

MASTER AGREEMENT FOR CONSTRUCTION MANAGEMENT (CM) SERVICES

This Agreement for Construction Management Services ("Agreement") is dated September 10, 2015 for reference purposes only and is made by and between **MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT**, a California Community College District ("District") and Tilden-Coil Constructors, Inc. ("CM").

WHEREAS, the District has engaged in a program of construction of various works of improvement and modernization funded by the District's Measure RR bond, State bonds and various other Capital Project funding ("Program"). Specific works are designated within the Program ("Project").

WHEREAS, the District desires to retain CM to provide project construction management services as more particularly described herein.

WHEREAS, CM is a professional construction manager, qualified and capable of providing the services and work product contemplated herein for the Projects within the District's Program, in accordance with the terms hereof.

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

AGREEMENT

1 BASIC SERVICES.

1.1 Scope. CM shall provide Basic Services consisting generally of construction management services as more particularly set forth herein and listed in Article 2 of **Exhibit A – Conditions of Agreement for Construction Management Services**.

1.2 Work Authorizations. Each Project to be performed by CM shall be enumerated in a written Work Authorization. Such Work Authorization shall set forth the specific scope of work, Contract Price, scheduled term and specified liquidated damages, any special conditions for that Project, and whether the work is defined as Basic Services or Additional Services.

1.3 CM Services. Basic Services and authorized Additional Services provided by the PM/CM shall be performed by, or under the direction and control of a licensed architect, registered engineer or licensed contractor.

2 CM COMPENSATION

2.1 Contract Price. The Contract Price due the CM under this Agreement for each Project shall be set forth in the Project Work Authorization. Payment of the Contract Price for a Project will be made by the District in accordance with the terms hereof. The Contract Price for each Project shall consist of Preconstruction Fee, CM Fee, and General Conditions:

2.1.1 Preconstruction Fee. The CM shall receive a fee for performing preconstruction phase and bidding phase services as set forth in Exhibit A, Paragraph 2.1 and 2.2 on a Project ("Preconstruction Fee"). The Preconstruction Fee shall be based upon the anticipated final Construction Costs at the time of the Project Work Assignment and reconciled after the bidding of the last contract for the Project and shall not be subject to increase thereafter. The Preconstruction Fee shall be determined in accordance with the following:

- 2.1.1.1 For Projects with an anticipated Construction Cost of \$1,000,000 or less, the Preconstruction Fee shall be 1% of the anticipated Construction Cost.
- 2.1.1.2 For Projects with an anticipated Construction Cost of \$1,000,001 or greater, the Preconstruction Fee shall be 0.75% of the anticipated Construction Cost.

2.1.2 CM Fee. The CM shall receive a fee for performing construction phase services as set forth Exhibit A, Paragraph 2.3 on a Project ("CM Fee"). The CM Fee shall be based upon the anticipated Construction Costs after bidding the last contract for the Project and shall be reconciled upon project completion. The CM Fee shall be determined in accordance with the following:

- 2.1.2.1 For Projects with a Construction Cost of \$1,000,000 or less, the CM Fee shall be 6% of the Construction Cost.
- 2.1.2.2 For Projects with a Construction Cost of \$1,000,001 to \$5,000,000, the CM Fee shall be 5.5% of the Construction Cost.
- 2.1.2.3 For Projects with a Construction Cost of \$5,000,001 to \$10,000,000, the CM Fee shall be 4.6% of the Construction Cost.
- 2.1.2.4 For Projects with a Construction Cost of \$10,000,001 to \$20,000,000, the CM Fee shall be 4% of the Construction Cost.
- 2.1.2.5 For Projects with a Construction Cost of \$20,000,001 or greater, the CM Fee shall be 3.8% of the Construction Cost.

2.1.3 General Conditions. CM shall provide General Conditions for the Project. General Conditions are those generic support activities including labor, materials and services which must be in place to support the Project and are listed in **Exhibit C – General Conditions**. A General Conditions Budget shall be submitted by the CM, for the District's approval for each Project during the construction document phase of design. CM Shall utilize the billable labor rates attached in **Exhibit B – Billable Hourly Rate Schedule** for the development of the General Conditions budget.

2.2 Additional Services. If the District shall approve or direct CM to perform or provide Additional Services described generally in Article 3 of the Conditions to this Agreement, CM shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule attached hereto as **Exhibit B – Billable Hourly Rate Schedule**. CM shall obtain in advance the District's approval of the nature and extent of actual costs reasonably and necessarily incurred by CM in providing such additional services without mark-up.

2.3 District Payments.

2.3.1 Allocation of Contract Price. The District's payment of the Contract Price for Basic Services for a Work Authorization shall be allocated amongst the phases of the Project defined in the Work Authorization.

2.3.2 Payment for Additional Services. District shall pay CM for authorized Additional Services monthly in arrears.

2.3.3 CM Billings to District.

2.3.3.1 Preconstruction Invoicing. During the course of providing preconstruction phase services and bidding phase services as set forth in Exhibit A, Paragraph 2.1 and 2.2, the CM shall submit equal monthly billing invoices to the District for payment of the Preconstruction Fee and authorized Additional Services. The Preconstruction Fee shall be reconciled after the bidding of the last prime contract for the Project and shall be adjusted accordingly.

2.3.3.2 Construction Invoicing. CM shall invoice the CM Fee monthly based upon the actual percentage of construction completion during the construction phase. The CM Fee shall be reconciled at the completion of the Project and shall be adjusted accordingly. General Conditions shall be invoiced monthly during the construction phase and all General

Conditions costs shall be supported by an invoice, receipt, an employee time sheet, or other acceptable documentation.

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

3 Term. The initial term of this Agreement shall commence September 10, 2015 and shall terminate at the completion of the Measure RR projects.

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

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

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

5 Miscellaneous

5.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or CM.

5.2 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors and assigns of CM and the District. Neither CM nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent. This Agreement may not be orally amended, modified or terminated.

5.3 Authority. The individual(s) executing this Agreement on behalf of CM warrant and represent that she/he is authorized to execute this Agreement and bind CM to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Board of Education, to bind District to all terms hereof and authority granted to enter into this Agreement.

5.4 Notices. Notices under this Agreement shall be addressed and delivered as follows:

If to District: Michael D. Gregoryk, Vice President, Administrative Services
Mt. San Antonio College
1100 N. Grand Avenue
Walnut, CA 91789

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

5.5 Entire Agreement. This Agreement, the accompanying Conditions and the documents enumerated below, if any, are all of the documents forming a part of the Agreement:

Exhibit A Conditions of Agreement for Construction Management Services
Exhibit B Billable Hourly Rate Schedule
Exhibit C General Conditions List

The foregoing constitutes the entire agreement and understanding between the District and CM concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. No term or condition of this Agreement shall be modified or amended except by writing executed by the District and CM.

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

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

5.8 The District agrees that the CM shall be the sole beneficiary of any and all tax credits related to the Construction Manager's services under this Agreement. Tax credits include, but are not limited to the R&D tax credit and 179D tax credit.

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

"CM"

Tilden-Coil Constructors, Inc.
3612 Mission Inn Ave
Riverside, CA 92501
(951) 684-5901; fax (951) 684-0769

"DISTRICT"

Mt. San Antonio Community College District
a California Community College District
1100 N. Grand Avenue
Walnut, CA 91789
(909) 594-5611; fax (909) 468-4025

By: _____
Dayne Brassard
Executive Vice President

By: _____
Michael D. Gregoryk
Vice President, Administrative Services

**EXHIBIT A
CONDITIONS OF AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES**

ARTICLE 1 RELATIONSHIP OF PARTIES

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

ARTICLE 2 BASIC SERVICES

- 2.0 Personnel.** CM will establish a construction management organization appropriately and reasonably staffed to perform the Basic Services. CM's personnel and the specific roles,

authority and responsibility of the CM's personnel are subject to the reasonable approval of the District.

2.0.1 Designated Personnel. Personnel shall be designated in Work Authorizations.

2.0.2 CM's Senior Project Manager. The CM's Senior Project Manager shall have the overall responsibility for performance of CM's obligations hereunder and be authorized to act on behalf of the CM in discharge of CM's services hereunder.

2.1 District approval of personnel shall be obtained in advance. **Pre-Construction Phase.** CM shall provide services that relate to the organization and development of the project prior to the start of construction including the following:

2.1.1 Site Evaluation. Consult with District staff in relation to the site selected or to be selected.

2.1.2 Plan Review: Value Engineering and Constructability. Provide plan review and constructability services with an emphasis on ensuring that the project can be completed within the established schedule and within the available budget. Provide a detailed analysis of all major project systems with an emphasis on possible value engineering items.

2.1.3 Master Budgeting and Scheduling. Provide master budgeting and scheduling services including the preparation of a report identifying anticipated expenditures based upon traditional project milestones.

2.1.4 Detailed Construction CPM Schedule. Produce detailed construction CPM schedule to be incorporated into the project documents including identification of the project critical path.

2.1.5 Preliminary and Detailed Estimates. In concert with item c. above, provide a preliminary construction estimate using like kind construction costs. Upon receipt of plans and specifications, provide a detailed construction estimate showing the values of all major components of the project.

2.1.6 Bidding Strategies. Consult with District staff regarding bidding strategies with an emphasis upon timing, development of alternates, and bid package scoping.

2.1.7 Project Accounting and Management Systems. In concert with District staff, develop and maintain the project accounting and budget management systems.

2.1.8 Prime General Conditions Document Preparation. The Construction Manager shall ensure that the prime general conditions are suitable for the Construction Management delivery system. The CM and the District shall coordinate this effort with District's legal counsel and obtain the District mandated approvals prior to publication.

2.1.9 Project Scoping. Multiple Prime requires that the project be divided into logical categories of work.

2.1.10 Construction Cost Accounting. Establish and maintain the pre-qualified contractors list/database. Work with the District to qualify informal projects, review Design Documents, Review/Develop Construction Budget estimates.

2.1.11 Building Information Modeling. If the District elects to utilize Building Information Modeling on the Project, CM shall prepare BIM requirements for bidders and incorporate them into the prime general conditions referenced in Paragraph 2.1.8.

2.2 Bidding Phase. CM shall provide the following services:

2.2.1 Bidder Interest. Assist District staff to encourage bidder interest in the project and provide assistance with such issues as bonding, insurance, and DVBE compliance.

2.2.2 Advertisements. Assist District staff with the placement of both the project legal advertisements and any other pre-bid advertisements.

2.2.3 Pre-Bid Conferences. In cooperation with District personnel, conduct pre-bid and site visit meetings with potential bidders.

- 2.2.4 Responses to Bidder inquiries.** Provide coordination of and, when possible, responses to bidder inquiries.
- 2.2.5 Plan and Addenda Distribution.** Assist District staff in the distribution of all plan sets, bid packages, and addenda.
- 2.2.6 Bid Evaluation and Review.** Review and evaluate all bids for responsiveness and certify the construction bid results.
- 2.2.7 Construction Cost Accounting.** Assist District staff in the review and assembly of bid documents, development of scope statements, pre-qualification process, hold pre-bid conferences and make recommendation for award.

2.3 Construction Phase.

2.3.1 Administration and Coordination of Construction Contract(s) and Construction.

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

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

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

2.3.2 Monitoring of Construction Costs; Contractor(s)' Applications for Payments.

- a) **Construction Costs.** CM will monitor the Construction Costs and advise the District of the financial condition of the Project by:
 - 1) Development of Project cash flow reports, forecasts and other financial reports to the District, including those reflecting variations between actual Construction

- Costs and the Construction Costs Budget and estimated costs of unperformed Project activities;
- 2) Maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis, or other work requiring accounting records;
 - 3) Monitor and advise the District of costs pertaining to potential, pending and completed changes to Construction Contract; and
 - 4) Advising and making recommendations to the District for adjustments to the Construction Cost Budget relative to actual or anticipated Construction Costs.
- b) **Applications for Progress Payments.** CM will participate in the review and disbursement of Progress Payments to the Contractor and in consultation with the District and the Architect, make recommendations for the disbursement of Progress Payments to the Contractor(s) as follows:
- 1) CM will assist in the development of procedures for submittal, review, processing and disbursement of Progress Payments to Contractor(s), along with associated forms and reporting systems.
 - 2) Based upon CM's observations and evaluations of each Application for Progress Payment, CM will review and certify to the District the amount due on each such Application for Progress Payment; CM's certifications constitute a representation to the District that, based on CM's observations at the Site, the data in each Application for Progress Payment, and to the best of CM's knowledge, information and belief, the Work has progressed to the point indicated in the Application for Progress Payment and the quality of the Work is in generally in accordance with the Contract Documents for the Construction Contract.
 - 3) CM's representations relative to Applications for Progress Payment are subject to an evaluation of the Work for conformity with the Contract Documents for the Construction Contract(s) upon Substantial Completion, results of subsequent tests and procedures, minor deviations from the Contract Documents correctable prior to completion and any specific qualifications expressed by CM in its certification. CM's issuance of a Certificate pursuant to the preceding shall be a representation that the Contractor(s) is/are entitled to payment in the amount so certified.
 - 4) The issuance of a Certificate for Payment shall not be a representation that the CM has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own work, or procedures, or (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum for the Project.
- c) **Construction Contract Close-Out; Final Payment.** In consultation with the District and the Architect, CM will assist and participate in the review of Applications for Final Payment. CM will compile for transmittal to the District the Close-Out documents required by the Construction Contract(s), including Record Drawings, Operations and Maintenance Manuals, test certificates, warranties and guarantees. CM will review and in consultation with the District and the Architect, CM will make recommendations to the District as to Final Completion of the Construction Contract(s) and disbursement of the Final Payment under the Construction Contract(s).

2.3.3 Project Progress.

- a) **Project Schedule(s).** CM shall review the Contractor(s)' Project Construction Schedule(s) and updates thereof and shall endeavor to secure Contractor(s)' compliance with such Schedules. CM shall advise the District of compliance with the terms of the Construction Contract(s) along with measures appropriate to obtain

compliance if necessary. CM is and will not be in control of the Architect's or Contractors' activities in connection with the Project, and therefore, CM cannot warrant or represent that the actual construction schedule will be consistent with the estimated construction schedule for the Project.

- b) **Progress Records.** CM will maintain records of the progress of construction of Project construction, including written progress reports and photographs reflecting the status of Project construction and percentage completion. CM will maintain daily records during Project construction showing weather conditions, Subcontractors at the Site, work in progress, work accomplished, problems encountered and other matters materially affecting the Project, completion of the Project or Construction Costs.
- c) **Substantial Completion and Final Completion.** Upon request of the Contractor(s), CM will in conjunction with the District and the Architect determine that Substantial Completion and Final Completion have been achieved.
- d) **Warranty.** CM shall schedule all warranty work with Contractors through resolution during the one (1) year warranty period.

2.3.4 On-Site Observations.

- a) **CM On-Site.** During Project construction and at substantially all times during which there are construction activities under the Construction Contract, CM shall have its Project Superintendent or other authorized representative at the Site to observe Site construction activities. CM shall maintain in their office, on a current basis, the Construction Contract(s), Drawings, Specifications, Addenda, approved Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; and other related documents. Make all records available to the District and the Architect. At the completion of the Project, deliver all such records to the District, such that the Architect may complete the record As-Built drawings.
- b) **Construction Quality.** The CM will endeavor to guard the District against defects and deficiencies in construction and workmanship on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor the workmanship of the Contractor(s) for conformity with: (a) accepted industry standards; (b) applicable laws, codes, regulations, ordinances or rules; (c) and the requirements of the Construction Contract.
- c) **Rejection of Work.** Whenever in the ordinary course of discharging its services hereunder CM shall discover or observe patent conditions of defective or deficient construction or workmanship which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, CM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District in writing. In other circumstances where defective or deficient Work is observed by CM, the District shall be notified in writing by the CM of such conditions and if directed by the District, the CM shall stop or reject such Work. CM's responsibilities hereunder shall be limited to defective or deficient work of an apparent and patent nature.
- d) **Site Safety.** CM shall review safety programs of the Contractor(s) for conformity with requirements of the Construction Contract(s) and applicable law; CM shall monitor the Contractor(s)' compliance with mandated State and Federal safety programs and advise the District of measures, if any, necessary or appropriate to obtain the Contractor(s)' compliance. CM's responsibilities for monitoring of safety programs shall not extend to direct control over or charge of the acts or omission of the Contractors. By undertaking the obligations hereunder, CM shall not be deemed to

have assumed responsibility for the adequacy or sufficiency of safety programs implemented by Contractor(s).

2.3.5 Changes and Claims.

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

2.3.6 Building Information Modeling. If the District elects to utilize Building Information Modeling on the Project, CM shall perform BIM coordination with Contractors. CM shall ensure the Project's General Conditions Budget is adequate for this service.

ARTICLE 3 ADDITIONAL SERVICES

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

- a) Services required or necessary as a result of significant changes in the Project scope or other requirements of the Program and/or a Project, including Project size, quality or complexity or material changes to the Project Schedule.
- b) Services required or necessary as a result of the default or termination of the Architect or a Contractor, failure of performance of the District or a Contractor under any Construction Contract, or major defects or deficiencies in the work of a Contractor.
- c) Services and consultation associated or necessitated by damage to the Project prior to completion by fire or other casualty.
- d) Evaluation of excessive claims submitted by Contractors.
- e) Services in connection with any arbitration or other legal proceeding arising out of the Project, except to the extent that CM is a party to such proceeding.
- f) Services relative to future systems, facilities or equipment not included within the scope of the Project.
- g) Recruiting or training maintenance personnel.

- h) Services to investigate existing conditions or facilities or to provide measured drawings thereof.
- i) Services in connection with the District's selection, procurement or installation of furniture, furnishing or equipment not included within the scope of the Project.
- j) Any other service not expressly included within the Basic Scope of Services hereunder.

ARTICLE 4 INSURANCE AND INDEMNITY

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

sprinkler leakage, civil authority, sonic disturbance, collapse, wind, fire, lightning, and smoke. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

- 4.8 CM Indemnity of District.** To the extent permitted by law, CM shall indemnify, defend and hold harmless the District from all claims arising out of this Agreement and arising out of the CM's negligence or willful misconduct, including without limitation, claims for bodily injury, death, physical property damage (other than to the work of the Project itself and property damage covered by Builders Risk Insurance) and demands, losses, liabilities or other claims of third parties arising out of the CM's negligence or willful misconduct. The foregoing shall include without limitation, attorneys fees, experts fees and costs, investigation expenses and costs incurred by the District, and any defense afforded pursuant to this paragraph shall be provided by counsel acceptable to the District. The CM's obligations hereunder are not limited in any way or by any limitation on the amount or type of damages or compensation payable to the CM. The provisions of this paragraph shall apply during the period of CM's performance under this Agreement and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations. The District shall include in all Contract Documents a requirement that Contractor(s) shall indemnify CM to the same extent that Contractor(s) are indemnifying the District.

ARTICLE 5 TERMINATION; SUSPENSION

- 5.1 Termination for Default.** Either the District or CM may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion (except that the Owner's failure to make undisputed payments due in accordance with this Agreement must be cured within said 7 day period). In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to CM if: (a) CM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by CM or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CM or any of CM's property on account of CM's insolvency; or (b) if CM disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due CM, if any, shall be based upon Basic Services and authorized Additional Services incurred or provided up to the effective date of the District's termination of this Agreement.
- 5.2 District's Right to Suspend.** The District may, in its discretion, suspend all or any part of the construction of the Project, work under a Construction Contract or CM's services hereunder; provided, however, that if the District shall suspend construction of the Project, work under a Construction Contract or CM's services hereunder for a period of thirty (30) consecutive days or more and such suspension is not caused by CM or the acts or omissions of CM, upon rescission of such suspension, the Contract Price will be subject to adjustment to provide for actual costs and expenses incurred by CM as a direct result of the suspension and resumption of Project construction or construction under a Construction Contract or CM's services hereunder.

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

ARTICLE 6 GENERAL

- 6.1 Marginal Headings; Captions.** The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of CM and District hereunder.
- 6.2 Cumulative Rights; No Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default by CM.
- 6.3 Notices.** Notices CM or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth in the Agreement or modified by notice hereunder from time to time. Notices shall be effective only if by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, postage fully pre-paid.
- 6.4 Disputes.**
- 6.4.1 Continuation of CM Services.** Except in the event of the District's failure to make undisputed payment of the Contract Price due CM, notwithstanding any disputes between District and CM hereunder, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- 6.4.2 Mediation.** If the dispute cannot be settled, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The mediation shall be conducted at a mutually agreeable location. The parties shall mutually select a mediator who is knowledgeable in construction trade and practices, as well as the area of the dispute. After one party serves a request for mediation to the other party, and a mediator has been agreed upon, the parties agree to conclude such mediation within sixty (60) days following the service of the request. Either party may terminate the mediation at any time after the first session, but notice of the termination shall be delivered in person or by mail to the other party's representative and the mediator. If the dispute is not settled at the mediation, it shall be submitted to arbitration in accordance with Paragraph 6.4.3.
- 6.4.3 Binding Arbitration.** If the dispute cannot be settled by mediation within sixty (60) days following the mediation, the parties shall submit the dispute to binding arbitration. The arbitration shall be conducted by the American Arbitration Association in accordance with their construction industry rules that are in effect at the time of the commencement of the arbitration proceeding, and as set forth in this paragraph. The arbitrator shall be knowledgeable in construction trade and practices, as well as the area of the dispute. The arbitrator must decide each and every dispute in accordance with the laws of the

State of California. The award of the arbitrator shall be final as long as the award is rendered in conformity with California statutory and decisional law, and may be entered in any court having jurisdiction. The arbitrators' decision and award shall be subject to judicial review for errors of law by a Superior Court of competent venue and jurisdiction. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure, Section(s) 1283 and 1283.05. All parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding.

6.4.4 Each party shall be responsible for their own costs, or portion thereof, for the dispute resolution, including but not limited to attorney fees, discovery costs, and a pro-rata share of mediation / arbitration fees.

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

6.6 Records.

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

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

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

6.8 Definitions.

6.8.1 Construction Contract. A Contract for Construction awarded by the District to a Contractor for the construction of the Project.

6.8.2 Contractor. A Contractor to the District under a Construction Contract awarded by the District for construction of the Project.

6.8.3 Construction Cost. The Construction Cost of a Project shall be the total of the final contract sums of all separate prime contracts for the Project plus the total value of owner requested changes, plus the CM's General Conditions.

6.8.4 Design Documents. The Drawings, Specifications, calculations and other work product and Instruments of Service prepared by the Architect for the Project. Design Documents include surveys, soils reports and other documents prepared for the Project by a licensed Architect or registered Engineer, whether under contract to the Architect or District.

6.8.5 Architect. The Architects are all architects under contract with the District to provide services for the Project. References to the Architect include its consultants retained to prepare or provide any portion of the Design Documents.

6.8.6 Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or its Subcontractors or suppliers illustrating some portion of the work of the Project.

6.8.7 Site. The physical area for construction and activities relating to construction of the Project.

6.9 Liquidated Damages. If, at the District's discretion, liquidated damages are to be a Part of the Project, then liquidated damages amount shall be specified in the Work Authorization and the language below is to be used in the Work Authorization:

“In the event substantial completion of the Project is delayed and the delay is caused by the CM, the CM Fee shall be reduced by \$_____ for each business day as liquidated damages, but not as a penalty, starting from the scheduled substantial completion date for the Project until construction is substantially complete. The District and CM agree that liquidated damages set forth above shall constitute a reasonable estimate of the amount of damages for the applicable delay in failing to achieve substantial completion of the work by the substantial completion date, and are intended to be the District's sole remedy for the failure to meet the substantial completion date”.

**EXHIBIT B
BILLABLE HOURLY RATE SCHEDULE**

Position	Hourly Rate
President/Executive VP	\$155.00
Project Executive	\$140.00
Production Director	\$140.00
Sr. Project Manager	\$129.50
Superintendent	\$126.00
Safety Director	\$115.00
Project Manager	\$104.50
BIM Manager	\$103.00
Assistant Superintendent	\$100.00
Project Engineer	\$82.00
BIM Technician	\$81.50
Finance Associate	\$80.00
Field Labor	\$78.50
Project Administrative Assistant	\$55.50

Hourly rates listed above include escalation through 12/31/2017 and will be subject to increase thereafter.

EXHIBIT C GENERAL CONDITIONS

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GENERAL CONDITIONS / GENERAL REQUIREMENTS TYPICAL COST RESPONSIBILITY

This table clarifies responsibility for general conditions costs. Not all cost items will be required for all projects. A specific general conditions budget will be developed for each individual project assigned and submitted for approval prior to construction.

Description	Qty	Unit	Unit Cost	Total	General Conditions	Owner Expense	Direct Cost of the Work
Construction Supervision							
President					X		
Executive Vice President					X		
Project Executive					X		
Safety Director					X		
Production Director					X		
Sr. Project Manager					X		
Project Manager					X		
Assistant Project Manager					X		
Superintendent					X		
Area/Assistant Superintendent					X		
Project Engineer					X		
Scheduler					X		
BIM Manager					X		
QA/QC Coordinator					X		
Project Administrative Assistant					X		
Finance Associate					X		
Project Engineer Intern					X		
Field Labor					X		
Construction Materials/Expenses							
Site Management							
Recycling/Trash Dumpster Removal / Hauling (TCC Only)					X		
Final Clean Up					X		
Safety Measures					X		
Safety Equipment					X		
Fire Prevention Equipment (Fire Extinguishers)					X		
Traffic Control / Signage							X
Dust Control							X
Construction Water						X	
Hydrant Meters						X	
SWPPP Implementation					X		
Rumble Plates					X		
QSP Owner Reporting (weekly/quarterly/annual)					X		
Weather Protection					X		X
Temporary Heating					X		X
Caretaker/Security						X	
Temporary Fencing & gates					X		
Parking						X	
Vandalism/Graffiti Repair						X	
Temporary Facilities & Storage							
Office Trailer Rental & Expenses					X		



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GENERAL CONDITIONS / GENERAL REQUIREMENTS TYPICAL COST RESPONSIBILITY

This table clarifies responsibility for general conditions costs. Not all cost items will be required for all projects. A specific general conditions budget will be developed for each individual project assigned and submitted for approval prior to construction.

Description	Qty	Unit	Unit Cost	Total	General Conditions	Owner Expense	Direct Cost of the Work
Office Trailer Mobilization & Set up & tear down					X		
Office Trailer Alarm (includes commissioning)					X		
Storage Bins					X		
Project Signs					X		
Temporary Utilities & Services							
Temp Power Poles & Connection					X		
Monthly Power					X		
Toilets / Hand Wash					X		
Temp Lighting					X		
Extend Temp Utilities					X		
Equipment & Fuel							
Management Fuel					X		
Supervision Fuel					X		
Equipment Fuel							X
Small Tools/Equipment Repair							X
Equipment Rental							X
On Site Transportation					X		
Specialty Services							
Blueprints/Plans (Printing)						X	
Blueprints/Plans (Electronic Conversion/Software)					X		
Photos/Video					X		
Web Camera						X	
3D Laser Scanning					X		
Surveying					X		
C.P.M. Schedule					X		
Material Testing						X	
Special Inspections						X	
Soils Testing						X	
Electronic File Archiving					X		
Communication Services							
Project Telephones / Internet						X	
Cellular Phones					X		
Mobile/In Field Computing (tablets)					X		
Project Management Software (Prolog)					X		
Systems Installation/Network Config. (Trailer)					X		
Office Equipment							
Office Equipment (Computers, Printers, Fax, etc.)					X		
Office Copier					X		
Office Furnishings					X		
Office Supplies					X		
Office Cleaning					X		
Drinking Water					X		



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**GENERAL CONDITIONS / GENERAL REQUIREMENTS
TYPICAL COST RESPONSIBILITY**

This table clarifies responsibility for general conditions costs. Not all cost items will be required for all projects. A specific general conditions budget will be developed for each individual project assigned and submitted for approval prior to construction.

Description	Qty	Unit	Unit Cost	Total	General Conditions	Owner Expense	Direct Cost of the Work
Postage/Shipping					X		
Travel Expenses							
Meetings					X		
Soft Costs							
Owner Purchases						X	
CM Insurance (GL/PL)					X		
Permits/Fees/Licenses						X	