



Marin Community College District

Marin Community College District
Measure C Bond
Capital Improvement Program

Professional Services Agreement

With

[Insert Name]

for the

And Related Consultant Services

_____, 20__

MARIN COMMUNITY COLLEGE DISTRICT

Marin Community College District Campus-wide Measure C Update Capital Improvement Program

AGREEMENT BETWEEN THE MARIN COMMUNITY COLLEGE DISTRICT AND

[INSERT NAME and ADDRESS]

This Agreement is made this ___ day of _____, 200___, in the City of Kentfield, State of California, by and between **[Insert Name]**, hereinafter referred to as “**Consultant**” and the Marin Community College District, a political subdivision of the State of California, hereinafter referred to as “**District**”.

AGREEMENT

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

- “**Agreement**” This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendix A (Services to be Provided by Consultant), Appendix B (Payments to Consultant), Appendix C (Milestone Schedule), Appendix D (Deliverables) and Appendix E (Insurance) attached hereto.
- “**Consultant**” **[Insert Name, Address, Telephone, Fax, website, etc.]**
- “**District**” Marin Community College District.
- “**Program**” Marine Community College District Campus-wide Measure C Update – Capital Improvement Program
- “**Project[s]**” The project[s] described in Appendix A, Scope of Services.
- “**Services**” All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
- “**Subconsultants**” Consultant’s consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. This Agreement shall conclude upon the completion of the Project[s].

3. Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix A, “Services to be provided by Consultant”, attached hereto and incorporated by reference as though fully set forth herein.

- 3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix C. Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for District's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Program, Project[s] and Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within seven calendar days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by District or District's agents or consultants when acting at District's direction, breaches of this Agreement by District, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project[s], or any other circumstances beyond Consultant's reasonable control. If the period of excusable delay caused by an excusable event concurs with a Consultant caused or other no excusable delay, District may (but shall not be required to) grant a time extension without compensation.
- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the District's satisfaction. (For example, and not by way of limitation, contract punch list and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.
- 3.5 The Consultant shall record meeting notes for all meetings [Consultant/Consultant] attended during the Design and Bidding Phase of a Project. Within two (2) Workdays after the meeting or 24 hours prior to the next meeting, whichever time is the shortest, Consultant will distribute minutes to District and to those affected by decisions made at the meeting by e-mail. Attendees can either submit comments or additions to minutes prior to the next progress meeting, or may attend the next progress meeting and submit comments or additions there. Minutes meeting the approval of the District's Representative will constitute final memorialization of results of meetings.
- 3.6 A master list of all specified submittals required for the project shall be submitted, as drafts, both electronically, in MS Word, and in writing as part of the 90/95% CD submittal and again in final form with the other final bid documents.
- 3.7 [PM determine if this is necessary. If not remove this paragraph from contract.] Web based project management. District projects valued at \$500,000, or more, or having a scheduled duration of 6 months or longer will utilize the District's specified web based project management software. When project management software is activated the consultant will be required to perform project management activities including but not limited to the review of and response to submittals, RFIs, etc., review, creation and distribution of meeting minutes and other similar tasks, via the District's specified web based project management software. Costs associated with software licenses and any training required for the architect or their staff to perform these activities shall be included in the contract amendment when project management software is selected.

4. Compensation

- 4.1 District shall pay Consultant compensation according to the Compensation Schedule established in Appendix B, "Payments to Consultant". District shall pay Consultant in monthly payments on or before the last day of each month for Services in an amount which the District, in its sole discretion, concludes is the value of the Services which have been properly performed as of the last day of the immediately preceding month and is due under Appendix B.
- 4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project[s], until District receives all deliverables required under Appendix D, "Deliverables", for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then District may consider a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District.
- 4.3 District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amount(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, Consultant's submittal and District's acceptance of all deliverables to District required by Appendix A.
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to District. All amounts paid by District to Consultant shall be subject to audit by District. Consultant shall maintain books and support documentation and submit to audit as and when required. Payment shall be made by District to Consultant at the address stated in Section 6.1.
- 4.5 District may set off against payments due Consultant under this Agreement any sums that District determines that Consultant owes to District because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused District monetary damages. Prior to exercising such right, District must demand and attend mediation pursuant to Section 24.3 of this Agreement, to be attended by District, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Marin County Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this Section, then District shall have satisfied its obligations under this Section.
- 4.6 District shall retain ten percent (10%) of each invoice until completion of all Services under this Agreement by the Consultant. Retained portions shall be released with the final payment provided Consultant has satisfactorily performed its obligations under this Agreement. Except to the extent provided by California Civil Code §3320 (including successor statutes), in no event shall District be liable for interest, late charges, penalties or other amounts for any late payments.

5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by the Board of Trustees and approved by the District's Executive Vice Chancellor or designee for payment to the Consultant pursuant to the terms of this Agreement.

- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its Trustees, employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 District shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Consultant through [Contact Name], its [Contact Title], at [Contact Address], and Consultant shall direct all communications to District through [Contact Name], its [Contact Title], at [Contact Address].
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, and shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project[s] will be listed in its proposal, Exhibit 1 to Appendix A, attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project[s] and Program during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant. Resumes for all listed professional personnel are attached to Exhibit 2 of Appendix A, and by this reference incorporated herein.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix A, Services to be Provided by Consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to Consultant, and within the times specified in the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has extensive knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it and its Subconsultants have specialized expertise intended for the Project[s]. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of architectural, engineering or other practice observed by a specialist in performing services similar to the Services. Consultant's Statement of Qualification, dated [redacted], is incorporated herein by reference.

7.4 The granting of any progress payment by District, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Consultant shall defend (with legal counsel reasonably acceptable to the District), indemnify and hold harmless District and its Trustees, officers, agents, departments, officials, representatives and employees (collectively "**Indemnities**") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent arising from (1) the negligent performance of Services under this Agreement, or any part thereof, or (2) any negligent act or omission of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnities shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnities, but shall apply to all other Liabilities.

8.2 Consultant shall defend (with legal counsel reasonably acceptable to the District), indemnify and hold harmless the Indemnities from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnities, of articles or Services to be supplied in the performance of this Agreement.

8.3 District shall include a provision in the construction contract with the general contractor on the [each] Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. District shall also include a provision in the construction contract with the general contractor on the [each] Project requiring the general contractor to name Consultant as an additional insured on its Comprehensive General Liability insurance coverage. If the Consultant has the opportunity to review the construction contract prior to bidding, the risk of an inadvertent omission of such provisions is on Consultant.

8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnities in the exact form and substance of those contained in this Agreement.

8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the [any] Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the [any] Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix A, "Services to Be Provided by Consultant".

9. Liability of District

- 9.1 Except as provided in Appendix A, "Services to be provided by Consultant" and Appendix E, "Insurance", District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, including without limitation lost profits or revenue, arising out of or in connection with this Agreement, the Services, the Program or any Project.
- 9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and shall exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of it its Subconsultants, its employees and its agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

11.1 Prior to execution of this Contract, Consultant shall furnish to District Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix E, "Insurance," which is attached and made a part of this Contract. Consultant shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix E. In the event Consultant fails to maintain any required insurance, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse District for such expense).

12. Suspension of Services

12.1 District may, without cause, order Consultant to suspend, delay or interrupt ("**suspend**") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

13.1 If at any time District believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, District may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Such plan shall include, as applicable, evidence of necessary resources, correction plans, subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Consultant shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Consultant's right to proceed under the Agreement, in whole or in part, for cause:

13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from District to Consultant demanding

such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of ten (10) calendar days, Consultant must provide District within the 10 day period a written plan acceptable to District to cure said breach, and then diligently commence and continue such cure according to the written plan. Such plan shall include, as applicable, evidence of necessary resources, correction plans, subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach.); or

13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project[s] or Services and does not cure such violation within ten (10) days of the date of the notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of ten (10) calendar days, Consultant must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan. Such plan shall include, as applicable, evidence of necessary resources, correction plans, subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, meeting all applicable requirements and showing a realistic and achievable plan to cure the breach.)

13.3 In the event of termination by District as provided herein for cause:

13.3.1 District shall compensate Consultant for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but District shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;

13.3.2 Consultant shall deliver to District possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project or the Program, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14. Termination of Agreement for Convenience

14.1 District may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, Consultant shall:

14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;

14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;

14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;

14.2.4 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Consultant under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;

14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;

14.2.6 Transfer title and possession to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to District; District acknowledges that said documents were prepared for the purpose of the Project[s].

14.2.7 Use its best efforts to assist District in selling, in the manner, at times, to the extent, and at a price or prices that District directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by District. All proceeds from the foregoing shall be applied to reduce

payments to be made by District to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as District may direct;

14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and

14.2.9 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which District has or may acquire an interest.

14.3 After receiving a Notice of Termination, Consultant shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by District upon Consultant's written request made within such 3-month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. District shall then pay to Consultant the amount so determined.

14.4 Subject to provisions of Section 14.3, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –

14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix B, "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.

14.5.1.1 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Consultant's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.

14.5.2 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.

- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
 - 14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and
 - 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of those sections.
- 15.2 Consultant represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant shall comply with all conflict of interest codes adopted by the Marin Community College District and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the District that Consultant has no present, and will have no future, conflict of interest between providing the District the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially

adverse to the District, as determined in the reasonable judgment of the District. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the District hereunder.

16. Proprietary or Confidential Information of District; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. Consultant shall notify the District immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.
- 16.2 Any publicity or press releases with respect to a Project, the Program or Services shall be under the District's sole discretion and control. Consultant shall not discuss the Services, a Project or the Program, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District's prior written consent. Consultant shall have the right, however, without District's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

17. Notices to the Parties

- 17.1 All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.
- 17.2 Notice shall be sufficiently given for all purposes as follows:
- 17.2.1 When personally delivered to the recipient, notice is effective on delivery.
 - 17.2.2 When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
 - 17.2.3 When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
 - 17.2.4 When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 - 17.2.5 When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as the original notice is promptly given by first-class or certified mail or by overnight delivery. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

17.3 Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.4 Addresses for the purpose of giving notice are set forth in Section 6.1. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

17.5 Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Ownership of Results/Work for Hire

Consistent with Education Code Section 17316, any interest (including copyright interests) of Consultant or its contractors or subconsultants (together, "**Subconsultants**"), in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Consultant or its Subconsultants in connection with the Services, shall become the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns to District all copyrights to such works. With District's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities. Consultant shall, however, retain the copyright in its standard details, and grants District an unlimited license to use such details for the purposes stated herein. Should the District desire to reuse the Documents specified above and not use the services of the Consultant, then the District agrees to require the new consultant to assume any and all obligations for the reuse of the documents and process the same through the Division of the State Architect as the project Consultant, and the District releases Consultant and its Subconsultants from liability associated with the reuse of the documents.

19. Audit and Inspection Records

19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to any Project or the Program, for a period of at least five years following final completion and acceptance of the last Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services, or Additional Services shall be kept on a generally recognized accounting basis, and shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project or Program records until after advising District and allowing District to accept and store the records.

19.2 Consultant shall maintain full and adequate records in accordance with District requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to District during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to District or relative to

Consultant's activities under this Agreement. Consultant will furnish to District, its authorized agents, officers and employees such other evidence or information as District may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit District, and District's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement

19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the [last] Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from District's offices at Kentfield, CA, Consultant shall, upon District's request and at Consultant's sole cost and expense, make such items available to District, and District's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay District its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California and any other governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon District by this Section.

19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20. Subcontracting/Assignment/District Employees

20.1 Consultant and District agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

20.2 Consultant shall use the Subconsultants identified in this Agreement and shall not substitute Subconsultants unless approved by written instrument executed and approved by the District in writing.

20.3 To the extent Consultant is permitted by District in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California Civil Code §3321. Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services, the Project[s] or the Program, as if it engaged it the acts and omissions directly.

20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

21. Non-Discrimination, Equal Employment Opportunity and Business Practices

Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or

veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations there under, and shall comply with same as each may be amended from time to time.

22. Drug-Free Workplace Policy

Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

23. Compliance With Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("**ADA**"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

24. Disputes

24.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the **Director of Modernization** and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the **Director of Modernization** and principal of the Consultant shall then take place within five days of the request.

24.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

24.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("**AAA**"), in San Francisco, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Marin County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, etc. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

25. Agreement Made in California; Venue

25.1 This Agreement shall be deemed to have been executed in the City of Kentfield, CA, County of Marin, CA. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Marin, CA. Consultant waives any right it may have to transfer any action to a county other than Marin County, CA under CCP §394.

25.2 The parties shall execute one original and one copy of this Agreement, both of which shall be deemed originals thereof.

26. Compliance with Laws

26.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over any Project or the Program, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

26.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

27. Construction

All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

28. Miscellaneous

28.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

28.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

18.3 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

29. Entire Agreement; Modifications

29.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

29.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.

29.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

29.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.

29.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.

29.6 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

“District”

MARIN COMMUNITY COLLEGE DISTRICT, a political subdivision of the State of California

By: _____

Al Harrison
Vice President of College Operations

“Consultant”

By: _____

Name
Title

Its: _____

By: _____

Its: _____

END OF DOCUMENT

APPENDIX A

SERVICES TO BE PROVIDED BY CONSULTANT

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APPENDIX A

SERVICES TO BE PROVIDED BY CONSULTANT

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated _____, 200X, between the Marin Community College District (the “**District**”), and _____ (“**Consultant**”) providing for professional services.

1. Conceptual Program and Projects Under this Agreement

1.1 General

The District’s Capital Improvement Program includes the following demographically divided Projects at Kentfield Campus (KTD)-Kentfield, Indian Valley Campus (IVC) – Novato, Bolinas Marine Biology Facility and District-wide Projects as further described in the attached documents. This Program Statement is dynamic and may change in its schedule (see Appendix C), the scope of individual Projects (see below), combining individual Projects, or other reasonable changes. Changes to the Program Statement, unless a cardinal change to the entire concept, do not require a change in this Agreement, and Consultant shall perform the services referred to herein on revised projects so long as generally consistent with the work described herein. The Program may be summarized, according to the anticipated Projects, their anticipated scope of work, and their budgeted Bid Day Construction Cost (as described below), as follows:

1. [Insert Project Description]: \$_____ Budgeted Bid Day Construction Cost

[to be provided by District]

2. [Insert Project Description]: \$_____ Budgeted Bid Day Construction Cost

[to be provided by District]

3. [Insert Project Description]: \$_____ Budgeted Bid Day Construction Cost

[to be provided by District]

1.2 Construction Budgets

The agreed upon “**Budgeted Bid Day Construction Cost**” above means the anticipated value of the construction contract for each Project when initially let for each of the above Projects. Consultant shall treat the Budgeted Bid Day Construction Cost so identified as the District’s required construction cost for each Project. In performing its Services under this Agreement, Consultant shall not rely upon or refer to District’s contingency budgets either for design, construction, or any items within those contingency budgets, nor shall any such contingency budgets be referred to in determining performance under this Agreement.

1.3 Criteria Governing Consultant’s Services on Program and Each Project

1.3.1 Each Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards, consistent with the standard of care of a specialist in schools design, and shall meet the criteria set forth below.

1.3.2 Consultant shall not, unless otherwise permitted in writing by Project Manager, propose or recommend any design which has the effect of shifting design responsibilities from Consultant to a contractor, through performance specifications or any other means.

Performance specifications will be allowed only when necessary to preclude single vendor sources.

- 1.3.3 Consultant shall not, unless otherwise directed or permitted in writing by Project Manager and the District specify unique, innovative, proprietary or sole source equipment, systems or materials. Whenever a proprietary or sole source design or equipment is requested by Consultant, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such report in making its decision. If requested by District, as Basic Services, Consultant shall comment on any District-proposed unique, innovative, proprietary or sole source equipment, systems or materials.
- 1.3.4 Consultant's design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA. Consultant shall allow representatives of the District's operation and maintenance departments to review, comment, and participate in meetings regarding Consultant's design as necessary to consider their requirements in design development, provided, however, that Consultant shall exercise its professional judgment respecting all ultimate design decisions.
- 1.3.5 Consultant must coordinate with other consultants on the Program, as directed by Project Manager, to specify designs, equipment and systems on a Program-wide basis to secure Program-wide efficiencies and economies in procurement and maintenance. Consultant shall not have responsibility for the technical adequacy or accuracy of consultants separately engaged by District.

2. Basic Services

2.1 Scope

Basic Services shall include all the services and activities specified below and herein in Programming Phase, Schematic Design Phase, Design Development Phase, Construction Document Phase, Bidding Phase, Construction Phase, Operation/Project Close-Out Phase, and Post-Construction Claims Resolution Phase.

2.2 General Description and Requirements

- 2.2.1 Performance of services will require Consultant to work with, meet with, and attend meetings with District staff, with Inspectors, with Project Manager staff, with testing agencies, with other governmental agencies, with Contractors, and with such other consultants as Consultant determines necessary, to the extent reasonably necessary for the design and construction of the Project and performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with Subconsultants or other District consultants).
- 2.2.2 Services performed by Consultant shall conform to the requirements of the laws of the State of California applicable to schools construction, including, but not limited to, the requirements of the California Business and Professions Code, the California Education Code, and the California Code of Regulations. As referenced in those codes, "**Responsible Charge**" for the work shall be with a Registered Consultant/Engineer currently licensed in the State of California.
- 2.2.3 Plans, specifications, design calculations, Site data, and cost estimates, if any, required to be prepared by Consultant shall be prepared by licensed personnel or personnel under the

direction of licensed personnel, as required by the California Education Code and Code of Regulations, and such personnel shall also be in Responsible Charge for observation of the construction, as required by those codes.

- 2.2.4 Consultant shall provide to District all professional engineering services necessary to perform the Services in all phases of the Program and each Project to which this Agreement applies. Services will include, but are not limited to, providing all professional engineering services necessary to perform the Services and complete each Project to which this Agreement applies, including but not limited to, all engineering services and all acoustical, civil, electrical, fire protection, mechanical, and structural engineering, landscape, and cost estimating services required to perform the Services on the Program and each Project to which this Agreement applies.
- 2.2.5 Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services. Consultant shall provide all materials to complete its services.
- 2.2.6 Consultant shall engage all appropriate specialty Subconsultants as are necessary for proper completion of the Services, at the sole expense of Consultant. Consultant's contracts with Subconsultants (and their contracts with their subconsultants) shall incorporate this contract by reference to the extent not inconsistent with Subconsultants' scope of work. Consultant shall intimate the District and allow sufficient time for the District to consider and advise approval of the 'Specialty Consultants'. District shall have the right (but not the obligation) to approve specialty Subconsultants engaged by Consultant as well as their form of contract, which approval shall not be unreasonably withheld.
- 2.2.7 Consultant shall require each of its Subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold District harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.8 To the extent necessary to complete its design services for each Project, Consultant shall review, update and verify all as-built information supplied by District concerning existing structures, facilities and utilities. If such reviewing, verifying and updating requires extra cost not foreseeable upon signing this Agreement, then District shall pay Consultant such actual costs.
- 2.2.9 Consultant shall make any required corrections or revisions to reports, drawings or specifications which are a result of any errors or omissions by Consultant, at no additional cost to District. Consultant shall make or cause to be made any and all corrections to said documents necessary to comply with the requirements of the California Code of Regulations applicable to schools.
- 2.2.10 Throughout Consultant's performance of the Services, Consultant shall make written recommendations to District and Project Manager concerning any additional information necessary to complete the Services.
- 2.2.11 Consultant shall provide District and Project Manager with written evaluations of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into the Project.
- 2.2.12 Consultant shall provide District and Project Manager with a copy of all written communications and submittals to third parties regarding this Project.

- 2.2.13 On all Projects, Consultant shall prepare all energy saving calculations and deliverables necessary for District to submit to PG&E, Division of State Architect (“**DSA**”), the State Office of Energy Assessments, and any other authority with jurisdiction, for energy savings rebates and unconventional energy rebates and any additional information required. Consultant shall then monitor construction for compliance with such rebate requirements and report to the District any problems encountered or anticipated.
- 2.2.13 The Consultant shall work within the standards and guidelines developed by the District Architect to support the Board’s resolution on Environmental Stewardship. Documentation as required for LEED certification will be the responsibility and a part of the scope of work of the Consultant working under this agreement and in accordance with the District’s resolution No. 2004-7-12b Environmental Stewardship and sustainable facilities construction, operating and implementation practices.
- 2.2.14 The Consultant shall exercise sound judgment in applying both green building and commissioning procedures on a project specific basis.
- 2.2.15 Consultant shall conduct at least monthly design coordination meetings with all Subconsultants employed to provide services under this contract, and shall be required to attend Program-wide design coordination meetings between consultants on different Projects as necessary to support the overall Program coordination efforts of the Program Manager. These meetings are in addition to the required meetings required in the Professional Services Agreement, Appendix A, paragraphs 1.3.4, 2.2.1, 2.4.2.2, 2.4.4.1, 4.6.2, 4.9, 5.10, and 8.11.4.

2.3 Coordination of Engineering Subconsultants/Other Consultants

- 2.3.1 Consultant shall fully coordinate all engineering disciplines and Subconsultants involved in completing the Services. Consultant’s Subconsultants shall fully coordinate with Consultant and all engineering disciplines and Subconsultants involved in completing the Services. The objective of this coordination shall be the development of a complete, comprehensive and workable design in which the work of Consultant and each Subconsultant interfaces well and is properly coordinated, sound and well engineered, with details that work together with regard to all affected disciplines.
- 2.3.2 Consultant shall coordinate its work on the Project with District personnel and work of other consultants on other projects in the Program (including Project Manager), as directed by Project Manager, as necessary to achieve desired Program-wide efficiencies in procurement and maintenance.
- 2.3.3 Consultant shall coordinate its work on the Project with work of the District’s separately maintained hazardous material consultants. Such coordination shall not impose on Consultant responsibility for the work of the hazardous materials consultant. However, Consultant shall consider the work of the hazardous materials consultant in developing work phasing recommendations, overall cost estimates, and design and product specifications, where applicable.
- 2.3.4 Consultant shall immediately advise District in writing if any consultant fails in any manner to coordinate its work with Consultant.

2.4 Coordination with Master Schedule Scheduling and District Operations

- 2.4.1 Consultant shall complete or cause to be completed all services required under this Agreement in accordance with the approved Master Schedule and Milestone Schedule to be developed by District and approved by Consultant (which approval shall not be unreasonably withheld).
- 2.4.2 For each phase of the Services under this Agreement, Consultant shall prepare and submit for District’s acceptance a task list identifying the principal tasks (and subtasks) defining

the scope of work of each phase. The main purpose of the task list shall be to promote coordination and scheduling of the District and third parties whose actions might impact Consultant's progress.

- 2.4.2.1 The task list submitted shall be coordinated with the Master Schedule and identifiable by contract package. The task list for each phase of the Services under this Agreement shall be submitted with the deliverables at the conclusion of the previous phase of the Services under this Agreement.
 - 2.4.2.2 The task list shall list all points of District and third party interface, for example, approvals, reviews, design input and supplying information. The task list shall include a listing of Consultant's anticipated specific requirements for information, decisions or documents from District necessary for Consultant's performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project
- 2.4.3 For every Project, Consultant shall prepare, submit for District's acceptance, and maintain a design schedule detailing, Consultant's scheduled performance of the Services. The schedule shall fit within and coordinate with the overall Master Schedule and Milestone Schedule, including any and all design interfaces referenced in the Master Schedule and all updates to the Master Schedule.
- 2.4.3.1 Consultant shall submit a preliminary schedule within two weeks (Ten working days) days of commencement of the Programming Phase (covering in summary fashion all Services of each phase of the Project and providing a detailed schedule for the tasks (and subtasks) of the Schematic Design Phase).
 - 2.4.3.2 For each succeeding phase of Services, Consultant shall supplement this schedule with a detailed schedule covering by task (and subtask) Consultant's work during the succeeding phase of Services. (The required schedule supplement shall be submitted as part of Consultant's deliverables at the conclusion of the current phase of Services.)
- 2.4.4 Consultant's schedule shall be updated monthly, and shall meet the following requirements:
- 2.4.4.1 Consultant's schedule shall outline dates and time periods for the delivery of Consultant's services, requirements for information from District for the performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and tenants involved in the Project.
 - 2.4.4.2 The schedule shall include appropriate District and third party design review durations for each contract package (in minimum durations of one week for Schematic Phase, Design Development Phase, and 50% Construction Document phase, and two weeks for 100% Construction Documents phase.)
 - 2.4.4.3 The schedule shall be in a computer software format compatible with District's existing computer software format, which is Microsoft Project.
- 2.4.5 Consultant shall adjust and cause its Subconsultants to adjust activities, personnel levels, and the sequence, duration and relationship of services to be performed in a manner that will comply with the accepted schedules.

- 2.4.6 Revisions to Consultant's schedules shall be prepared and submitted when requested by District, but no more frequently than once a month. District's acceptance of Consultant's schedule will not create any duty of care or impose on District any responsibility for the sequence, schedule or progress of Services nor will it interfere with or relieve Consultant from Consultant's full responsibility therefor.
- 2.4.7 For every Project, Consultant shall include in Consultant's monthly progress report written recommendations regarding ongoing design and construction work, with respect to the following subject matters:
 - 2.4.7.1 Value engineering (including value engineering design, equipment or labor, or audits or inventories),
 - 2.4.7.2 Constructibility (including actual and reasonable constructibility in light of District's objective to secure a completed Project with the lowest reasonable construction costs and maintenance),
 - 2.4.7.3 Project scheduling,
 - 2.4.7.4 Scheduling of Consultant's own Services and coordination with work of other consultants,
 - 2.4.7.5 Construction schedules,
 - 2.4.7.6 Coordination of Consultant's work with other projects within the overall Master Schedule,
 - 2.4.7.7 Any and all design changes affecting appearance, size, usage or cost of the Project.

Consultant shall make these written recommendations from the standpoint of a design professional observing the construction work and shall not by these recommendations assume construction management responsibilities.

- 2.5 Deliverables Required Under This Agreement - Generally:
Each deliverable shall be reviewed with representatives of District. Deficiencies in deliverables and modifications to conform with program requirements and modifications to achieve acceptability of deliverables to District, shall be promptly performed, and the cost thereof included in the fee for Basic Services.
- 2.6 Deliverables Required Under This Agreement - By Phase:
Required Deliverables are listed in Appendix D.
- 2.7 Monthly Progress Report:
Consultant shall provide District with a Monthly Progress Report, in writing, reporting on Consultant's progress and any problems in performing the Services of which Consultant becomes aware. The Monthly Progress Report may cover more than one Project, provided it does so in separate sections. The Monthly Progress Report shall include, but is not limited to:
 - 2.7.1 A narrative of the work performed (including a list of any contract deliverables) and identification of areas of concern, actions and approvals needed.
 - 2.7.2 A schedule assessment and proposed ways to work around any problems that arise.
 - 2.7.3 Monthly schedule status reports clearly identifying actual performance with respect to the current approved version of the schedule.

2.7.4 The original summary schedule as updated to reflect current progress, updates and revisions, submitted in both 3 1/2 diskettes (three sets) and 8 1/2" x 11" bound hard copy forms (three sets).

2.7.5 All written submittals prepared using Word for Windows 2000 software program.

2.8 Compliance with Laws:

Consultant shall comply with the standard of care applicable to a specialist in schools design regarding complying with all requirements of all applicable laws as if set forth in this Agreement, including without limitation California Administrative Code Title 24 (Public Works), Division 1 (Department of General Services), Chapter 1 (Office of the State Consultant) ("**Title 24**"). Consultant shall perform all duties which Title 24 imposes on school project engineers, including those summarized generally in Section 41 of Title 24, all of which include, but are not limited to, the following:

2.8.1 Prepare all project designs to meet and exceed building standards set forth in Part 2, Title 24 of the California Administrative Code, which are minimum standards applicable to school construction; coordinate submission and approval of same to DSA and the State Chancellor's Office and any other public authority with jurisdiction.

2.8.2 Coordinate and cooperate fully with DSA and the State Chancellor's Office and any other authority with jurisdiction, to secure timely review and approval of Consultant's work, including but not limited to:

2.8.2.1 Determining the estimated time from submission to DSA and State Chancellor's Office of plans and specifications to approval of same, including "bin time" for initial review of plans and specifications, and incorporating same into Project schedule;

2.8.2.2 Securing from DSA change order pre-approvals, where appropriate to minimize Project delays caused by delays in review and approval of change orders;

2.8.2.3 Securing early review and approval by DSA of deferred approval items (for example, elevators, skylights etc.), including advising District of the need to require immediate submission after construction contract award of all necessary submittals for such items, including specifications to this effect in final design documents, and review of proposed contract documents to assure presence of necessary enforcement provisions.

2.8.2.4 Determine and advise District on four weeks advance notice all necessary DSA fees, so as to avoid any delay.

2.8.3 Coordinate and cooperate fully with the DSA in its required observation of construction.

2.8.4 Designate an Consultant or structural engineer in general responsible charge of the preparation of the plans, specifications, and observation of the work of construction for each Project.

2.8.5 Issue Verified Reports on the form and frequency required by Title 24, showing of consultant's personal knowledge, the work is in every material respect in conformance with the approved plans and specifications. Require that the Project Inspector's, the Contractor's, and the other Consultants' and engineers' Verified Reports are submitted as required by Title 24.

- 2.8.6 Advise on:
 - 2.8.6.1 Selection of resident inspector and testing laboratories;
 - 2.8.6.2 Preparing addenda and change orders as required by conditions on the Project.
 - 2.8.7 Performing general observation of the work of construction, interpreting the approved drawings and specifications.
 - 2.8.8 Receive and act upon all technical correspondence from the State to the Consultant or registered engineer in general responsible charge of the Project.
 - 2.8.9 Perform those responsibilities imposed upon it under Title 24 including, but not limited to, observation and personal contact with the Project, Subconsultants, submitting information to DSA, and general direction of the work of the Project Inspector (as contemplated by Title 24).
 - 2.8.10 Consultant shall establish the extent of the testing of materials consistent with the needs of the Project, shall issue specific instructions to the testing agency prior to the start of construction, and shall notify DSA as to the disposition of materials noted on laboratory reports as not conforming to the approved specifications.
 - 2.8.11 District will engage Project Inspector(s) as required by the California Education Code and Title 24, which Project Inspectors shall have been approved by Consultant and submitted by Consultant to DSA, as required by those codes. Said Project Inspectors shall be under the direction of consultant, as required by the California Code of Regulations.
- 2.9 State Communications:
Assist with and coordinate all communications with State Chancellor's Office, secure necessary approvals from Division of the State Architect, and assist with and coordinate any necessary approvals from other authorities having jurisdiction.
- 2.10 Consultant's Scope of Services:
Consultants scope of work on each Project shall include the following work items:
- 2.10.1 Diagram of Building Areas (SP 1-A)
 - 2.10.2 ADA compliance surveys and report.

3. Programming Phase

- 3.1 Period of Service:
The services called for in the Programming Phase will be completed and the required deliverables submitted within the stipulated periods of time indicated in Appendix C, "Milestone Schedule". Written authorization to proceed with the Programming Phase will be given at such time as District may direct.
- 3.2 Detailed Requirements:
Consult with District to establish and document the following detailed requirements for the Project:
 - 3.2.1 Design objectives, limitations and criteria, functions, priorities;
 - 3.2.2 Development of initial approximate gross facility areas and space requirement;

- 3.2.3 Space relation, requirements and restraints (including comparing requested space requirements to similar projects and space standards, diagramming space relationships by using massing diagrams, flow diagrams, stacking diagrams, bubble diagrams and other graphical methods);
 - 3.2.4 Number of functional responsibilities and personnel;
 - 3.2.5 Flexibility and expendability;
 - 3.2.6 Special equipment and systems;
 - 3.2.7 Site requirements and existing conditions, and utilities services;
 - 3.2.8 Development of a preliminary budget for the work based on programming and scheduling studies;
 - 3.2.9 Operating procedure;
 - 3.2.10 Zoning and other applicable regulations;
 - 3.2.11 Expandability;
 - 3.2.12 Access, parking;
 - 3.2.13 Construction feasibility and phasing;
 - 3.2.14 Security criteria;
 - 3.2.15 Communications relationships; and
 - 3.2.16 Project schedule.
- 3.3 Space Schematics/Flow Diagrams:
Prepare diagrammatic studies and pertinent descriptive text for:
- 3.3.1 Conversion of programmed requirements to net area requirements;
 - 3.3.2 Internal functions;
 - 3.3.3 Human, vehicular and material flow patterns;
 - 3.3.4 General space allocations;
 - 3.3.5 Analysis of operating functions;
 - 3.3.6 Adjacency;
 - 3.3.7 Special facilities and equipment; and
 - 3.3.8 Flexibility and expansibility.
- 3.4 Existing Facility Surveys:
Consultant shall research, assemble, review and supplement information for Projects involving alterations and additions to existing facilities or determining new space usage in conjunction with a new building program and including:
- 3.4.1 Field measurements;
 - 3.4.2 Review of existing design data;
 - 3.4.3 Analysis of existing structural capabilities;
 - 3.4.4 Analysis of existing mechanical capabilities;
 - 3.4.5 Analysis of existing electrical capabilities; and
 - 3.4.6 Review of existing drawings for inaccuracies, updating where necessary and the development of required measured drawings.
- 3.5 Estimate of Project Cost:
Based upon the programming phase services performed, review initial budget estimates existing by applying unit costs and other standard cost data to space and facilities requirements. Consider all foreseeable Project costs, including design, construction, utilities connections, off-Site improvements, permits, fees, furniture, and movable and installed equipment. Report to District regarding continued accuracy of initial budget estimates contained in District's Implementation Plan.

4. Schematic Design Phase

- 4.1 Period of Service:

The services called for in the Schematic Design Phase will be completed and the required deliverables submitted within the stipulated period of time indicated in Appendix C, “Milestone Schedule”. Written authorization to proceed with the Schematic Design Phase will be given at such time as District may direct.

4.2 Consultation with District

- 4.2.1 Consult with District to clarify and define the requirements for the Services and review available data.
- 4.2.2 Review District’s conceptual program for scope, coordination requirements, criteria, budget and constructibility.
- 4.2.3 Identify, analyze and conform to the requirements of governmental and private authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.

4.3 Site Visit and Investigations

- 4.3.1 Investigate existing conditions through Site visits and otherwise, to determine scope of work and effects on design and construction. Obtain from District all available information on hazardous materials and advise District immediately of any other hazardous materials consultant has observed. (This paragraph does not impose on Consultant any duty to locate hazardous materials.)
- 4.3.2 Advise Project Manager as to the necessity of obtaining additional information related to the Site, necessary for purposes of design. Such advise and statement of necessity shall be in writing and explain fully the considerations involved. Such information might include, by way of example only: description of property boundaries or as built information, rights of way, topographic, hydrographic, and utility surveys, soil mechanics, seismic and subsoil data, chemical, mechanical and other data logs of borings, etc.
- 4.3.3 Review information generated under Paragraph 2.2.8, 4.4 and information secured pursuant to Paragraph 5.3.2 and advise Project Manager whether such data is adequate for purposes of design. Determine if additional data is necessary because of apparent errors, conflicts, incomplete information or otherwise, before Consultant can proceed with design.

4.4 Recommendations on Required Additional Information

- 4.4.1 Advise District as to the necessity of District’s providing or obtaining from others available or additional information pertinent to the Project including previous reports, as built conditions, information, and any other data relative to design or construction of the Project.
- 4.4.2 Make recommendations on required additional information necessary to complete the design and complete the preliminary reports and schematic materials.
- 4.4.3 Additional information required by Consultant under Paragraph 4.4.2 shall be secured by Consultant as directed in writing by Project Manager and compensated as Additional Services pursuant to Section 12.

4.5 Preliminary Estimates of Construction Costs

- 4.5.1 Prepare preliminary estimates of construction costs and times of completion for the Project.
- 4.5.2 Develop alternative conceptual plans and provide a general economic analysis of District's program requirements applicable to various design alternatives, including but not limited to, structural, mechanical and electrical systems. Include analyses of District's program requirements.

4.6 Schematic Layouts, Sketches and Conceptual Design Criteria

4.6.1 Prepare reports containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits.

4.6.2 Reports and exhibits shall incorporate District's program requirements and shall include structural concepts, Site utilization plans, floor plans, elevations, sections, study perspectives and other drawings necessary to describe the Project. Schematic reports shall be developed until an acceptable design concept has been approved by District. Consultants shall participate in weekly progress meetings with representatives of District and shall coordinate with Project Manager formal design presentations at times indicated on the Project schedule. [PM- Consider inclusion of illustrative materials such as models, 3D drawings / artist's impression etc.]

4.6.3 Prepare and submit to District for approval:

4.6.3.1 Outline specifications including engineering, structural, mechanical, electrical, and instrumentation systems and materials proposed;

4.6.3.2 For _____ [insert applicable Projects, if any] only, floor plans and elevations at a scale acceptable to District as necessary to convey the engineering design, and tabulation of both gross and assignable floor areas including a comparison to the initial program area requirements; prepare mounted presentations and rendered perspectives.

4.6.4 Reports and exhibits shall indicate clearly the considerations involved, including but not limited to applicable requirements of governmental authorities having jurisdiction or private licensing, patent, easements, or other legal restrictions. Reports and exhibits shall indicate any alternative solutions available to District and set forth Consultant's findings and recommendations.

4.6.5 Consultant shall provide a narrative report by each design discipline describing their proposed design philosophy with a description of, and the rationale for, the proposed structural systems, mechanical systems, electrical, electronics and security systems, types of equipment, materials, finishes, Site development and landscaping. The rationale shall include initial costs, lifecycle costs, life expectancy and maintenance considerations.

4.7 Opinion of Probable Project Costs:

Prepare reports on Consultant's opinion of probable Project costs based on the schematic layouts, sketches and conceptual design criteria provided, including, but not limited to, the following which will be separately itemized. The total of all such costs, contingencies and allowances are hereinafter called "**Total Project Costs**". Reports shall include:

4.7.1 Estimate of Probable Total Construction Cost (defined as the total anticipated cost of the construction contract to be let to a general contractor)

4.7.2 Allowance for engineering costs and contingencies within the scope of Consultant's Services, and, solely on the basis of information furnished by District, allowances for any other expected charges of all other professionals and consultants,

- 4.7.3 Allowance for any other reasonably expected Project costs,
- 4.7.4 Based upon information provided by District, allowance for other services to be provided by others for District.
- 4.8 Design Schedule Report:
A report on the anticipated schedule for Project design, including a detailed schedule of progression and submittals of drawings and specifications in the subsequent phases, verifying Consultant's ability to conform to the Contract schedule.
- 4.9 Attend Required Meetings:
Attend meetings with the community, representatives of District, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the Project.
- 4.10 Board Approval:
Present schematic documents to District Board of Trustees and secure its approval. [PM-Verify requirements.]

5. Design Development Phase

- 5.1 Period of Service
 - 5.1.1 After acceptance by District of the required deliverables in the Schematic Design Phase, and upon written authorization from District, Consultant shall proceed with the performance of the services called for in the Design Development Phase.
 - 5.1.2 Consultant shall submit the deliverables required by the Design Development Phase including preliminary design documents and a revised opinion of probable Total Project Costs, within the stipulated period indicated in Appendix C, "Milestone Schedule".
- 5.2 General Scope of Project and Final Design Criteria:
After consultation with District and on the basis of the accepted schematic, study and report documents, determine the general scope, extent and character of the Project and establish final design criteria. Participate in weekly progress meeting with District's personnel and subconsultants.
- 5.3 Design Development Documents:
Prepare Design Development Documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project, together with renderings and models if required. These Preliminary Design documents shall include, but are not limited to:
 - 5.3.1 Site plans, engineering, structural, mechanical and electrical floor plans, elevations; cross sections and other mutually agreed upon drawings deemed necessary to describe the developed design; single line electrical and mechanical drawings, and structural drawings with preliminary sizing of major structural elements; and
 - 5.3.2 Outline specifications for each specification, section, with Part 2 of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; type of structural, mechanical and electrical systems; and
 - 5.3.3 If appropriate, a tabulation of both gross and assignable floor areas in a comparison to the approved schematic program area requirements and to the initial program area requirements.

- 5.3.4 If appropriate, Consultant shall provide to Project Manager for District's approval a color and materials board, samples of textures and finishes of all materials proposed in the Services.

5.4 Design Development Phase Drawings:

Provide drawings that indicate the scope of work included in the bid package with sufficient detail to enable preparation and review of an accurate cost estimate, including but not limited to, the following descriptions of minimum requirements for a design development submittal, which shall be augmented as necessary to show design intent and to prepare an accurate estimate of construction cost.

5.4.1 Architectural Drawings

5.4.1.1 Floor plans which clearly show:

- a. Finish schedule
- b. Principal dimensions
- c. Wall types clearly identified
- d. Security zones and perimeters
- e. Room and door numbers, and a numbering plan for the entire facility
- f. Sufficient sections and details to enable a reasonable material takeoff
- g. Contractor-furnished and Owner-furnished equipment list incorporated in layout

5.4.1.2 Roof plans which clearly show:

- a. Slopes
- b. Type of roofing
- c. Roof access and pathways
- d. Location of any mechanical equipment
- e. Sufficient information to determine primary and secondary means of drainage

5.4.1.3 Reflected ceiling plans which clearly show:

- a. Ceiling material
- b. Access hatches
- c. Room numbers
- d. Partitions coordinated with the floor plans
- e. Mechanical and electrical features coordinated with mechanical and electrical equipment and system drawings to verify the specified ceiling heights could be achieved during construction.

5.4.1.4 Elevations which clearly show:

- a. Types of surface materials
- b. Dimensions from finish floor to tops of walls, eaves and roof lines
- c. All openings without dimensions but coordinated with door and window schedules

5.4.1.5 Sections which clearly show:

- a. Any security considerations
 - b. Firewall conditions at tops of walls
 - c. All essential building parts and materials
 - d. Arrangement of mechanical , electrical equipment and services in congested areas of equipment rooms, corridor ceilings etc.
- 5.4.1.6 All door, window, glazing and hardware schedules complete with sufficient detail to show the agreed-upon form and style
- 5.4.1.7 All items intended to be permanently affixed to the building.
- 5.4.2 Structural Drawings
- 5.4.2.1 Floor and foundations plans which clearly show:
- a. Principal dimensions
 - b. All columns, shear walls, shafts and stairs
 - c. Coordination of structure with architectural floor plans
 - d. Sections cut and details to identify the proposed type of foundations
 - e. Sufficient section and detail bubbles to show where sections and details can be found
- 5.4.2.2 Roof plans which clearly show:
- a. Principal dimensions
 - b. All major framing members
 - c. Sufficient sections and details to show design intent
 - d. Coordination with architectural, mechanical and electrical floor plans
 - e. Sufficient section and detail bubbles to show where sections and details can be found
- 5.4.2.3 Sections and details which clearly show:
- a. Design intent
 - b. All important connections
 - c. Coordination with other structural plans
 - d. Logical placement to allow easy location of sections and details
- 5.4.3 Mechanical and Plumbing Drawings
- 5.4.3.1 Mechanical and Plumbing plans which clearly show:
- a. Room numbers
 - b. Locations of all major pieces of equipment
 - c. Layout and sizing of all ductwork and piping
 - d. Symbol list coordinated with symbols on plans
 - e. All points-of-connection including invert elevations
 - f. Sufficient section and detail bubbles to show where sections and details can be found

5.4.3.2 Equipment and fixture schedules which clearly show:

- a. All fixtures identified
- b. All mechanical equipment identified and sized

5.4.4 Electrical Drawings

5.4.4.1 Lighting and power plans which clearly shows:

- a. Room numbers
- b. Single line diagrams of services and systems
- c. Symbol list coordinated with symbols on the plans
- d. Lighting plans coordinated with reflected ceiling plans
- e. Power, telephone and computer outlets shown and coordinated with equipment layouts in other disciplines
- f. Sufficient section and detail bubbles to show where sections and details can be found

5.4.4.2 Equipment and fixture schedules including lighting.

5.4.4.3 Security, alarm, intercom, public address (PA), closed-circuit TV (CCTV), nurse call and similar electrical and electronic systems.

5.4.5 Civil Drawings:

5.4.5.1 Site and grading plans which clearly show:

- a. Site cross sections
- b. Site contours and drainage
- c. Locations of all bench marks
- d. Precise locations of all major elements
- e. Roadways, driveways and parking areas

5.4.5.2 Site utility plans which clearly show:

- a. All connections to off-Site utilities
- b. All points-of-connection including invert elevations
- c. All drainage systems and other utilities located and sized

5.4.6 Other Items

5.4.6.1 Outline Specifications describing the size, character and quality of the entire Project, including locations of materials; types of structural, mechanical, electrical and security systems.

5.4.6.2 Engineering Calculations clearly presented for all disciplines, including realistic loads, and sufficiently complete for Construction Documents to proceed.

5.5 Additional Data or Services:

Advise District in writing if additional data or services of the following types are necessary and, as Additional Services, assist in obtaining such data and services as directed in writing by Project Manager:

- 5.5.1 Data prepared by or services of others, including without limitation, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
 - 5.5.2 Appropriate professional interpretations of the foregoing;
 - 5.5.3 Environmental assessment and impact statements, Site assessments;
 - 5.5.4 Property, boundary, easement, right-of-way, topographic and utility surveys;
 - 5.5.5 Property descriptions;
 - 5.5.6 Zoning, deed and other land use restriction; and
 - 5.5.7 Other special data or consultations necessary or useful in completion of the Project.
- 5.6 Report on Additional Information Required:
Advise in writing if any of the following are required:
- 5.6.1 Governmental permits of any type;
 - 5.6.2 Reports of any type to governmental agencies;
- 5.7 Revised Opinion of Probable Total Project Costs:
Based on the information contained in the Preliminary Design documents, submit a revised opinion and more detailed estimate of probable Total Project Costs and times of completion of the Project, coordinated with the Master Schedule.
- 5.8 Review with District:
Prepare for approval by District written design criteria for mechanical and electrical systems (for example, temperature, humidity, lighting levels and floor live load design shall be stated for general and special occupancy areas).
- 5.9 Lifecycle and Alternates Workshop
- 5.9.1 Participate with Project Manager and any other consultants designated by Project Manager in the conduct of an approximate, not to exceed eight hour Lifecycle and Alternates Workshop.
 - 5.9.2 Participate, and arrange for the participation of Subconsultants in the Lifecycle and Alternates Workshop and provide with Subconsultants lifecycle analysis on all major components and equipment and cost/benefit of alternate systems and materials.
 - 5.9.3 Prepare and submit to Project Manager for District's approval comparative cost studies of proposed major building systems for analysis in the Lifecycle and Alternates Workshop. Studies shall include first cost and lifecycle cost for all major components and equipment. Study shall estimate the yearly energy savings which shall be anticipated and shall list alternatives for systems and materials.
- 5.10 Attend Required Meetings:
Attend meetings with the community, representatives of District, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the Project.
- 5.11 Design Development:
After written authorization to proceed with the design development, Consultant shall:

- 5.11.1 Provide technical criteria, written descriptions and design data for District's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist District in consultations with appropriate authorities.
- 5.11.2 Prepare a comprehensive update on estimates of probable Total Project Costs and times of completion coordinated with Master Schedule, caused by changes in scope, extent or character of design requirements.
- 5.11.3 Prepare for review and approval by District, its legal counsel and other advisors, Supplementary Conditions to the construction contract, and (where appropriate) additional bidding requirements for inclusion in existing bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 5.11.4 Make full written disclosure to District, and obtain District's express written approval of:
 - 5.11.4.1 Any provisions in the final drawings and specifications that operate to shift design responsibilities from Consultant to Contractor, through performance specifications or any other means;
 - 5.11.4.2 Any proposed innovative, unique, proprietary or sole source design features.
- 5.12 Work Phasing Recommendations:
Prepare recommendations for phasing of the construction work to minimize disruptions and interferences with District's operations and any concurrently proceeding construction activities. Meet and discuss phasing recommendations with District and Project Manager. This phasing may be incorporated into Construction Contract documents. Complete phasing recommendations as part of the Construction Documents Phase services.
- 5.13 Report:
Provide a written report to District that the final design, as expressed in the final plans and specifications, will meet the standard of care of a specialist in schools design including, but not limited to, the following attributes:
 - 5.13.1 Its constructibility, workability and biddability;
 - 5.13.2 The finished construction meeting the required levels of structural integrity, watertightness, durability, maintainability, and security, if faithfully carried out;
 - 5.13.3 The completed Project conforming to the requirements of all applicable laws, statutes, regulations and ordinances.
 - 5.13.4 Does not call for the use of hazardous materials.
- 5.14 Review of the Final Design by District:
Participate and cooperate fully in a review of the Final Design by District, and any consultants engaged by District, to assess the constructibility of the final design. Respond to District comments and incorporate comments as necessary.

6. Construction Document Phase

6.1 Period of Service:

After acceptance by District of the Design Development Phase documents and revised opinion of probable Total Project Costs, and upon written authorization from District, Consultant shall proceed with the performance of the services called for in the Construction Document Phase; and shall deliver required deliverables under this phase, within the stipulated period indicated in Appendix C, "Milestone Schedule".

6.2 Final Drawings and Specifications

6.2.1 On the basis of the accepted Design Development documents and the comprehensive update on estimates of probable Total Project Costs and times of completion for the Project, coordinated with the Master Schedule, prepare for incorporation in the Contract Documents final drawings (hereinafter called "**Drawings**") and Specifications to show the work to be furnished and performed by Contractor. Drawings and Specifications shall set forth in detail the requirement for construction of all work to be performed by Contractor.

6.2.2 Final Drawings shall be prepared in accordance with District's standards. Final technical specifications shall be prepared in conformance with the sixteen division format of the Construction Specification Institute. Consultant shall cooperate with District in coordinating the Drawings and technical specifications with District's Divisions 0 and 1 standard specifications and in jointly revising District's standard specifications. Consultant shall provide whatever Division 1 construction contract specifications necessary for the Project and not supplied in District's standard forms.

6.2.3 Submittal to DSA: All construction documents shall be brought to a ninety-five percent level of completion for DSA submittal. District may conduct a peer review of the completed construction documents, including submittal of a list of revisions required to complete the documents. Consultant shall complete drawings and specifications following DSA submittal and review, including completion of all Subconsultant services, fully coordinate drawings and specifications, and perform a quality control review. The same Architectural and Subconsultant team (and team personnel) preparing the DSA submittal shall complete the drawings and specifications.

6.3 Compliance with Codes, Regulations and Requirements:

Comply with the standard of care of a specialist in schools design when preparing Drawings and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, applicable to the Services, including, but not limited to, environmental, energy conservation, and disabled access requirements, regulations and standards of the Fire Marshal having jurisdiction over the Project.

6.4 Compliance With State Standards:

Without limiting Paragraph 7.3 above, all plans, specifications, structural design calculations, Site data, and cost estimates required by State law, including without limitation the California Education Code and Code of Regulations, shall comply with State standards. Consultant shall prepare and submit the application for approval of the plans and specifications by the DSA. A "check set" shall be submitted by Consultant to the DSA, and any changes or corrections required by the DSA shall be made by Consultant. Any other requirements of the DSA or any other authority with jurisdiction shall be complied with. Deliver to District two (2) complete sets of final DSA approved plans and specifications. Consultant shall designate a contact person for the duration of the State approval process.

6.5 Drawings and Specifications:

The Drawings and Specifications must clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, submittals or other measures that the Contractor must perform. Each specification section must include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that section. Each work-related specification section must also dedicate a subsection to identify and list required Contractor submittals along with testing and inspection requirements.

6.6 Revised Opinion of Probable Total Project Costs:

Based on the information contained in the Drawings and Specifications, submit, once at 50% completion and again at 90% completion, a revised opinion and more detailed estimate of probable Total Project Costs and times of completion of the Project, coordinated with the Master Schedule.

7. Bidding Phase

7.1 Bidding:

After written authorization to proceed with the Bidding Phase, Consultant shall:

7.1.1 Attend Pre-Bid Conferences and Site Visits.

7.1.2 Assist District in advertising for and obtaining bids for each separate prime contract for construction, materials, equipment and evaluating bids;

7.1.3 Consult with and advise District as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the bidders for those portions of the work as to which such acceptability is required by the bidding documents.

7.1.4 Consult with District concerning, and determine the acceptability of, substitute materials and equipment proposed by bidders.

7.1.5 Issue written addenda as appropriate to interpret, clarify or expand the bidding documents, including allowable substitutions of materials and equipment.

7.1.6 Attend the bid opening and assist District in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

7.2 Where Bids Exceed Budget:

If the lowest responsible, responsive bid received from a contractor exceeds the latest approved Estimate of Probable Total Construction Costs (as contained within the estimate of Total Project Costs), District may, at its discretion:

7.2.1 Award the contract to the lowest responsible, responsive bidder, and give written approval of an increase in District's budget.

7.2.2 Reject all bids and rebid the contract.

7.2.3 If the bid amount is more than 10% greater than the Consultant's latest accepted Estimate of Probable Total Construction Cost rendered during the Construction Documents Phase, District may require Consultant to revise the scope of work to be performed by the Contractor or its quality, or both, so as to reduce the Project Construction Cost for the work to be performed by the Contractor, while still meeting District's program objectives. Consultant shall at its expense, if so directed by District, modify the Construction Documents in order to reduce the Project Construction Costs for the work to be performed by the Contractor within the Project budget for that Contractor's work.

7.2.4 Abandon the Project and terminate this Agreement.

8. Construction Phase

8.1 Period of Service:

The Construction Phase will commence with the execution of the prime contract to be executed for the work of the Project, and will terminate upon written recommendation by Consultant for final payment on the prime contract completed.

8.2 General Administration of Construction Contract

8.2.1 Consultant shall consult with and advise District and act as District's representative as provided in Document 00700 General Conditions and Division 1 Specifications (herein called the "**General Conditions**"). Consultant shall perform all duties which the General Conditions provide will be performed by the "Consultant" or "Consultant/Engineer".

8.2.2 Consultant will have authority to act on behalf of District to the extent provided in the General Conditions of the Construction Contract, provided, however, that District may, in its sole discretion, issue instructions directly to Contractor if notice of such instructions is given to Consultant as soon as practicable thereafter.

8.2.3 Consultant will work with District, Project Manager, and any other Project Inspectors, testing agencies, and governmental agencies as set forth in the General Conditions and this Contract. Consultant consents to District's retaining of a construction manager who may perform some or all of the functions assigned to Project Manager in this Agreement.

8.2.4 For purposes of this Appendix A, words and phrases having a defined meaning under the General Conditions shall have that defined meaning in this Appendix A, including, but not limited to, the terms "**Site**", "**defective**", "**Contract Documents**", "**Shop Drawings**", "**Samples**", "**Inspector**" and "**Contractor**".

8.2.5 Consultant and Resident Project Representative (if required) shall attend the Preconstruction Conference.

8.2.6 Consultant shall, after approval of the plans and specifications by the DSA, and as soon as the construction contract is let, but before construction is started, provide notice to the DSA as required by the California Code of Regulations.

8.3 Visits to Site and Observation of Construction

8.3.1 Consultant shall make visits to the Site at intervals appropriate to the various stages of construction as Consultant deems necessary in order to observe, as an experienced and qualified design professional, and sufficient to prepare the Verified Reports and any other reports or certifications required by the California Education Code and Code of Regulations, or by any other authority, on the progress and quality of the various aspects of Contractor's work. Consultant shall provide District with copies of all records and reports of Site visits within forty-eight (48) hours of the Site visit.

8.3.2 Consultant shall advise District in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work.

8.3.3 Consultant shall establish and maintain to the satisfaction of District, a computer database compatible with the database maintained by District. The Consultant's database shall maintain complete and accurate records regarding defective work, work not in conformance with drawings and specifications, and lack of progress of work, and shall cross reference such work to the drawings and specification sections violated. Consultant

shall make such database available to District at all reasonable times and turn over the database to District upon completion or termination of this Agreement.

8.3.4 Consultant shall not, during visits or as a result of observations of Contractor's work in progress, supervise, direct or have control over Contractor's work.

8.4 Resident Project Representative:

Unless agreed specifically otherwise, Consultant shall not provide the services of a Resident Project Representative at the Site to assist Consultant to provide continuous observation of the Project.

8.5 Defective Or Nonconforming Work:

Consultant shall make written recommendations to Project Manager to disapprove or reject Contractor's work, or to accept Contractor's work with a reduction in Contract Cost, while it is in progress if Consultant believes such work is defective or will not produce a completed Project that conforms to the Contract Documents or that such work will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

8.6 Interpretations, Clarifications and Corrections

8.6.1 Consultant shall issue necessary interpretations, clarifications and Request for Information (RFI)-Replies regarding the Contract Documents and in connection therewith assist Project Manager with supplemental instructions and change orders as required, with reasonable promptness (no longer than two working days) so as to cause no delay to Contractor or the Project.

8.6.2 Consultant shall, at its own expense, make all revisions and changes to the Drawings and Specifications as directed by District to correct errors, omissions or conflicts.

9.6.3 On change orders, prepare the scope of work, justifications and estimate of the cost where necessary.

8.7 Verified Reports:

Consultant shall make the "verified reports" required by the California Education Code and Code of Regulations, according to the form and schedule required by those codes and the DSA.

8.8 Review of Submittals and Requests for Information

8.8.1 Consultant shall review, approve or take other appropriate action as set forth in the General Conditions in respect of Shop Drawings, Samples and other data which Contractor is required to submit under Specification 01300 Submittals (collectively referred to herein as "**Submittals**"), and review and reply to RFI's, for conformance with the design concept of the Project and the intent of and compliance with the Contract Documents, with reasonable promptness so as to cause no delay to Contractor or the Project. In no event shall Consultant respond to RFI's longer than two working days after their receipt and other submittals any longer than ten days after their receipt.

8.8.2 Reviews, approvals and other actions taken shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto, unless same has been expressly specified by Consultant.

8.8.3 Consultant shall, for the purpose of performing its review obligations herein, employ and engage personnel who are sufficiently qualified to conduct meaningful review of the Shop Drawings, submittals and requests for clarification.

- 8.8.4 Consultant shall maintain to the satisfaction of District a computer based system to record, control and manage the review of Submittals and RFI's, which shows the interrelationships among and between such documents and requests for changes or claims, and which can be used for coordination of submittal reviews with the Project scheduling requirements, and shall make such system available to District at all reasonable times.
- 8.8.5 Consultant shall provide to Project Manager for District approval two copies of a color schedule, samples of textures and finishes of all materials in the work at the Project.

8.9 Communications with Contractor

- 8.9.1 Any communications between Consultant and Contractor regarding the any form of change to the construction contract's Contract Documents (including, but not limited to, changes in price), and any other party acting on behalf of either, shall be in writing, or if not made in writing, memorialized in writing, and copies of same shall be sent immediately to Project Manager. All such communications shall be delivered to Project Manager for delivery to the contractor, except for actions on submittals, which shall be sent directly to Contractor with a copy to the District. Consultant shall not communicate directly with the contractor. Conversely, Consultant shall receive all written communications from the contractor through the Project Manager). The District, in its sole discretion, reserves the right to change this requirement, relax this requirement, or revise this requirement.
- 8.9.2 As required in the General Conditions, Consultant shall review all written communications from Contractor, recommend actions to be taken by District, and reply in writing to Project Manager or to Contractor with a copy to Project Manager regarding the following:
 - 8.9.2.1 Applications for payment.
 - 8.9.2.2 Requests for changes in contract costs or times of completion.
 - 8.9.2.3 Disputes with respect to technical aspects of contract documents.
 - 8.9.2.4 Requests for interpretation and clarification of contract documents.

8.10 Substitutions

- 8.10.1 Consultant shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.
- 8.10.2 Consultant shall review quality control submittals and requests for substitution from Construction Contractor in a timely manner and, for the purpose of performing its review obligations herein, shall employ and engage personnel who are sufficiently qualified to conduct meaningful review and make knowledgeable comparisons of proposed substitutions.

8.11 Inspections and Tests

- 8.11.1 Consultant shall request Project Manager to require special inspection or testing of the work whenever necessary to Consultant's performance of its duties hereunder.
- 8.11.2 Consultant shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents

(but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

8.11.3 Consultant shall inspect work to determine if work or portions of work are substantially complete, and for development of punchlists, and final completion.

8.11.4 Consultant shall attend all weekly construction contract progress meetings.

8.12 Disputes Between District and Contractor:

Consultant shall act as initial interpreter of the requirements of technical aspects of the Contract Documents as required by the General Conditions.

8.13 Applications for Payment

8.13.1 Based on Consultant's on-Site observations as an experienced and qualified design professional, on information provided by the Inspector and on review of applications for payment and the accompanying data and schedules, Consultant shall assist Project Manager in its determination of amounts owing to Contractor and recommend in writing payments to Contractor in such amounts.

8.13.2 Recommendations of payment by Consultant will constitute a representation to District that:

8.13.2.1 The work has progressed to the point indicated;

8.13.2.2 To the best of Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation).

8.13.3 In the case of unit price work, Consultant's recommendations of payment will include its determinations of quantities and classifications of such work, along with data provided by District and other consultants (subject to any subsequent adjustments allowed by the Contract Documents).

8.13.4 By recommending any payment Consultant will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by Consultant to check the quality or quantity of Contractor work as it is furnished and performed, beyond the responsibilities specifically assigned to Consultant in this Agreement and the General Conditions.

8.14 Contractor's Completion Documents

8.14.1 Consultant shall receive and review all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to District with written comments and recommendation on their conformance with Contract requirements.

8.14.2 Consultant shall employ and engage personnel who are sufficiently qualified to conduct meaningful review of maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, and tests.

8.15 Final Inspections:
Consultant shall conduct inspections to determine if the work or portions of the work is substantially complete and a final inspection to determine if the completed work is acceptable, and will recommend, in writing, whether final payment shall be made to Contractor and will give written notice to District and Contractor that the work either is or is not acceptable subject to any conditions therein expressed. Consultant shall participate in one (1) "post occupancy review" to occur no later than one year after completion.

8.16 Time of Construction Phase

8.16.1 Any prolonged construction phase services past the construction completion date defined in the Construction Contract, due in whole or in part to Consultant's failure to perform its obligations under this Agreement, shall be included in Basic Service.

8.16.2 Prolonged construction phase services not due in whole or in part to any failure of Consultant to perform under this Agreement, and which exceed by less than 30 days the actual construction completion date defined in the Construction Contract, or which exceed by less than 20% of the expected construction duration in Appendix C, whichever is longer, shall be included in Basic Service.

9. Operation/Project Close-Out Phase

9.1 Operation/Project Close-Out:

During the Operation/Project Close-Out Phase, Consultant shall, when requested by District:

9.1.1 Provide assistance in connection with the refining, adjusting and correcting of any equipment or systems.

9.1.2 Assist in start-up, testing and placing in operation special equipment and systems. (For all such equipment and systems, Consultant shall have specified start-up and testing procedures in the contract documents.)

9.1.3 Provide assistance in connection with completion of punchlist work, including but not limited to, preparing the initial comprehensive punchlist and conducting no more than two follow up Site visits (with follow up punchlisting if necessary) in addition to other responsibilities under this contract.

9.1.4 Assist District in coordination of training District's staff to operate and maintain equipment and systems as necessary.

9.1.5 Assist District in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

9.1.6 Together with District, visit the Project to observe any apparent defects in the completed construction, assist District in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.

9.1.7 Together with District and Project Manager, coordinate, prepare and submit all final required deliverables under Title 24 and any thing else required by DSA for its final Project approval.

9.1.8 Prepare electronic record sets and sets of reproducible record prints or Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor to Consultant.

- 9.1.9 Prepare electronic record sets and set of record prints showing those changes made during the construction process, based on the marked-up Technical Specifications and other data furnished by Contractor to Consultant. Electronic data shall conform to District requirements for compatibility with District equipment and software.

10. Payments to Consultant

- 10.1 Payments to Consultant:
Payments to Consultant shall be made according to Appendix B, "Payments to Consultant"..

11. Additional Services

- 11.1 Performance:
Services required to be performed by Consultant upon request by District, which are described hereinafter as Additional Services, must be authorized by District in writing prior to performance.
- 11.2 Compensation for Additional Services:
Consultant shall be compensated for Additional Services as set forth in Appendix B unless the parties agree on lump sum compensation for particular work activities.
- 11.3 Services:
The following services shall be considered Additional Services:
 - 11.3.1 Making revisions in reports, drawings, or other documents, if:
 - 11.3.1.1 Such revisions are not necessary because of a deficiency in Consultant's work, and
 - 11.3.1.2 Such revisions are inconsistent with written approvals or instructions previously given by District, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Consultant.
 - 11.3.2 Changes in scope, such as revisions of approved reports or design documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.
 - 11.3.3 Required out-of town travel beyond limits specified in Appendix B.
 - 11.3.4 Assistance in connection with bid protests and rebidding when such assistance is required by matters unrelated to Consultant's deficient performance.
 - 11.3.5 Property surveys or field surveys for design purposes, engineering surveys, and staking, to the extent not required by other provisions of this Agreement.
 - 11.3.6 Preparing to serve or serving on behalf of District as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.
 - 11.3.7 Preparation of applications and supporting documents for governmental grants and permits. [However, participating in consultations and evaluation of the effect of associated requirements on the design requirements of the Project is within Consultant's contract scope.]

- 11.3.8 Services to verify the accuracy of geotechnical information.
- 11.3.9 Assisting in actual claims resolution efforts when such assistance is required by matters unrelated to Consultant's performance.
- 11.3.10 Providing any other services requested by District that are not otherwise included in this Agreement and are not customarily furnished in accordance with generally accepted architectural, engineering and other professional practice.
- 11.3.11 All work or services required as a result of any failure by Consultant to perform its obligations under this Agreement shall be performed by Consultant at no additional cost as part of Basic Services and shall not be deemed Additional Services.
- 11.3.12 Providing additional insurance coverage requested by District beyond that specified in the Agreement, except that no markup will be allowed. Consultant shall promptly comply with such request.

12. Periods of Service

- 12.1 Milestones:
Milestones for completion of Phases and tasks within each phase are given in Appendix C. Milestones shall conform to Master Schedule.
- 12.2 Commencement of Services:
Consultant shall not commence work on any succeeding phase of Services until completion of services on existing and prior phases of Service and Project Manger has provided Consultant with written notice to commence the succeeding phase of Service, unless Project Manager, in its sole discretion, authorizes Consultant to do so.

13. District's Responsibilities

- 13.1 Project Manager:
District shall designate a Project Manager, who is authorized to act on District's behalf with respect to this Agreement. District or such authorized representative shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant's services. District may delegate all or some of Project Manager's role and function to a separate contractor or to a construction manager. District may change the individual acting as Project Manager and/or the individual or entity acting as a separate contractor or construction manager at any time with notice to Consultant.
- 13.2 Design Requirements:
District shall provide criteria and information concerning design objectives and constraints, space, capacity and performance requirements, and budgetary limitations, when known.
- 13.3 Property Information:
District shall provide geotechnical information, environmental impact reports, and relevant information concerning property boundaries, easements, rights of way, topographic and utility surveys, property descriptions, zoning, boundary and other land use restrictions, as needed and necessary.
- 13.4 Documents:
District shall make copies of available documents and drawings of existing conditions available to Consultant. Consultant may inspect all District's surveys and records of construction. Verification of visible on-Site facilities is the responsibility of Consultant.
- 13.5 Surveys:

District shall provide engineering surveys to establish reference points for construction.

13.6 Hazardous Materials:

District shall provide hazardous materials surveys and perform remediation measures to eliminate hazardous materials from Project Site.

13.7 Permits and Approvals:

Consultant shall assist District in its securing of all required approvals and permits from governmental authorities having jurisdiction over the Project, unless otherwise specified in this Agreement (for example, Consultant's duty to secure all required design approvals from DSA).

13.8 Site Access:

District shall provide Consultant reasonable access to the Site provided Consultant complies with all security and safety requirements, and coordination requirements.

13.9 Resident Inspector:

District shall supply the Resident Inspector required by the Education Code.

END OF APPENDIX A

APPENDIX B

PAYMENTS TO CONSULTANT

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated _____, 2005, between the Marin Community College District (the “**District**”), and _____ (“**Consultant**”) providing professional services for Marin Community College District Campus-wide Measure C Update – Capital Improvement Programs, described in Appendix A.

1. Maximum Payment

Excluding Additional Services only, the Maximum Payment to Consultant for Work performed under this Agreement shall not exceed progress on the Projects described in Appendix A “Services to be Performed by Consultant”, their stated budgets, and the percentage allowances under Paragraph 2.3 below.

- 1.1 The parties shall pay Consultant based on progress on each phase and demographic areas of the College campuses. Total Compensation for these Projects under this agreement shall not exceed \$_____.
- 1.1 For purposes of this Appendix B, all work performed by Consultant prior to this Agreement shall be deemed performed under this Agreement and considered in calculating Consultant’s fees due under this Agreement. The Maximum Payment to Consultant described above shall apply in all circumstances except Additional Services.
- 1.2 In calculating fee, a Project’s construction value shall include all District-initiated change orders, but shall not include change orders caused or contributed to by Consultant’s errors or omissions. This measure shall constitute Consultant’s full compensation for its work on change order related work. ~~(e.g., scope descriptions etc. per Appendix A Paragraph 9.6.4).~~ Contractor claims (except those limited to the price of extra work, as opposed to entitlement recognition or extra work) shall not be considered in calculating fee and Consultant shall be paid for its work on contractor claims as Additional Services under Appendix A. ~~(see Appendix A Paragraph 12.3.9).~~
- 1.4 In the event the District changes the scope of a Project referenced in Appendix A Paragraph 1.1, either increasing its size or decreasing its size, then the parties shall calculate fee based upon the revised construction value. If the District changes the scope of the Project after Consultant has commenced work on a Project, then the parties shall agree upon an equitable adjustment limited by the original fee for that Project, Consultant’s incurred costs and progress under Paragraph 2.3 below, and the revised scope of work and revised fee remaining.
- 1.5 For Projects where the work anticipated involves new construction and renovation construction, let under a single construction contract, thus implicating two fee schedules, the fee applicable to new construction shall apply to the new construction. For the renovation construction, the fee applicable to renovation construction shall apply as if a separate Project.

2. Methods of Payment for Services and Expenses of Consultant

- 2.1 For Basic Services on the Project: The District shall pay Consultant for basic services rendered under Appendix A a sum not exceeding the amount allocated to the Project in Paragraph 1 above, and, for the phases listed in Paragraph 2.3 below, a sum not exceeding the amount so allocated to that phase and for each demographic zone listed thereunder. Within each contract phase listed in Paragraph 2.2 below, Consultant shall be paid according to its percentage completion of each phase at each demographic zone.

2.2 Maximum Compensation to Consultant by Phase. / Demographic Division

[PM add one table per project, use multiple pages if necessary. Match this section with Appendices B & D.]

PROJECT: _____

PHASE of PROJECT	Start Date	End Date	Percent of Project	Kentfield Campus	Indian Valley Campus	Bolinas Marine	Total Amount
Programming Phase			5 %				
Schematic Design Phase			10 %				
Design Development Phase			20 %				
Construction Documents Submittal to DSA			35 %				
Approval by DSA			5 %				
Bidding Phase			3 %				
Construction Phase			17 %				
Operation / Project Closeout			5 %				
Total Basic Services			100 %				

CONTRACT BREAKDOWN

PROJECT	Start Date	End Date	Percent of Contract	Total Amount per Project
			Contract Total	

Payments for Program-Wide Services are deemed included within the foregoing amounts.

2.3 For Additional Services: The District shall pay Consultant for “Additional Services” rendered under Appendix A as follows:

- 2.3.1 General: For Additional Services of Consultant’s principals and professional and technical staff engaged directly on the Project and rendered pursuant to Appendix A Paragraph 12, on the basis of a lump sum negotiated between the parties, or, at District’s option, at Consultant’s Standard Billing Rates.
- 2.3.2 Subconsultants: For Additional Services of Subconsultants employed by Consultant to render Additional Services pursuant to Appendix A Paragraph 12, the amount billed to Consultant therefor times a factor of 1.10.
- 2.3.3 Hourly Basis: For Additional Services on an hourly basis, Consultant agrees that all subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of the District.
- 2.3.4 Reimbursable Expenses: Except as set forth in Paragraph 2.3.5, the District shall pay Consultant the actual cost of all Reimbursable Expenses incurred only in connection with Additional Services.
- 2.3.5 Other Expenses: For expenses not required by the Agreement, the District shall reimburse the following expenses at a rate of 1.10 time cost, whether incurred on Basic Services or Additional Services: any plotting of Drawings, Specifications and Bidding Documents in addition to the original set plus one plot. District shall reimburse 100 % fees paid to government agencies on behalf of the District.

2.3.6 Photocopying and Postage: On Basic Services, District shall pay Consultant 1.10 times cost for expenses for plotting, photocopying and postage.

3. Times of Payments

- 3.1 Consultant shall be paid according to actual percentage of completion of designated phases of the Basic Services as specified in Paragraph 2.2.
- 3.2 Consultant shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based on Consultant's estimate of the proportion of completion of each phase of service set forth above, utilizing the design schedule organized by task. The District shall promptly review Consultant's monthly statement, and provided it is acceptable, shall promptly make payment thereon.

4. Submission of Invoices

- 4.1 The requisition number, purchase order number, District project number, consultant's invoice number, and project name must appear on all invoices and correspondence. Send invoices, in duplicate, immediately upon performance to:

By U.S. Postal Service:

Geraldine Bracken
Marin Community College District
c/o Swinerton Management & Consulting
P.O. Box 144003
Kentfield, CA 94914

By overnight and express delivery services:

Geraldine Bracken
Marin Community College District
c/o Swinerton Management & Consulting
835 College Avenue, Building MS-3
Kentfield, CA 94904

5. Definitions

- 5.1 The "**Billing Rates**" for purposes of this Appendix B apply to all Consultants' professional personnel (Engineers, drafters, etc.) engaged directly on the Project listed below. Consultant shall not bill for or receive compensation for other business or administrative personnel or secretarial personnel. For purposes of this Agreement, the Billing Rates are Consultant's regular San Francisco Bay Area public entity billing rates during the applicable time.
- 5.2 "**Reimbursable Expenses**" mean actual expenses incurred by Consultant or Consultant's independent professional associates or consultants, directly or indirectly in connection with Additional Services, such as expenses for: transportation and subsistence incidental thereto; providing and maintaining field office facilities including firm furnishings and utilities; toll telephone calls and telegrams, mail and overnight delivery services; reproduction of reports, Drawings, Specifications, Bidding Documents and similar Project-related items; and if authorized in advance by the District, overtime work requiring higher than regular rates.
- 5.2.1 Reimbursable Expenses shall not include Local Travel.
- 5.2.2 Travel expense beyond Local Travel for travel by automobile shall be reimbursed at the current rate set by the U.S. Government, and for travel by other means shall be the actual expense incurred by Consultant.
- 5.3 "**Local Travel**" means travel between Consultant's offices and Marin County, and travel to any location within a fifty-mile radius of either Consultant's office and Marin County.

END OF APPENDIX B

APPENDIX C

MILESTONE SCHEDULE

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated _____, 20[xx], between the Marin Community College District (the “**District**”), and _____ (“**Consultant**”) providing for professional services.

The following table(s) include a list of activities to be performed by Consultant, District and other parties with regard to Services under this Agreement, for which specific time deadlines for performance are set:

[PM add one table per project, use multiple pages if necessary. Match this section with Appendices B & D.]

PROJECT: _____

ACTIVITY	PARTY	MILESTONE DATE
COMMENCEMENT		00/00/20xx
DRAFT ASSESSMENT REPORT		00/00/20xx
FINAL ASSESSMENT REPORT		00/00/20xx
PROGRAMMING PHASE		00/00/20xx
SCHEMATIC DESIGN PHASE		00/00/20xx
DESIGN DEVELOPMENT PHASE		00/00/20xx
CONSTRUCTION DOCUMENT PHASE		00/00/20xx
BIDDING PHASE		00/00/20xx
CONSTRUCTION PHASE		00/00/20xx
OPERATION/PROJECT CLOSE-OUT PHASE		00/00/20xx

CONTRACT MILESTONES

PROJECT	Start Date	End Date	Percent of Contract

END OF APPENDIX C

APPENDIX D

DELIVERABLES

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated _____, 20[], between the Marin Community College District (the “**District**”), and _____ (“**Consultant**”) providing for professional services.

Consultant’s deliverables under the Agreement are as follows:

1. **DSA Coordination Deliverables** The deliverables required for the Division of the State Architect (“**DSA**”) coordination are defined in Paragraph 2 of Appendix A, and include without limitation the following:
 - 1.1 Report on time required for review and approval of project plans and specifications (for inclusion in project master schedule).
 - 1.2 Report on suggested methods of DSA pre-approval of change orders.
 - 1.3 Report on all deferred approval items for which contractor must submit early its shop drawings, product samples and other submittals, necessary for DSA review and approval in time to not impact construction progress.
 - 1.4 Recommendations on selection of Project Inspector, approval of proposed Project Inspector, and submit required application for approval to DSA.
 - 1.5 Recommendations on choice of testing agency suitable for the contract.
2. **Not Used.**
3. **Programming Phase** The deliverables required by the Programming Phase are defined in Paragraph 4 of Appendix A and include without limitation the following:
 - 3.1 Space schematics/flow diagrams.
 - 3.2 Existing facility survey information.
 - 3.3 Estimate of Project Cost.
4. **Schematic Design Phase** The deliverables required by the Schematic Design Phase are defined in Paragraph 5 of Appendix A and include without limitation the following:
 - 4.1 Written recommendations on required additional information and data.
 - 4.2 Preliminary estimates of construction costs, times of completion, and alternatives.
 - 4.3 Schematic layouts, sketches and conceptual design criteria, with supporting reports and exhibits.
 - 4.4 Opinion of probable construction costs.
 - 4.5 Revised opinion of probable Total Project Costs.
 - 4.6 Work phasing recommendations.
 - 4.7 Information and diagrams for required meetings.

5. Design Development Phase The deliverables required by the Design Development Phase are defined in Paragraph 6 of Appendix A and include without limitation the following:

- 5.3 Reports on whether further data, information or permits or reports are needed.
- 5.4 Revised opinion of probable Total Project Costs.
- 5.5 Written design criteria for mechanical and electrical systems.
- 5.6 Comparative cost studies for major building systems (for Life Cycle Alternates Workshop).
- 5.7 Information and diagrams for required meetings.
- 5.8 Technical criteria, written descriptions and design data as needed for permits and approvals.
- 5.9 Comprehensive update on estimates on probable Total Project Costs and times of completion.
- 5.10 Preparation of supplementary conditions to the Construction Contract and additional bidding requirements.
- 5.11 Required disclosures regarding the final design.
- 5.12 Written certification.

6. Construction Document Phase The deliverables required by the Construction Document Phase are defined in Paragraph 7 of Appendix A and include without limitation the following:

- 6.3 Reports on whether further data, information or permits or reports are needed.
- 6.4 Revised opinion of probable Total Project Costs.
- 6.5 Written design criteria for mechanical and electrical systems.
- 6.6 Comparative cost studies for major building systems (for Life Cycle Alternates Workshop).
- 6.7 Information and diagrams for required meetings.
- 6.8 Technical criteria, written descriptions and design data as needed for permits and approvals.
- 6.9 Comprehensive update on estimates on probable Total Project Costs and times of completion.
- 6.10 Preparation of supplementary conditions to the Construction Contract and additional bidding requirements.
- 6.11 Required disclosures regarding the final design.
- 6.12 Written certification.

7. Bidding Phase The deliverables required by the Bidding Phase are defined in Paragraph 8 of Appendix A and include without limitation the following:

- 7.1 Written addenda (where necessary).
- 7.2 Written determinations regarding proposed substitutes.

7.3 Notice of Contract to DSA.

8. Construction Phase The deliverables required by the Construction Phase are defined in Paragraph 9 of Appendix A and include without limitation the following:

8.1 Necessary notices, communications, interpretations, clarifications, as required by and in the format required by Paragraph 9 of Appendix A, including without limitation:

8.1.1 Verified Reports of Consultant, Inspector, and Contractor (on February 1, May 1, August 1, November 1 and at conclusion of project or Consultant's services).

8.1.2 Notice of start of construction.

8.2 Certificates of Substantial Completion and Final Completion.

8.3 Punchlists

9. Operation/Project Close-Out Phase. The deliverables required by the Operation/Close Out Phase are defined in Paragraph 10 of Appendix A and include without limitation the following:

9.1 Electronic record sets and sets of reproducible record prints of drawings showing changes made during construction.

9.2 Electronic record sets and sets of prints of Technical Specifications showing changes made during construction.

END OF APPENDIX D

APPENDIX E

INSURANCE

[PM verify that insurance limits are appropriate . Do not make changes without consulting Program Manager.]

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated _____, 2005, between the Marin Community College District (the “District”), and _____ (“Consultant”) providing for professional _____ services.

1. Consultant’s Duty to Show Proof of Insurance. Prior to the execution of this Agreement, Consultant shall furnish to District Certificates of Insurance showing satisfactory proof that Consultant has taken out for the entire period required by this Agreement, as further described below, the following insurance, in a form satisfactory to District and with an insurance carrier satisfactory to District, authorized to do business in California and rated by A. M. Best & Company “A” or better, financial category size **IX** or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the acts or omissions of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:

1.1 Commercial General Liability Insurance

Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, blanket contractual liability, broad form endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than **\$_2 million_** annual general aggregate per project and **\$_1 million_** each occurrence.

1.2 Business Automobile Liability Insurance

Business automobile liability insurance with limits not less than **\$_1 million_** combined single limit including coverage for owned, non-owned and hired vehicles.

1.3 Workers’ Compensation Insurance

Workers’ Compensation Employers’ Liability limits required by the laws of the State of California. Consultant’s Worker’s Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

1.4 Professional Liability Insurance

Professional Liability Insurance, either (a) specific to this Project only, with limits not less than \$1,000,000 each claim, or (b) limits of not less than **\$_1 million_** each claim and **\$_2 million_** aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured and with tail coverage for a period of five (5) years after the completion of the Services.

2. Insurance terms and conditions:

2.1 Additional Insureds:

2.1.1 Status of MARIN COMMUNITY COLLEGE DISTRICT as Additional Insured.

On Engineer's Commercial General Liability policy, the MARIN COMMUNITY COLLEGE DISTRICT, and its Trustees, officers, officials, representatives, employees, Consultants, and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.

2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

2.3 Certificates of Insurance shall include the following statement: "Written notice of cancellation, non-renewal or of any material change in policy shall be mailed to District thirty (30) days in advance of the effective date thereof."

2.4 Consultant's insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than that amount Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.

2.4 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its employees may be held responsible for payment of damages resulting from their operations.

2.6 If Consultant fails to maintain any required insurance, District may obtain such insurance, and deduct and retain amount of premium from any sums due Consultant under this Agreement.

3 Provide Proof of Insurance

3.1 Address Certificate Holder to:

Marin Community College District
835 College Avenue
Kentfield, CA 94904

3.2 Send Insurance Certificate and Endorsement to:

Copy by fax to:

Geraldine Bracken
Marin Community College District
c/o Swinerton Management &
Consulting
phone: 415-884-3142
fax: 415-721-7039

Original by mail to:

Geraldine Bracken
Marin Community College District
c/o Swinerton Management &
Consulting
P.O. Box 144003
Kentfield, CA 94914

END OF APPENDIX E

