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March 5, 2019

Board of Education
BASSETT UNIFIED SCHOOL DISTRICT
904 North Willow Avenue
La Puente, California 91746

Re: Del Terra Program and Construction Management Agreement

Dear President Rivera and Board Members:

In or about February 2018, the Los Angeles County Office of Education (“LACOE”) contacted Superintendent French expressing concerns relating to Del Terra’s business practices in other school districts and suggested that the District evaluate the Del Terra Agreement.

Shortly thereafter, Del Terra notified the District finance staff that the term under the Program Management Services of the Agreement expired on April 21, 2018, and requested an Amendment to the Agreement and a budget increase to continue providing Program Management Services. As General Counsel to the District, Leal & Trejo was engaged to advise the District on the concerns raised by LACOE and Del Terra’s requested Amendment to the Agreement.

Factual Background

The Bassett Unified School District (the “District” or “Bassett”) entered into an agreement with Del Terra Real Estate Services, Inc., dba Del Terra Group (“Del Terra”) for program and construction management services related to the Measure “V” bond program (the “Agreement”) (Exhibit “A”). Measure V was approved by the voters on November 4, 2014 and authorized the District to issue Thirty Million Dollars (\$30M) in general obligation bonds. Del Terra has requested an Amendment that would provide for an additional \$389,906.00 to complete the tasks under Program Management in the original Agreement. The purpose of this memorandum is to highlight for the Board issues of concern related to the requested Amendment.¹

¹ We have not reviewed compliance with the competitive bidding statutes, nor have we analyzed potential conflict of interest issues that could be implicated by serving as both the Program and Construction Manager.

The original Agreement was negotiated between former District superintendent Alex Rojas (“Superintendent Rojas”) and Luis Rojas, principal of Del Terra, (the individual and entity referred to as “Del Terra”). The Agreement was drafted by Del Terra and provided to Superintendent Rojas. Superintendent Rojas did not consult, nor include, District Counsel in the negotiation or formation of the Agreement. The Agreement was placed on the agenda and presented to the Board of Education (“Board”) for approval on April 21, 2015. The agenda item stated, “[a]pprove/Ratify Contracts Not Requiring the Bidding Process, Del Terra Group 4% PM and 9.9% CM.” The Agreement does not provide a termination date, instead it provides that the Agreement shall end “when the District has issued notices of completion for all Campus Projects and all punch list items for the Campus Projects have been completed or waived by District...” (§4.4.1). To date, this point has not been reached.

Upon determining that the Agreement had not terminated, we sought clarification from Del Terra regarding the requested Amendment, and specifically, the request for an additional \$389,906.00. District staff confirmed that they had already paid Del Terra \$1.2 million, which is 4% of \$30 million - the full bond program value. District staff also confirmed that the tasks under the scope of work required under Program Management had not been completed.

We have been unable to find any documentation authorizing the 100% payment of the Program Management work without completion of the work. According to Del Terra, Superintendent Rojas and Del Terra agreed to a thirty-six (36) month term for the conclusion of all projects. Rather than apportioning payments to percentage of work performed, or milestones completed, Del Terra billed the District a fixed monthly stipend by dividing the 4% Program Management fee for the \$30 million by 36 months. Del Terra therefore billed the District and was paid a monthly stipend of approximately \$31,666.00², regardless of the amount of work performed for Program Management services. As discussed in more detail below, the monthly stipend was in addition to the monies paid pursuant to the Construction Management and Additional Services/Assessments provisions of the Agreement.

By approximately June of 2018, when Del Terra requested the Amendment, an additional \$389,906.00, to complete the Program Management portion of the projects, many projects identified in the original scope of work remained unfinished. Del Terra’s assertion that the Program Management Services of the Agreement expired is inconsistent with the terms of the Agreement. Legally, any separate agreement made by Del Terra and Superintendent Rojas after Board approval is not enforceable. In addition, Superintendent Rojas did not have the legal authority to modify the contract terms approved by the Governing Board at a duly noticed meeting. Statutorily, only the Board can approve contracts and amendments thereto. (*Santa Monica Unified School District v. Perch* (1970) 5 Cal.App. 3d 953-954 (all contracts entered into by a school district must be approved and ratified by the district’s governing board). [See Code of Civil Procedure §1698(c)]. This is generally because individual recollection may differ years after separate agreements or understandings, not included in the original contract, are made. In this instance, an agreement entered into between Del Terra and former superintendent Rojas providing for a 36 month term for the conclusion of all projects is unenforceable particularly given that the Agreement specifically provides in relevant part, “the [Agreement] supersedes all prior negotiations, representations, or agreements, either written or oral except as otherwise expressly provided. This Agreement may be amended only by written instrument

² This amount is the \$1.2 million PM fee minus a 5% retention amount divided by 36 months.

signed by authorized representatives of both District and Manager, **which has no force or effect until it has been formally approved or ratified by the Board of Education.**” (§10.9). (Emphasis added)

Our law firm can attest to the disruption in a school district’s bond construction program when county offices of education become involved in reviewing the performance and legal issues that arise when a District approves bond construction and program management contracts. In fact, the California Attorney General’s office has agreed to issue an opinion on whether a county office of education can summarily halt a school district’s entire bond construction program. The request for the Attorney General opinion involves Del Terra. Although it is a different school district, the Attorney General opinion will impact school districts across the State, including Bassett. Given that LACOE is evidently monitoring Del Terra’s performance and billings at Bassett, we have engaged in a thorough analysis of the terms of the Agreement, and a review of the available billings in order to preempt any allegations by LACOE that the District may not be compliant in its obligations to enforce the terms of the Agreement and serve as responsible stewards of tax payer bond dollars.

The following provides the process undertaken by Leal Trejo to respond to LACOE’s concerns and to Del Terra’s request for the Amendment. We have included a section highlighting issues of concern noted in that review, as well as recommendations.

PROCESS:

- Reviewed Del Terra Agreement. (Exhibit “A”)
- Reviewed documentation related to services performed by Del Terra.
- Reviewed agenda items and board minutes relating to Del Terra.
- Reviewed Del Terra invoicing, in the District’s possession, and payments made to Del Terra for Program Management services. (Exhibit “B”)
- Requested information from Del Terra. Two letters were sent to Del Terra requesting information to substantiate invoices paid by the District for various assessments billed to the District by Del Terra, as well as copies of the assessments and related work product. (Exhibit “C”). To date, there is no response.
- Francisco Leal met with Del Terra owner Luis Rojas on September 18, 2018, wherein Luis Rojas indicated he would provide the requested information, but as of this date has not provided the requested information.
- Interviewed former Superintendent Alex Rojas.

KEY PROVISIONS OF THE AGREEMENT:

Agreement Terms:

- Provides for Program Management (“PM”) services at a fee of Four Percent (4%) of the full Bond Program value (\$30 million). Completion of all the tasks outlined in Exhibit A of the Agreement, would result in a total payment of \$1,200,000.00.
- Construction Management (“CM”) services at 9.9% of actual construction cost.
- Additional Services charged at an hourly rate, or on a mutually agreed upon fee, based on the position/classification required for the additional services (Exhibit B of the Agreement).

- The Agreement also provides for separate charges for Facility Reports, Assessment and Updates, “as requested by District” (so long as these are not included in the PM or CM scope of work).
- Term of the Agreement ends “when the District has issued notices of completion for all Campus Projects and all punch list items for the Campus Projects have been completed or waived by District...” (§4.4.1).

Program Management (PM) and Construction Management (CM):

Exhibit A of the Agreement, titled “Scope of Services” delineates the tasks under the CM and PM portions of the Agreement. For purpose of illustration, below is a brief example of the types of services required under PM and CM.

Program Management:

- The Program Management services includes management, oversight, and coordination of all contractors, subconsultants, vendors and suppliers’ work, in connection with, and in the performance of, the delivery of the Campus Projects
- Del Terra’s Program management deliverables require progress reporting at monthly intervals. (2.1.1.1)³ We have not identified monthly progress reports. The invoices submitted for payment by Del Terra merely reference “Program Management Services, Board Approval 04/21/15.”

Construction Management:

- Construction management services include all phases of construction from pre-construction, post-construction, through close out from the Department of State Architect (“DSA”).⁴

Additional Services/Assessments:

The Agreement provides for Additional Services, for services not included in Exhibit A, the Scope of Services for PM and CM, (§4.3.1) to be provided on an hourly basis or at a mutually agreed upon fee. (§4.3.2) Additionally, the Agreement provides for Facility Reports and Assessments, based on a fee to be agreed to by District Administration. From April 2015 through September 2016, Del Terra billed the District \$1,037,750.00 for “Additional Services” and “Assessments”.

Del Terra billed for the following services under Additional Services/Assessments (Exhibit “D”):

- | | |
|--|--------------|
| • Development of Bond Program Plan | \$85,000.00 |
| • Facility report, HVAC assessment | \$115,750.00 |
| • Facility report, Torch Environmental | \$68,000.00 |

³ Section 2.1.1.1 states, “Program management services shall include progress reporting at monthly intervals, in the format described as follows: Prepare reports (to be provided in writing and electronically) to the District, according to an approved format developed by the Manager. This summary report must include a) Program Status Reports for each project; b) Project Schedules for each project including an update of actual performance against the approved baseline schedule; c) Budget, Actual, Budget Available Balances (this portion of the report shall be provided quarterly)”

⁴ This memorandum does not include a full analysis of the invoicing related to the construction management work due to the lack of documentation.

- DSA close out (part of CM scope) \$64,500.00
- District roofing assessment \$74,500.00
- Various projects including PM/CM services,
Abatement of hazardous materials⁵ \$400,000.00
- Re-programing & Re-planning/Technology Scenarios, \$230,000.00

Items billed under Additional Services appear to fall within the Scope of Services of the PM and CM work. Development of a Bond Program Plan is called for in the Scope of Services, both in Exhibit A and section 1.2.1 of the Agreement itself. DSA close out is identified in CM services of Exhibit A, as “Close Out Documentation” and “Project Close out”, albeit, without including the name “DSA” (the Department of State Architect). DSA, however, is the agency that closes out the projects. Therefore, “project close out” is synonymous for DSA close out, which is in the CM scope of work. In addition, Del Terra has already billed for project close out under “additional services.” Del Terra appears to intend to bill for project close out again in the proposed Amendment, asking for a budget of \$245,890.00.

CLAIM BY DEL TERRA THAT PM PORTION OF THE CONTRACT EXPIRED/REQUEST FOR AMENDMENT/ADDITIONAL FUNDS:

Del Terra provided the District a proposed, “Amendment to the Program and Construction Management Agreement” (“Proposed Amendment”). (Exhibit “E”). The Proposed Amendment provides in the recitals, in relevant part, the following:

“The Parties desire to continue with the scope of services, confirm timeline of management services and amend the payment provisions . . . ; and

“Due to various District decisions and actions, the Program timeline was exceeded and the original Program Management fee was exhausted. Such decisions and actions were the District’s decisions to re-prioritize the Bond projects several times and directed Manager to work on re-developing and re-programing the Bond program. . . ; and

“The delays in the District decisions, and the time and effort to re-prioritize and re-program the Bond program was not originally contemplated by the District Administration or Manager when the original Agreement for Program and Construction Management Services was negotiated.

Therefore,

1. Program Management timeline and Manager’s fee are required to be extended to December 2019 and Fee increased by \$389,906.”

⁵ The District would need to assess the documentation of “various projects” to confirm whether the projects billed in this invoice of \$400,000.00 qualify as additional services. Additionally, there are projects listed in the invoice that continue to appear as projects on later board reports. Additional analysis into projects to be completed under Measure E and Measure V should be investigated to determine if projects listed as complete under Measure E were completed and that there are not duplicated projects in Measure V.

The first recital quoted above, in plain terms, is asking the Board to approve additional monies in order for Del Terra to perform the work in the existing Agreement, for which Del Terra has already received full payment in the amount of \$1.2 million. The second and third recitals blame the District for delays due to “re-prioritizing” and “re-programing the Bond Program.” Even assuming Del Terra were to provide documentation demonstrating with specificity what exact action the District took which created the delay, which it has not, Del Terra’s scope of work under PM and CM require the development of program and project schedules, budgets and to ensure everything remains on schedule and on budget. If indeed there was a delay in construction, Del Terra continued to invoice the District a monthly \$31,666.00 Project Management fee.

Most problematic, however, is Del Terra’s assertion that the need for additional monies to complete the work is due to exhausting the 36 month timeline. The Agreement does not provide for the 36 month period. The Agreement mandates completion of the work in order to have entitled Del Terra to the full payment of \$1.2 million-the equivalent of 4% of the full \$30 million bond amount. The payments allowed under the Agreement for the performance of the PM work is based on performance. There is no legal basis authorizing Del Terra’s billing and payments of a monthly stipend. Based on the terms of the Agreement and the documentation, Del Terra has been paid in full for the performance of the work delineated under the PM scope of work but has not completed the work. Approving an Amendment to a contract that by its own terms, is in full force and effect, to authorize payment for work for which Del Terra has already received payment, could expose both the District and Del Terra to additional scrutiny by LACOE and potentially other legal claims.

AREAS OF CONCERN:

1. Rate Structure:

- The 4% PM fee is within industry standards.
- However, the 9.9% CM fee is high. The standard is 4%-6%. Under the current Agreement, a 3.9% differential equates to approximately \$1M more in CM related fees.

2. Authorization of Additional Services and Reports/Assessments.

- The Agreement provides a detailed procedure for performing additional services, requiring pre-approval in writing by District (§§1.1.3 and 4.3.3). Del Terra claims all additional services/assessments were approved by the Board. However, Del Terra has not provided any documentation. Our review of Board agendas and minutes yielded no records of such Board actions authorizing *over* one million dollars in additional services and assessments.
- There is no record of written work authorizations prior to work being performed, only of sign off by the prior Superintendent *at time of payment*.
- Given the over \$1,000,000.00 cost of the additional services/assessments, we requested copies of the work product from Del Terra. Del Terra did not provide us with work product materials, stating that only one copy was generated of the assessments, which were provided to former Superintendent Rojas. Superintendent Rojas, in turn, stated that when he departed from the District, he left the assessments in his office. To date, we have not been able to locate the assessments, and have repeatedly requested them from Del Terra.

- We corresponded with and interviewed former Superintendent Rojas to determine the whereabouts of the missing assessments, and to obtain an explanation as to the basis for the “agreed upon fees”. He could not articulate the basis or negotiations for the fees charged by Del Terra, particularly the \$74,000.00 roof assessment. (Exhibit “F”). During his interview, he stated that the Board would request an assessment, and Del Terra would “run with it” and perform the services, then present him with an invoice. He noted: “what am I supposed to do, he has already done the work.”⁶
- The terms of the Agreement mandate that Del Terra retain all records for services performed. Section 6.1.1⁷ requires that Del Terra maintain all project books and records; and Section 2.1.5⁸ requires that Del Terra establish a document control and master file archive system. Del Terra’s inability to provide the necessary documentation runs afoul of the requirements of the Agreement, but more troubling makes it difficult to thoroughly assess the work completed and payments made.

3. Other Billing Issues Noted.

- Section 5.1 requires that Del Terra provide the District with applications for payment “setting forth in detail” the amount invoiced and specifically requires compliance with a payment schedule for any PM invoicing, and separation of billings by CM, PM and additional work. The billings we reviewed were broad and general and lacked the required detail. For example, rather than identifying the actual work and segregating the invoice to CM or PM, the invoices read, “Per Program and Construction Management Agreement, Board approved 4/21/15 . . .

⁶ Note that excluding the \$400,000.00 for services performed prior to the Board approval of the Agreement, the amount of the remaining Additional Services/Assessments is \$637,750.00. Dividing this amount by the hourly rate for the program manager (\$180.00 per hour – per Exhibit B of the Agreement) would total approximately 3,543 hours of work over a 14 months period (July 2015 – September 2016). During that same period Del Terra received approximately \$443,324.00 in compensation (regular monthly invoice) under the Program Management agreement, which would equate to approximately 2,463 hours. Therefore, the total hours that would have been spent by Del Terra in the 14 months would have been 6,006 hours, or 429 hours per month. This is the summary of each invoice on a per hour (\$180.00) basis:

• Development of Bond Program Plan	\$85,000.00	(472 hours)
• Facility report, HVAC assessment	\$115,750.00	(643 hours)
• Facility report, Torch Environmental	\$68,000.00	(378 hours)
• DSA close out (part of CM scope)	\$64,500.00	(358 hours)
• District roofing assessment	\$74,500.00	(414 hours)
• Various projects including PM/CM services, Abatement of hazardous materials	\$400,000.00	(2,222 hours)
• Reprogramming & Re-planning/ Technology Scenarios	\$230,000.00	(1,278 hours)

⁷ Section 6.1.1 states “Manager shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by District to verify the scope or charges for any services provided under this Agreement. Manager shall maintain such records in sufficient detail to permit District, District’s independent auditors, or their designee to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.”

⁸ Section 2.1.5 states “Implement a document control and master file archives system. This activity is limited to the files and documents created by the Manager and not to any of the pre-existing documents generated by its predecessors. All equipment and supplies for control and filing of program documents will be completely burdend (sic) by the District from it’s (sic) bond funds. Manager shall acquire advance approval by District for the purchase of any and all such equipment and/or supplies for this purpose.”

- Billings not signed off or verified by Director of Facilities, provided directly to finance.
- Billings not detailed or itemized as to sources of project cost; CM fee is applied broadly to total project expenditures.
- Misapplication of CM fee to costs other than construction
 - Contract provides that CM fee applies to “actual construction cost”, Section 1.1.20 defines “Construction Costs” as “the total cost of constructing a Campus Project, excluding the following: (1) the cost of professional services to be rendered by Design Consultants, Specialty Consultants or Manager (2) land acquisition costs; (3) finance costs; (4) District’s administrative costs; and (5) legal fees and related legal costs.”
 - In some instances, Del Terra applied the CM fee to non-construction costs. The billings contain limited/incorrect detail (when provided). Work incorrectly billed as construction meant the District paid 9.9% of the total cost rather than the 4%.
- Misapplication of CM Fee to FF&E (Fixtures, Furniture and Equipment):
 - Del Terra applies CM fee to FF&E (Furniture, Fixtures and Equipment)
 - FF&E are not provided for as component of the CM fees in the Agreement. In fact, the agreement specifically provides that FF&E are a *post* construction cost.
 - Example: 21st Century classroom project (TK-5 and 6-12):
 - Billings total \$9,401,387.56, of which \$1,749,190.54 was spent on actual construction expenses and \$7,610,798.16 was for FF&E (digital network, audio visual, carpet, furniture). The CM fee was assessed on total project cost of \$9,401,387.56, including the cost of furniture and digital equipment.
 - Due to the fact that Del Terra charged the CM fee on the entire \$9,401,387.56, rather than the actual construction expenses of \$1,749,190.54, Del Terra received a CM fee of \$930,737.00 on the 21st Century projects, rather than \$173,169.86.
- Roofing Assessment
 - Del Terra billed the District \$74,500.00 for a roofing assessment (Exhibit “G”)
 - Provided the Garland roofing assessment to the District as product.
 - We contacted Garland to identify the cost of the assessment and provided a copy of the assessment in the District’s possession.
 - We were informed by Garland that the company does not charge customers for the assessment and confirmed that the report was generated free of charge (Exhibit “H”).
- HVAC Assessment
 - Del Terra charged the District \$105,750.00 to conduct a District HVAC assessment. Superintendent Rojas could not recall the basis for authorizing this assessment, nor the details of the “agreed upon fee” of \$105,750.
 - Based on correspondence with Betty Hanson and Tarana Alam, from California Financial Services, it appears that the HVAC assessment was completed as part of an application for state funds. BUSD, however, was disqualified from obtaining these funds because the project did not pre-qualify bidders. California Financial Services attempted to contact Del Terra regarding this issue, but they were unsuccessful. (Exhibit “I”)

- Invoice for \$400,000.00 for “Various projects including PM services, CM services - Abatement of hazardous materials”.
 - This invoice was presented to the District by Del Terra on April 29, 2015, eight (8) days after the Agreement was executed. This would imply that the services provided by Del Terra would have occurred *prior* to the Board Approval of the agreement. Therefore, it may constitute an unauthorized commitment by District administration (unless this commitment was submitted to the Board for ratification).
 - Also problematic is the detailed description of services as written on the invoice seem to imply that Del Terra may have performed them as the General Contractor. This would violate the Public Contract Code.
 - The issue of greatest concern is Del Terra’s inability or refusal to provide the documentation to substantiate the \$1,037,750.00 in additional services/assessments. On February 26, 2019, at a District meeting with Superintendent French, Luis Rojas stated that the District’s request, dated August 21, 2018, is under review by Del Terra’s legal counsel.

RECOMMENDATION:

Based on our analysis, it appears Del Terra may have overcharged the District by \$1,831,567.14. One million dollars was identified as “additional services” and “assessments” for which there is no documentation. Del Terra applied the construction management formula of 9.9% to the \$7.6 million dollars the District spent on fixtures and equipment (i.e. computers, desks, etc.). The 9.9% charge on the purchase cost the District \$757,567.14. Del Terra also billed the District \$74,500.00 for the roofing assessment, which it received free of charge. Although the Agreement requires performance under the PM scope of work, Del Terra invoiced the District as though the Agreement allowed for a monthly stipend of \$31,666.00 for a 36-month period-it did not.

It is important to note, that our review consisted only of documents in the District’s possession. Should Del Terra provide the documentation we have requested, the analysis in this memorandum may change. However, given the issues identified above, we recommend:

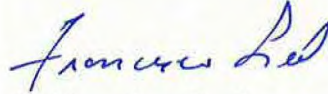
- The board demand that Del Terra provide the requested documentation to legal counsel.⁹
- District exercise its audit rights under the Agreement. In essence, a forensic review of all billings and related back up in the possession of the District and Del Terra.
- Auditors generate a report of findings to the Board of Education.
- Board of Education consider options/actions in response to auditor’s report findings.

⁹ Del Terra’s issue with its billing and contracting practices has been the subject of audits in several districts in the state. The Montebello Unified School District’s FCMAT audit from October 2018 states that little to no supporting documentation for billing was received, the volume of work does not equate to the amount billed, the fixed percentage fee for basic services was unrelated to the number of hours provided and apply the not-to-exceed provision only to additional services, etc... These are all areas of concern raised in this report. The FCMAT report states further states that “**payment of unsubstantiated invoices may constitute a gift of public funds and/or a false claim scheme.** These schemes as defined by Government Code Section 12651 include the situation where the entity “knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.” Entities that present false claims are liable to the district for triple damages, the costs of a civil action to recover the damages, and a civil penalty of between \$5,500.00 and \$11,000.00 per occurrence.” (Emphasis added) (Exhibit J)

At minimum, we recommend the Board authorize a letter to Del Terra demanding full performance of the scope of work in the existing Agreement for which Del Terra has already received 100% payment in the amount of \$1.2 million.

Sincerely,

LEAL TREJO, APC

A handwritten signature in blue ink, appearing to read "Francisco Leal".

H. Francisco Leal

EXHIBIT A

V. O
Barbara's
Office

PM

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PROGRAM AND CONSTRUCTION MANAGEMENT AGREEMENT

This PROGRAM AND CONSTRUCTION MANAGEMENT AGREEMENT ("Agreement") is entered into on this 21st day of April, 2015, between the BASSETT UNIFIED SCHOOL DISTRICT ("District") and DEL TERRA REAL ESTATE SERVICES, Inc., dba DEL TERRA GROUP ("Manager") for program, project and construction management services.

RECITALS

- A. The District is a K-12 school district that operates in the County of Los Angeles, California.
- B. The Manager is a corporation licensed to do business in California. The Manager represents it has the background, knowledge, experience, licenses and expertise necessary to provide the services set forth in this Agreement.
- C. The District and Manager desire to enter into an agreement for the Manager to provide the District with professional services consisting of program and construction management services in connection with the planning, programming and construction of existing projects, and new construction projects related to the District's Bond Program, known as Measure V, and any match funding (Campus Projects).
- D. It is the intention of the parties that the Manager provide comprehensive program, project and construction management services under the supervision of the District's Superintendent or designee that will enable the Campus Projects to be completed and constructed in accordance with the program and project schedule to be agreed to by the parties,

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 DEFINITIONS

- 1.1.1 Acceptance.** The point after Final Completion when Contractor has fully performed all of the requirements of the Contract Documents and the Work of a Campus Project is certified as complete and accepted by the District in writing.
- 1.1.2 Addendum, Addenda.** Written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued prior to the receipt of the Contractor's Bid for a Campus Project, which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections to said Bid Documents.

- 1.1.3 Additional Services.** Services requested and approved by District in writing that do not arise, in whole or in part, from the fault, negligence or breach of this Agreement by Manager and which: (i) are not included within the scope of Basic Services described in Article 2; or (ii) except as otherwise provided in Paragraph 4.4.2 of this Agreement, are performed after the expiration of the Basic Term. Such Additional Services shall be compensated on an Hourly Rate Basis, see Exhibit B.
- 1.1.4 Applicable Laws.** All federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Project, Work, Site, District, or Manager, including ordinances, rules and regulations enacted by the District.
- 1.1.5 Application for Payment.** An itemized application for payment prepared and submitted by Manager for review and approval by District, with supporting documentation required by this Agreement.
- 1.1.6 Architect.** The Architect of Record for a Campus Project.
- 1.1.7 As-Builts.** The documents prepared by Contractor, and reviewed and approved by Inspector of Record, Architect of Record and the Manager, showing the condition of the Work of a Campus Project as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown in the Contract Documents' diagrams. This term does not apply to existing District as-built documents that reflect the conditions existing prior to the commencement of Work on any Campus Project under this Agreement.
- 1.1.8 As-Planned progress.** The planned progress of the work by a Contractor pursuant to its as-planned construction schedule for a Campus Project.
- 1.1.9** Intentionally blank.
- 1.1.10 Basic Services.** All Program Management and Construction Management services specified in Article 2 and EXHIBIT A of this Agreement.
- 1.1.11 Basic Term.** The term of this Agreement as defined in Section 4.4 of this Agreement.
- 1.1.12 Bid.** A Contractor's written bid proposal submitted to the District for a Campus Project in response to District's Notice Inviting Bids.
- 1.1.13 Bid Documents.** The following collection of documents prepared and issued for the purpose of soliciting Bids for construction of Work : (i) Notice Inviting Bids; (ii) Instructions to Bidders; (iii) Blank Bid Form; (iv) Construction Contract between the District and the Contractor; (v) General Conditions; (vi) Specifications; (vii) Plans and Drawings; (viii) Addenda; and (ix)

reports, addenda, supplements, attachments, modifications and exhibits attached to the documents listed in Clauses (i) through (viii), above.

- 1.1.14 Board of Trustees.** The governing board of the District.
- 1.1.15 Campus Projects.** The individual works of improvement, modernization or new construction which, collectively, comprise the District's Measure K Bond Program, that are to be separately designed, bid and constructed under contracts between District and Design Consultants or Contractors and identified by the District pursuant to Section 1.2.1.
- 1.1.16 Change Order.** A written instrument signed by District, Manager, Architect of Record by Contractor, describing an adjustment in a Construction Contract Sum or Construction Contract schedule, or both, pertaining to a deletion, addition or change to the Contractor's scope of Work.
- 1.1.17 Claim.** A written demand or assertion by District, Manager or any other member of the Project Team seeking as a matter of right, an interpretation of contract, payment of money, recovery of damages, or other relief. A Claim does not include the following: (i) penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency; (ii) tort claims for personal injury or death; (iii) false claims liability under California Government Code Section 12650, et seq.; (iv) defects in the Work first discovered by District after Final Payment by District to Contractor; (v) stop notices; and (vi) the right of District to specific performance or injunctive relief to compel performance.
- 1.1.18 Claims Dispute Resolution Process.** The process of resolution of Claims as set forth in Article 9 of this Agreement.
- 1.1.19 Construction Contract.** A written contract executed between District and a Contractor for construction of a portion or all of the Work of one or more Campus Project(s).
- 1.1.20 Construction Costs.** The total cost of constructing a Campus Project, excluding the following: (i) the cost of professional services to be rendered by Design Consultants, Specialty Consultants, or Manager; (ii) land acquisition costs; (iii) finance costs; (iv) District's administrative costs; and (v) legal fees and related legal costs.
- 1.1.21 Contract Documents.** Without limitation, the following collection of documents that are anticipated to be designated as the Contract Documents governing a Contractor's performance of the Work of a Campus Project: (i) The Notice Inviting Pre-Qualification Statements (if applicable), Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable); (ii) executed Construction Contract between District and Contractor; (iii) Notice Inviting Bids; (iv) Instructions to Bidders; (v) Bid Addenda; (vi) Contractor's Bid; (vii) General Conditions; (viii) Specifications; (ix) Performance and Payment Bonds; (x) insurance forms; (xi) Plans and Drawings; (xii) Modifications; (xiii) reports listed

in the Bid Documents; (xiv) Change Orders; (xv) Field Directives and (xvi) supplements, attachments and exhibits attached to the items listed in Clauses (i) through (xv), above.

- 1.1.22 Contract Sum.** The total amount of compensation stated in a Construction Contract that is payable to a Contractor.
- 1.1.23 Contract Time.** The total number of Days set forth in a Construction Contract within which Final Completion of the Work of a Campus Project must be achieved by Contractor, including approved extensions of time permitted under the terms of the governing Contract Documents.
- 1.1.24 Contractor.** An individual or firm under contract with District to perform any Work on one or more Campus Project(s).
- 1.1.25 Day.** Whether capitalized or not, unless otherwise specifically provided, a calendar day, including weekend days and legal holidays.
- 1.1.26 Defective Work.** Work that does not fulfill the requirements of the Contract Documents or Construction Contract.
- 1.1.27 Deliverables.** The written work product, consisting of reports, summaries, projections, budgets, schedules, plans, programs, procedures and minutes required to be prepared and submitted by Manager to the District under the terms of this Agreement.
- 1.1.28 Deliverables Schedule.** The schedule setting forth the applicable contractual time periods and deadlines at which Manager is required to perform its Basic Services, including, without limitation, the production of its Deliverables.
- 1.1.29 Design Consultant.** An individual or firm under contract with District to provide design, architectural, engineering and/or design administration services for a Campus Project.
- 1.1.30 Design Costs.** The costs to District for conceptual, schematic, design development, construction documents and construction administration services required for completed design, engineering, administration and management of a Campus Project by Design Consultants and Specialty Consultants.
- 1.1.31 Design Documents.** All plans, drawings, tracings, specifications, programs, reports, calculations, models and other material containing designs, specifications or engineering information prepared by Design Consultants and Specialty Consultants including, without limitation, computer aided design materials, electronic data files, files and paper copies.
- 1.1.32 District Representative.** The Superintendent, or as designated by the Board of Trustees.

- 1.1.33 Drawings.** The graphic and pictorial portions of the Contract Documents prepared by a Design Consultant and other Specialty Consultants showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."
- 1.1.34 Environmental Law.** Any applicable federal, state or local laws, ordinances or regulations relating to the environment, health and safety, Hazardous Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Site, including soil, groundwater and indoor and ambient air conditions, and the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901-6992k), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1307), the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601-2692), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 15 U.S.C. §§ 2681-2692 and also 42 U.S.C. §§ 4851-4856, the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Indoor Radon Abatement Act, 15 U.S.C. §§ 2661-2671, and the Safe Drinking Water Act Amendments of 1996, Pub L. No. 104-182, 110 Stat. 1613 (1996) and all similar federal, state and local statutes and regulations.
- 1.1.35 Field Directive.** A written instrument signed by Manager and District that requests performance of Work by Contractor in one of the following categories: (i) over which there is a dispute as to whether the Work is or is not extra work; or (ii) involving extra work which Manager and the District request be performed without a unilateral Change Order adjustment to the Contract Sum or Contract Time and before agreement on all terms of a Change Order to the Construction Contract.
- 1.1.36 Final Completion.** With respect to the Work under a single Construction Contract, the point at which all conditions set forth in the Contract Documents for Final Completion of the Work, including post-construction services specified in Section 2.5, have been, and continue to be, fully satisfied.
- 1.1.37 Force Majeure Circumstances.** Unavoidable circumstances beyond the reasonable control of Manager, including but not limited to Acts of God, strikes, lockouts, labor disputes, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, regulations and controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, that interfere with Manager's ability to complete its Services utilizing the resources authorized by the Staffing Plan or that prevent Manager from satisfying the requirements of the Deliverables Schedule or complying with its other obligations under this Agreement.

- 1.1.38 General Conditions.** That portion of the Contract Documents between District and a Contractor titled "General Conditions."
- 1.1.39 Hazardous Substance.** Any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste" or words of similar import under any Environmental Law, including but not limited to the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally.
- 1.1.40 Hourly Rates for Services.** The hourly rates set forth in Exhibit "B" to this Agreement. The Hourly Rates for Services shall have an annual cost-of-living adjustment throughout the Basic Term and any extensions of the Basic Term.
- 1.1.41 Interest Rate.** The lesser of: (i) the "prime rate" reported in the Wall Street Journal from time to time; or (ii) the maximum rate permitted under California law for prejudgment interest.
- 1.1.42** Intentionally blank.
- 1.1.43 Loss, Losses.** Any and all losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorney fees, court costs, or consequential damages.
- 1.1.44** Intentionally blank.
- 1.1.45 Plans.** See "Drawings."
- 1.1.46 Project Budget.** The District's written statement of funds available to pay for Project Costs of a Campus Project, or collection of Campus Projects.
- 1.1.47 Project Construction Budget.** That portion of the Project Budget that sets forth the District's budget for Construction Costs for a Campus Project or collection of Campus Projects.
- 1.1.48 Project Costs.** The total of all Design Costs, Construction Costs, Specialty Consultants Costs, costs, and fees of Manager and other related costs (such as, but not limited to, personnel relocation and temporary facilities costs, fixtures, furniture and equipment (if required)) for a Campus Project or collection of Campus Projects, excluding: (i) land acquisition costs; (ii) finance costs; (iii) District administrative costs; or (iv) legal fees and court costs.
- 1.1.49 Manager Representative.** Manager or his/her representative, identified to act on behalf of Manager with the authority set forth in Paragraph 1.5.4 of this Agreement.

- 1.1.50 Project Team.** District Representative, Manager Representative, Key Personnel as needed, Specialty Consultant(s), Design Consultant(s), Contractor(s), Subconsultant(s), Sub-subconsultant(s), and other firms or individuals retained by District or others with District approval participating in the planning, programming, design or construction of a Campus Project.
- 1.1.51 Reimbursable Expense.** Any expense that is reimbursable to Manager under Section 4.2 of this Agreement.
- 1.1.52** Intentionally blank.
- 1.1.53 Site.** The term "Site" refers to: (i) the District school sites and such additional parcels as may be purchased by District during the Basic Term on which Work is required to be performed under the Contract Documents; (ii) all areas adjacent to such parcels that may be used by Contractor or its Subconsultants for staging, storage, parking or temporary offices; and (iii) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.
- 1.1.54 Specialty Consultant.** The professionals, other than Manager, of any Tier, retained by a Design Consultant or District to provide professional services for any Campus Project, including master planners, programming consultants, soils and geotechnical engineers, environmental consultants, Hazardous Substance consultants, infrastructure consultants, or landscape designers.
- 1.1.55 Specifications.** The portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work, and performance of related services.
- 1.1.56** Intentionally blank.
- 1.1.57 Statement of Dispute.** A written description of a dispute regarding a Claim required to be submitted as part of the Claims Dispute Resolution Process.
- 1.1.58 Subconsultant.** A person or firm that has a contract with Manager to perform a portion of the services covered by this Agreement.
- 1.1.59 Subcontractor.** A person or firm that has a contract with a Contractor to perform a portion of the Work, including without limitation, subcontractors, sub-subcontractors, and suppliers and vendors, of every Tier.
- 1.1.60 Submittals.** Shop drawings, samples, exemplars, models, product data and other similar submittals required to be submitted by Contractor under the Contract Documents.
- 1.1.61 Tier.** The contractual level of a Subconsultant with respect to Manager, a Consultant with respect to the Design Consultant retaining such Consultant or a Subcontractor with respect to a Contractor. For example, a "first-tier"

Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on.

1.1.62 Work. All labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for Contractor to perform its obligations and complete a Campus Project (or a collection of Campus Projects under a single Construction Contract to a single Contractor), including any changes, additions or deletions approved by District, in accordance with the Contract Documents and all Applicable Laws.

1.2 SCOPE OF SERVICES

1.2.1 Campus Projects. District shall, with input from Manager, develop the list of all Campus Projects to be included in the Bond Program. District shall furnish its list of Campus Projects to Manager not later than sixty (60) days after this Agreement has been fully executed by the Parties.

1.2.2 Scope of Services. Manager shall provide Program Management and Construction Management services, if and as needed, as specified in Article 2 and Exhibit A, for the Campus Projects, in accordance with the terms of this Agreement.

1.3 PERFORMANCE STANDARDS

1.3.1 Standard of Care. Manager shall perform all services under this Agreement in a manner consistent with the standard of care, competence, skill, and knowledge under California law applicable to those who specialize in providing Program, Project and Construction Management services for projects of the type, scope and complexity of the Campus Projects.

1.3.2 Relationship. Manager serves as District's agent and fiduciary in performing services under this Agreement. Manager shall, in this capacity, maintain confidences and provide professional services in a manner consistent with District's economic, educational and governmental best interests.

1.4 AUTHORITY OF THE MANAGER

Manager's authority to act on behalf of District is limited to the scope of authority set forth in this Agreement and as directed by the District. Notwithstanding anything else stated in this Agreement or any Contract Documents, Manager does not have the express or implied authority to obligate District to any expenditure of money or extension of contractual time periods, or to any adjustment to the price or time of performance of any contract between District and its Contractors, Specialty Consultants or Design Consultants, including binding approval of Change Orders.

1.5 KEY PERSONNEL

1.5.1 Additions, Removals, Replacements.

1.5.1.1 Additions. It is contemplated that from time to time individuals will be added to the list of Key Personnel as necessary and appropriate to the stage of planning, programming, designing and constructing of the Project. Manager shall make staffing additions at its discretion and shall notify the District of such changes in writing within seven (7) days of such addition. Manager's staffing additions shall not serve to replace or substitute for services provided by existing Key Personnel.

1.5.1.2 Removals. If the District, in good faith, is dissatisfied with the services rendered by any Key Personnel, Manager, within a reasonable time after receipt of written demand from the District setting forth the basis of its dissatisfaction and request for replacement, shall promptly provide a substitute person acceptable to the District as discussed below.

1.5.1.3 Replacements. If any Key Personnel ceases employment with Manager or is requested to be removed by District pursuant to Paragraph 1.5.1.2 above, then Manager shall promptly notify District of a proposed substitute person of at least equal qualifications to perform the same functions who is approved by District, which approval may be granted or withheld in its reasonable discretion. Manager shall bear, at its own expense and without reimbursement by District, all costs associated with replacing, for any reason, any Key Personnel.

1.5.2 Project Representative. The Project Representative has the authority to act on behalf of the Manager in respect to all matters that are the subject of this Agreement, including the power and authority to enter into agreements or modifications to agreements that contractually bind Manager.

1.5.3 Manager's Employees. All persons employed by Manager shall be the employees of Manager and not of District. Manager shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to all employees working for Manager.

1.6 SUBCONSULTANTS

Manager may, with prior approval by District, not to be unreasonably withheld, enter into written contracts with Subconsultants to perform portions of the services provided for in this Agreement. Manager's request for hiring of a Subconsultant shall be submitted in a writing that describes the scope of work to be contracted and the name of the proposed Subconsultant. If Manager proposes to enter into a contract with a Subconsultant for Additional Services, Manager shall also provide to District and the total price and/or hourly rates for the Subconsultant's services. Subconsultants' services shall not be considered Additional Services unless they satisfy the requirements under Section

4.3. Manager shall not separately invoice fees for services rendered by Subconsultants. However, if a Subconsultant performs Additional Services, fees for such Additional Services shall be separately identified in Manager's invoices. Only the District's approval of the Subconsultant in writing shall be effective to convey the District's approval. District shall use its best efforts to approve or disapprove proposed Subconsultants within fourteen (14) Days of Manager's request. Subconsultants identified by name by the Manager shall be deemed approved by District. Manager shall remain solely responsible to District for the quality and performance of all Subconsultants' services. Manager may, upon advance written notice and approval of District, terminate and replace the services of any Subconsultant. Every subcontract or agreement of any kind entered into between Manager and Subconsultant (or between any Subconsultant and other independent contractor consultants) shall contain appropriate language whereby Subconsultant, without creating any contractual obligation on the part of the District to the Subconsultant or anyone working under contract to Subconsultant, accepts and agrees to be bound by all applicable provisions of this Agreement and agrees to include in its contracts with its Subconsultants a contingent assignment of the contract to District, or its designee, effective only upon written acceptance by District or its designee.

1.7 OWNERSHIP OF DOCUMENTS

All Design Documents and all documents that are prepared, reproduced or caused to be prepared by Manager or its Subconsultants, of any Tier, in furtherance of their obligations under this Agreement shall be and remain the sole property of District. Without limitation to the foregoing, District shall hold, and Manager shall be deemed to have irrevocably assigned to District, in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights to such documents. The District hereby grants to Manager and its Subconsultants a license, revocable at will of District, to use and copy such documents during the term of this Agreement for the sole purpose of performing the Work required under this Agreement. Upon the earlier of termination of this Agreement or completion of performance of this Agreement, Manager and its Subconsultants, of every Tier, shall, if requested by District, deliver all of the originals of such documents prepared in the course of their performance of this Agreement to District within fifteen (15) days. Manager may retain a copy of such documents for its records.

ARTICLE 2 BASIC SERVICES

2.1 GENERAL SUMMARY OF MANAGER'S BASIC SERVICES

The Basic Services to be performed under this Agreement by Manager are described below on a summary level by scope category, and more specifically by phase of delivery of services in Sections 2.2 to 2.5.

2.1.1 Program Management. Provide program management services during all phases (i.e. planning, pre-construction, bidding and award of contracts, construction, post-construction) of each Campus Project. Program management services will include management, oversight, and coordination of all Contractors, Subconsultants, vendors, and suppliers' Work, in connection with, and in the performance of, the delivery of the Campus Projects.

2.1.1.1 Reports. Program management services shall include progress reporting at monthly intervals, in the format described as follows: Prepare reports (to be provided in writing and electronically) to the District, according to an approved format developed by the Manager. This summary report must include:

- a) Program Status Reports for each project;
- b) Project Schedules for each project including an update of actual performance against the approved baseline schedule;
- c) Budget, Actual, Budget Available Balances (this portion of the report shall be provided quarterly);

2.1.1.2 Coordination. Program management services shall include coordination of all work with campus personnel (including affected District Site staff where necessary), District facilities staff, public agencies and utilities that are necessarily involved in the planning and execution of the Campus Projects. These services do not include the coordination of services that are not included within Basic Services or the performance or provision of legal services on behalf of the District.

2.1.2 Status Meetings. Meet with District staff and other necessary individuals to coordinate all phases of the Campus Projects. Chair meetings, prepare meeting minutes (if meeting is Program Management-related meeting with District, Manager shall prepare meeting minutes; For all meetings with contractors, the Architect shall prepare and distribute the meeting minutes), and distribute meeting minutes to attendees. Meet monthly with District Representative to provide a written summary of the status of progress on Campus Projects. Present a status update to the Board of Education, as directed by the Superintendent or designee, at a regularly scheduled public meeting of the Board. Such presentations shall contain material from the reports described in Section 2.1.1.1, including but not limited to highlights/accomplishments, potential and actual cost savings. Attend meetings of the Cost Containment Committee or the Citizens' Oversight Committee and provide progress report or interim progress reports as requested by District. The contents and details contained within such reports must be defined and agreed upon by Manager.

2.1.3 Schedule Management. Develop, review, and maintain a Master Program Schedule listing each Campus Project independently, and provide a Master

Summary Schedule for the Campus Projects. Prepare a proposed "baseline" schedule for each of the Campus Projects for review and approval by District. Report progress against the approved baseline schedule for coordination, tracking, reporting, and recording purposes.

- 2.1.4 Inspection Services.** Monitor the status of the inspection of the Work and the maintenance of appropriate inspection reports and inspection logs relating to the Work staff. District shall select any necessary independent inspectors, including Division of State Architect inspectors. Manager shall have no obligation to personally inspect the Work. To the extent that Manager becomes or is made aware of any Work that does not conform to the Specifications or Drawings, communicate said defective conditions to District and the appropriate independent inspectors retained by District to perform inspections on the Campus Project. Manager shall not have responsibility or liability for the quality or completeness of the inspections, inspection reports and/or inspection logs.
- 2.1.5 Document Control.** Implement a document control and master file archives system. This activity is limited to the files and documents created by the Manager and not to any of the pre-existing documents generated by its predecessors. All equipment and supplies for control and filing of program documents will be completely burdend by the District from it's bond funds. Manager shall acquire advance approval by District for the purchase of any and all such equipment and/or supplies for this purpose.
- 2.1.6 Cost Estimating.** Monitor the cost estimating services provided by consultants/general contractors, and provide recommendations where applicable for the reduction of costs of design, construction and maintenance. If the Manager is requested to provide among other things, feasibility analysis, and use of alternative approaches to building systems, project delivery and procurement of these services are deemed Additional Services.
- 2.1.7 Schedule.** Manage a process for (i) evaluation of Contractor's schedules and schedule updates, including the preparation of independent critical path schedules and short-term ("look ahead") schedules, (ii) receiving and evaluating requests for time extensions and claims for compensation for delay, and (iii) evaluating As-Planned to As-Built progress to assure that the District is fully advised on issues that could affect timely completion of a Campus Project. Construction schedules shall be provided to District by Manager monthly and shall be considered General Services.

2.2 PRE-CONSTRUCTION

For each Campus Project for which Manager is authorized by District to proceed, Manager shall perform the following services as deemed necessary by Manager, until the commencement of Work by Contractor(s). This section shall apply only to those projects of NEW projects/construction commenced by the Manager.

- 2.2.1 **Project Prioritization.** Assist District in identifying and prioritizing Campus Projects, including determining which tasks may be performed through single or multiple Contractors, based on availability of funds and District and campus areas of need.
- 2.2.2 **Campus Project Cost Estimates, Budget.** In conjunction with the District and the District's Architect, review Initial Budget of the Construction Cost for each Campus Project developed by the Campus Project Architect. Review and evaluate the detailed cost estimate for each Campus Project developed by the Campus Project Architect. Review and update current project budgets for each Campus Project based on the Architect's approved detailed cost estimate.
- 2.2.3 **Screening of Design Consultants and Specialty Consultants.** Subject to the District's written direction for each Campus Project, chair, manage, or participate in the prescreening and interview of Design Consultants and Specialty Consultants. Provide written recommendations concerning selection of Design Consultants and Specialty Consultants. This task may and will be subject to the requirement and acceptance of the transfer of design responsibility of original design from the original AOR to the new AOR.
- 2.2.4 **Design, Constructability, and Value Engineering Review.** Perform a general evaluation of Design Documents for accuracy and completeness and advise District on Design Costs, cost-effective design alternatives, materials, building systems, equipment and methods of delivery. In performing these services the Manager does not assume responsibility for the adequacy of the design of a Campus Project.
- 2.2.5 **Communications.** Maintain and track communications among Campus Project participants.

2.3 BIDDING AND AWARD OF CONTRACTS

For each Campus Project for which Manager is authorized by District to proceed, Manager shall perform the following services as deemed necessary by Manager, through the award of Construction Contract(s).

- 2.3.1 **Bid Preparation.** Review Drawings and Specifications and work with District staff, including Design Consultant(s) as necessary, to prepare Bid Documents. Recommend bundling of Bids where appropriate. Assist District staff in properly advertising request for Bids. Provide information uniformly to bidders, conduct pre-bid conference and pre-bid job walks. Monitor Campus Project Architect's responses to bidder questions and issuance of Addenda and assist in the preparation of Addenda as necessary.

- 2.3.2 **Bid Review.** Review Bids for price proposals, conformance to requirements, adequacy of bid bonds, accuracy of quantities, rates and unit prices, and time and schedule impacts. Make recommendations for awards and evaluate bid protests.
- 2.3.3 **Awards.** Review performance and material/labor bonds for compliance with District requirements and Applicable Law. Arrange pre-award conference, as appropriate. Coordinate preparation and execution of Contract Documents.

2.4 CONSTRUCTION

For each Campus Project, Manager shall perform the following services from the award of Construction Contract(s) to Contractors to Final Completion of all Construction Contract(s).

- 2.4.1 **Pre-Construction Conference.** Conduct pre-construction conference prior to Contractor mobilization with Project Team, relevant public agencies and utilities. Review plans, scheduling, General Conditions, compliances, staging, security, reporting procedures, Site rules, and other key elements.
- 2.4.2 **Site Construction Management, Coordination, and Inspection.** Maintain sufficient personnel for consistent Site monitoring and coordination of construction activities, as the District's agent. Ensure regular coordination and communication among Manager, District staff, Contractors, and other relevant personnel. Monitor the Contractor's Schedule, and direct, manage, and coordinate the construction process, and coordinate the inspection and documentation of all the Work. However, Manager shall not be required to direct the Contractor's Means and Methods of their construction implementation.
- 2.4.3 **Permits, Bonds, Insurance.** Monitor Contractor's efforts to obtain all required permits, bonds and insurance coverages required for a Campus Project.
- 2.4.4 **Schedule Maintenance.** Maintain and monitor master schedule to ensure all Work, submittals, and reviews are accomplished. Update schedule as necessary and distribute to appropriate Project Team Members.
- 2.4.5 **Contract Compliance Supervision.** Monitor construction activities to ensure compliance with Contract Documents, Project Costs, Specifications, and Drawings, budgets, schedules, and/or need for Change Orders. Advise District on options to address failure by a Contractor, Subcontractor (of any Tier), or Subconsultant (of any Tier) to complete their respective duties by established deadlines.
- 2.4.6 **Information and Submittals.** Log, process, and expedite Contractor, Subcontractor (of any Tier), Design Consultant, and Subconsultant (of any Tier) requests for information and submittals. Analyze and evaluate time and cost impacts of suggested modifications and make recommendations to District.

- 2.4.7 Change Order Management.** Investigate, estimate, negotiate, recommend, and process Change Order requests and claims for additional compensation or time extensions, with immediate notification to District of such requests and claims, and related cost overruns. On a monthly basis, prepare tabulated Change Order monitoring and impact reports describing work, cost and progress. Make recommendations to District for District's final decisions on each Change Order.
- 2.4.8 Testing, Inspection and Special Services.** Monitor the performance of the overall testing inspections and special services for a Campus Project. Required tests and inspections are developed by the Architect of Record for a Campus Project in conjunction with the Division of State Architect (DSA) and are reflected in the Campus Project Specifications and/or the DSA Test and Inspection Sheets. It is the Inspector of Record's responsibility to coordinate and schedule the testing or inspection activities. Special services such as site surveys and geotechnical services are defined by the Campus Project Architect of Record or its Subconsultants. All Special services are to be at the cost of the District.
- 2.4.9 Safety Program.** Review each safety program to ensure compliance with Contract Document requirements and monitor the Contractor's implementation of Site Safety Program and ensure that accidents are investigated and reported. The Contractor is responsible for developing and implementing a site safety program at each Campus Project Site.
- 2.4.10 Document Control and Recordkeeping.** Maintain files for Campus Projects utilizing Manager's filing structure and recommended document control system. All recordkeeping shall include all files on Construction Contracts, submittals, design, engineering, construction, Change Orders, test reports, inspections reports, regulations, and other records. Should District wish to obtain remote access to Manager's document control and/or project management systems, all necessary hardware, software and software licenses to obtain such access, if any, shall be purchased by the District at its sole cost and expense.
- 2.4.11 Progress Monitoring and Reporting.** Maintain daily log of Work and conditions. Conduct and record weekly Site progress meetings, and adhere to reporting requirements of Section 2.1.1.1.
- 2.4.12 Progress Payments.** Manage the monthly Application for Payment (AFP) of Contractor(s), confirm submission of appropriate waivers, insurance certificates and other required documents, and recommend approval on AFPs.
- 2.4.13 Cost Accounting and Payments.** Maintain records of actual costs and Change Orders, monitor Contractor cost compliances, and submit Contractor's progress payment requests to District.
- 2.4.14 As-Builts.** Regularly review Contractor(s)'s As-Builts for general accuracy and completeness and ensure that the Contractor provides the final set of As-Built