the Construction Contract, CM will:

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

**2.4 Construction Phase.**

**2.4.1 Administration and Coordination of Construction Contract(s) and Construction.**

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

- a) Assist the District in receiving and reviewing the Contractor's Certificates of Insurance and Bonds along with commentary as to the extent to which such Certificates of Insurance and Bonds comply with the applicable terms of the Contract Documents and the Construction Contract;
- b) Provide advice and recommendations to the District for issuance of Notice to Proceed directing commencement of work under the Construction Contract(s);
- c) Schedule, coordinate and conduct pre-construction, progress, and construction meetings; recording, maintaining and distributing minutes thereof;
- d) In consultation with the Architect, develop and implement procedures for the submittal and processing of Submittals required by the Construction Contract. CM will review Contractor's Submittals and coordinate the same for transmittal to the Architect for review and approval;
- e) 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;
- f) Establish and implement procedures for the transmittal and receipt of communications, drawings and other information between CM, Architect and the Contractor relating to Project construction; and
- g) Assist the District in selection and retention of testing laboratories, inspection services, surveyors and other special consultants for Project construction;
- h) Coordinate Site activities of the Contractor(s) and allocation of Site staging and storage areas.
- i) Assist the District, Architect and Inspector with monitoring certified payroll for the entire Project, if required.
- j) With the Architect and the District's maintenance personnel, observe the Contractors' check-out of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing.

With respect to each Contractor's own work, CM shall not have control over or charge of and shall not be responsible for the work, for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of each of the Contractors, since these are solely the Contractor's responsibility under the Contract for Construction. CM shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the work not directly employed by CM or under contract to CM.

#### **2.4.2 Monitoring of Construction Costs; Contractor(s)' Applications for Payments.**

**a) Construction Costs.** CM will monitor the Construction Costs and advise the District of the financial condition of the Project by:

- 1) Development of Project cash flow reports, forecasts and other financial reports to the District, including those reflecting variations between actual Construction Costs and the Construction Costs Budget and estimated costs of unperformed Project activities;
- 2) Maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis, or other work requiring accounting records;
- 3) Monitor and advise the District of costs pertaining to potential, pending and completed changes to Construction Contract; and
- 4) Advising and making recommendations to the District for adjustments to the Construction Cost Budget relative to actual or anticipated Construction Costs.

**b) Applications for Progress Payments.** CM will participate in the review and disbursement of Progress Payments to the Contractor and in consultation with the District and the Architect, make recommendations for the disbursement of Progress Payments to the Contractor(s) as follows:

- 1) CM will assist in the development of procedures for submittal, review, processing and disbursement of Progress Payments to Contractor(s), along with associated forms and reporting systems.
- 2) 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 for the Construction Contract.
- 3) CM's representations relative to Applications for Progress Payment are subject to an evaluation of the Work for conformity with the Contract Documents for the Construction Contract(s) upon Substantial Completion, results of subsequent tests and procedures, minor deviations from the Contract Documents 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(s) is/are entitled to payment in the amount so certified.
- 4) The issuance of a Certificate for Payment shall not be a representation that the CM has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own work, or procedures, or (3)

ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum for the Project.

- c) **Construction Contract Close-Out; Final Payment.** In consultation with the District and the Architect, CM will assist and participate in the review of Applications for Final Payment. CM will compile for transmittal to the District the Close-Out documents required by the Construction Contract(s), including Record Drawings, Operations and Maintenance Manuals, test certificates, warranties and guarantees. CM will review and in consultation with the District and the Architect, CM will make recommendations to the District as to Final Completion of the Construction Contract(s) and disbursement of the Final Payment under the Construction Contract(s).

#### 2.4.3 Project Progress.

- a) **Project Schedule(s).** CM shall review the Contractor(s)' Project Construction Schedule(s) and updates thereof and shall endeavor to secure Contractor(s)' compliance with such Schedules. CM shall advise the District of compliance with the terms of the Construction Contract(s) along with measures appropriate to obtain compliance if necessary. CM is not and will not be in control of the Architect's or Contractors' activities in connection with the Project, and therefore, CM cannot warrant or represent that the actual construction schedule will be consistent with the estimated construction schedule for the Project.
- b) **Progress Records.** CM will maintain records of the progress of construction of Project construction, including written progress reports and photographs reflecting the status of Project construction and percentage completion. CM will maintain daily records during Project construction showing weather conditions, Subcontractors at the Site, work in progress, work accomplished, problems encountered and other matters materially affecting the Project, completion of the Project or Construction Costs. The CM to provide updates to the District file storage system every week at a minimum.
- c) **Substantial Completion and Final Completion.** Upon request of the Contractor(s), CM will in conjunction with the District and the Architect determine that Substantial Completion and Final Completion have been achieved.

#### 2.4.4 On-Site Observations.

- a) **CM On-Site.** During Project construction and at substantially all times during which there are construction activities under the Construction Contract, CM shall have its Construction Manager or other authorized representative at the Site to observe Site construction activities. CM shall maintain in their office, on a current basis, the Construction Contract(s), Drawings, Specifications, Addenda, approved Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; and other related documents. Make all records available to the District and the Architect. At the completion of the Project, deliver all such records to the District, such that the Architect may complete the record As-Built drawings.
- b) **Construction Quality.** The CM will endeavor to guard the District against defects and deficiencies in construction and workmanship on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor the workmanship of the Contractor(s) for conformity with: (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; (c) and the requirements of the Construction Contract.
- c) **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 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.

- d) **Site Safety.** CM shall review safety programs of the Contractor(s) for conformity with requirements of the Construction Contract(s) and applicable law; CM shall monitor the Contractor(s)' compliance with mandated State and Federal safety programs and advise the District of measures, if any, necessary or appropriate to obtain the Contractor(s)' compliance. CM's responsibilities for monitoring of safety programs shall not extend to direct control over or charge of the acts or omission of the Contractors. 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(s).

#### 2.4.5 Changes and Claims.

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

### ARTICLE 3 ADDITIONAL SERVICES

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

- a) Services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
- b) Services in connection with any arbitration or other legal proceeding arising out of the Project, except to the extent that CM is a party to such proceeding.
- c) Services relative to future systems, facilities or equipment not included within the scope of the Project.
- d) Recruiting or training maintenance personnel (beyond coordination of standard training on installed equipment).
- e) Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.
- f) Any other service not reasonably included within the Basic Scope of Services hereunder.

## ARTICLE 4 INSURANCE AND INDEMNITY

- 4.1 Workers' Compensation and Employers Liability Insurance.** CM shall purchase and maintain as a cost of the work Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable. CM shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by CM. The Employer's Liability Insurance required of CM hereunder may be obtained by CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by CM hereunder.
- 4.2 Commercial General Liability (Bodily Injury & Property Damage) Insurance and Commercial Automobile Insurance.** CM shall purchase and maintain Commercial General Liability Bodily Injury Property Damage Insurance as will protect CM from the types of claims set forth below which may arise out of or result from CM's services under this Agreement and for which CM may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of CM's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than CM's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by CM, or (b) by another person; (iv) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to CM's obligations under this Agreement. District shall be an additional insured to CM's commercial general liability insurance policy.
- 4.3 Professional Liability Insurance.** CM will procure and maintain professional liability insurance covering claims arising out of the performance of services under this Agreement.
- 4.4 Coverage Amounts.** Insurance to be procured and maintained by CM under this Article 4 shall be in the coverage amounts set forth in the Agreement.
- 4.5 Policy Endorsements; Evidence of Insurance.** CM shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverage under each policy of insurance, whether by endorsement or otherwise, shall provide that such policy will not be canceled without at least thirty (30) days advance written notice to the District.

**4.6 CM Indemnity of District.** To the fullest extent permitted by law, CM shall indemnify, defend and hold harmless the District, its employees, agents, consultants, and board members from all claims arising out of this Agreement, including without limitation, claims for bodily injury, death, physical property damage (other than to the work of the Project itself and property damage covered by Builders Risk Insurance) and demands, losses, liabilities or other claims of third parties to the extent arising out of, in whole or in part, this Agreement or CM's services hereunder or the negligent or willful acts omissions or other conduct of CM. The foregoing shall include without limitation, attorneys fees, experts fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph shall be provided by counsel acceptable to the District. The CM's obligations hereunder are not limited in any way or by any limitation on the amount or type of damages or compensation payable to the CM under applicable policies of insurance, workers' compensation acts, disability benefits acts, or other employee benefits acts. The provisions of this paragraph shall apply during the period of CM's performance under this Agreement and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

## **ARTICLE 5 TERMINATION; SUSPENSION**

**5.1 Termination for Default.** Either the District or CM may terminate this Agreement upon seven (7) 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 it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to CM if: (a) CM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by CM or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CM or any of CM's property on account of CM's insolvency; or (b) if CM disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due CM, if any, shall be based upon Basic Services and authorized Additional Services incurred or provided up to the effective date of the District's termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due, if any, shall be made by District only after completion of the Construction Phase of the Project. 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.

**5.2 District's Right to Suspend.** The District may, in its discretion, suspend all or any part of the construction of the Project, work under a Construction Contract or CM's services hereunder; provided, however, that if the District shall suspend construction of the Project, work under a Construction Contract or CM's services hereunder 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 Project construction under a Construction Contract or CM's services hereunder.

- 5.3 District's Termination of Agreement for Convenience.** The District may, at any time, upon thirty (30) days advance written notice to CM terminate this Agreement, in whole or in part, for the District's convenience and without fault, neglect or default on the part of CM. In such event, the Agreement shall be deemed terminated thirty (30) 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 to CM for services provided through the date of termination for all active project assignments plus actual costs incurred by CM directly attributable to such termination, but in no event shall CM be entitled to payment of loss of profits.
- 5.4 Lack of Funding.** CM acknowledges and agrees that funds utilized by the District to pay for services provided by CM under this Agreement are public money acquired by District from the local general bond obligation as well as other public sources, including the State of California, and is subject to variation. The District reserves the right to modify, limit or cancel, in whole or in part, CM's services hereunder on account of funding changes or limitations.

## ARTICLE 6 GENERAL

- 6.1 Marginal Headings; Captions.** The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of CM and District hereunder.
- 6.2 Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by CM.
- 6.3 Notices.** Notices CM or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.
- 6.4 Disputes.**
- 6.4.1 Continuation of CM Services.** Except in the event of the District's failure to make payment of undisputed amounts of the Contract Price due CM, notwithstanding any disputes between District and CM hereunder, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 6.4.2 Arbitration.** All claims, disputes or other matters in controversy between CM and District arising out of or pertaining to the Project or this Agreement shall be settled and resolved by binding arbitration conducted in accordance with the American Arbitration Association's Construction Industry Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. If any claim or dispute is asserted by the Architect or the Contractor or the District relating to the Project and arising in whole or in part out of this Agreement, 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. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Main District Office. The award rendered by the Arbitrator(s) shall be final and binding upon the District and CM. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed

or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. The Architect, Contractor, Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and CM, in which case an appropriate severance order shall be issued by the Arbitrator(s). The expenses and fees of the Arbitrator(s) shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. The parties agree that the Arbitrator shall not be empowered to add to, subtract from or in any other manner modify, alter or amend the terms of this Agreement. The Arbitrator shall conform to the legal rules of evidence in California and the basis of the Arbitrator's award shall be in accordance with California law. The Arbitrator shall provide a written award setting forth the specific bases for the award. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

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

**6.6 Records.**

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

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

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

**6.8 Definitions.**

- 6.8.1 Construction Contract.** A Contract for Construction awarded by the District to a Contractor for the construction of the Project.
- 6.8.2 Contractor.** A Contractor to the District under a Construction Contract awarded by the District for construction of the Project.
- 6.8.3 Design Documents.** The Drawings, Specifications, calculations and other work product and Instruments of Service prepared by the Architect for the Project. Design Documents include surveys, soils reports and other documents prepared for the Project by a licensed Architect or registered Engineer, whether under contract to the Architect or District.
- 6.8.4 Architect.** The Architects are all architects or other design professionals, including engineers, under contract with the District to provide services for the Project. References to the Architect include its consultants retained to prepare or provide any portion of the Design Documents.
- 6.8.5 Submittals.** Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractors or suppliers illustrating some portion of the work of the Project.
- 6.8.6 Site.** The physical area for construction and activities relating to construction of the Project.

SAMPLE

**EXHIBIT A – TABLE OF BASIC SERVICES**

SAMPLE

**EXHIBIT B – HOURLY RATE SCHEDULE**

SAMPLE