

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
BETWEEN NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
AND
<<FIRM NAME>>**

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AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of the <<DAY (DAY AFTER BRD MTG)>> day of <<MONTH>>, 20<<YEAR>> ("Effective Date"), between the NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT ("District") and <<COMPANY NAME>> ("Construction Manager") (collectively, the "Parties"), for the construction management and administration of construction and/or modernization of <<PROJECT NAME>> (See Exhibit "E" for project(s) description). Project scope and/or projects may be amended from time to time pursuant to the mutual written agreement of both parties.).

The Project or Projects may include multiple components. Any one of the components or combination thereof for any Project may be changed, including terminated, in the same manner as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Construction Manager shall invoice for each Project component separately and District shall compensate Construction Manager for each Project component separately on a proportionate basis based on the level and scope of work completed for each Project component.

That for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. DEFINITIONS

- 1.1. In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect**: The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s). The Architect is a member of the Design Team
 - 1.1.3. **Construction Manager**: The entity listed in the first paragraph of this Agreement, including all Consultant(s) to the Construction Manager.
 - 1.1.4. **Construction Budget**: The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.5. **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Design Team, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Program Manager, the Design Team, the Construction Manager, the cost of the land, rights-of-way, financing or other soft costs which are the responsibility of the District.
 - 1.1.6. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.
 - 1.1.7. **Design Team**: The architect(s), engineer(s), and other designer(s) that the District designates as designing all or a portion of the Project, including all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor.
 - 1.1.8. **DSA**: The Division of the State Architect.

- 1.1.9. **Extra Services:** Extra Services are defined in Article 7 and **Exhibit “B.”**
- 1.1.10. **Fee:** The Construction Manager’s Fee is defined herein, payable as set forth herein and in **Exhibit “D.”**
- 1.1.11. **Program Manager:** Any program manager hired to perform program management services under for the District, including all Consultant(s) to the Program Manager. If no Program Manager is hired by the District for the Project(s), then all references to “Program Manager” shall be read and interpreted as the District.
- 1.1.12. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

- 2.1. **Scope:** Construction Manager shall provide the Services described herein and under **Exhibit “B”** for the Project. The parties agree that the Construction Manager’s Services described herein are based on a construction manager / general contractor structure on the Project(s). The District reserves the right to change this structure including, without limitation, utilizing a construction manager / multiple-prime structure, a design-build structure, or a lease-leaseback structure, each of which the Parties agree may require the Construction Manager’s Fee and Scope as well as certain terms and conditions of this Agreement to be adjusted by an amendment, in writing and signed by both Parties.
- 2.2. **Coordination:** In the performance of Construction Manager’s services under this Agreement, Construction Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District’s Design Team, and the persons responsible for operation of the District’s Labor Compliance Program, if any. If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language notifying the sub-consultant(s) of the District’s Labor Compliance Program, if any.
- 2.3. **Construction Manager’s Services:** Construction Manager shall act as the District’s agent to render the services and furnish the work as described in **Exhibit “B,”** which will commence on the Effective Date and shall terminate when DSA Certification and project close-out has been achieved (“Term” or “Contract Term”), unless terminated or otherwise canceled. Construction Manager’s services will be completed in accordance with the schedule attached as **Exhibit “C”**, subject to extension for delays attributable to causes not within the Construction Manager’s control.

Article 3. CONSTRUCTION MANAGER STAFF

- 3.1. The Construction Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 3.2. The Construction Manager agrees that the following key people in Construction Manager’s firm as noted in **Exhibit “A”** shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be employed by Construction Manager. In either case, District shall be allowed to interview and approve replacement personnel.

- 3.3. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Construction Manager shall within seven (7) days provide a permanent replacement person acceptable to the District. All lead or key personnel for any Consultant must also be designated by the consultant and are subject to all conditions previously stated in this paragraph.
- 3.4. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any such interest shall be employed by Construction Manager.

Article 4. SCHEDULE OF WORK

The Construction Manager shall prosecute the work diligently as described in **Exhibit “B”** in accordance with the schedule attached as **Exhibit “C.”** Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

Article 5. CONSTRUCTION COST BUDGET

- 5.1. The Construction Manager shall develop a cost estimate at each design phase, review architect and third-party cost estimates, and participate in reconciling the Construction Cost Budget with the Design Team, District’s third-party estimator, and the District throughout the design process and construction.
- 5.2. The Construction Cost Budget shall be the total cost to District of all elements of the Project designed or specified by the Design Team. The Construction Cost Budget does not include the compensation of the Construction Manager, the Design Team, sub-consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.
- 5.3. Construction Manager shall work cooperatively with the Design Team during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit “A,”** so that the construction cost of the work designed by the Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District’s written approval. The Construction Manager shall notify the District if it believes the construction cost of the work by the Design Team will exceed the Construction Cost Budget. The Construction Manager, however, shall not perform or be responsible for any design or architectural services.
- 5.4. Evaluations of the District’s Construction Cost Budget, and preliminary and detailed cost estimates prepared by the Construction Manager, represent the Construction Manager’s best judgment as a professional familiar with the construction industry.
- 5.5. If the Procurement Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.6. If any of the following events occur:
 - 5.6.1. If the lowest responsive base bid or proposal received is in excess of ten percent (10%) of the Construction Cost Budget, or
 - 5.6.2. If the combined total of base bid or proposal and all additive alternates come in

fifteen percent (15%) or more under the Construction Cost Budget, or

5.6.3. If the Construction Cost Budget increases in phases subsequent to the Design Development Phase due to revisions in the project scope, then the District, in its sole discretion, has one or a combination of the following alternatives:

5.6.3.1. Give the Construction Manager written approval on an agreed adjustment to the Construction Cost Budget.

5.6.3.2. Authorize the Construction Manager to re-negotiate, where appropriate, or re-bid or re-solicit within three (3) months (exclusive of District and other agencies' review time) at no additional cost to the District.

5.6.3.3. Terminate this Agreement if the Project is abandoned, without further obligation by either party.

5.6.3.4. Instruct the Design Team to revise the drawings and specifications to bring the Project within the Construction Cost Budget for re-bidding or re-soliciting, with Construction Manager's performing cost estimating, value engineering, and/or bidding and solicitation support at no additional cost to the District.

5.7. The Construction Cost Budget shall be reconciled at the completion of each design phase. No adjustment to the Construction Manager's Fee shall result from any of the events described in Section 5.6 without the prior written approval of the District.

Article 6. FEE AND METHOD OF PAYMENT

6.1. District shall pay Construction Manager for all services contracted for under this Agreement based on the Fee and Fee Schedule included within **Exhibit "A"**.

6.2. No increase in Fee will be due from change orders generated during the construction period unless change orders increase the Contract Time beyond **Exhibit "C"** to the extent not caused by Construction Manager's error.

6.3. The Construction Manager's Fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in the performance hereof as indicated in **Exhibit "A"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "B"**. ("Fee")

6.4. Invoicing:

6.4.1. **Hourly, Not-to-Exceed Invoicing.** Construction Manager shall submit one (1) invoice monthly to the District for fees incurred during the billing period and reimbursable expenses (if any). Invoices must reflect the date of the Service, individual performing the Service, description of Services performed, number of hours worked, and hourly rate charged in accordance with **Exhibit "A"**.

6.4.2. **Fixed Fee Invoicing.** Construction Manager shall submit one (1) invoice monthly to the District detailing all the fees associated with the applicable progress to completion percentage in accordance with **Exhibit "A"**, reimbursable expenses (if any), and Extra Services (if any) incurred for the monthly billing period.

6.4.3. **Reimbursable Expenses.** Invoices requesting reimbursement for reimbursable expenses incurred during the billing period must clearly list

items for which reimbursement is requested and be accompanied by proper documentation (e.g. receipts, invoices) including a copy of the District's authorization notice for invoiced items. Invoices requesting payment for overtime must reflect straight time and overtime hours being charged, and must include a copy of the District's written authorization to incur additional overtime expense. The mark-up on any reimbursable expense shall not exceed ten percent (10%).

- 6.4.4. Upon receipt and approval of Construction Manager's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

Article 7. PAYMENT FOR EXTRA SERVICES

- 7.1. District-authorized Services outside of the scope in **Exhibit "B"** or District-authorized reimbursable expenses not included in Construction Manager's Fee are "Extra Services." Any charges for Extra Services shall be paid by the District as described in **Exhibit "D"** only upon certification that the claimed Extra Services were authorized in writing in advance by the District and that the Extra Services have been satisfactorily completed.
- 7.2. A written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the District for written approval before proceeding with any Extra Services.

Article 8. OWNERSHIP OF DATA

- 8.1. Upon termination, abandonment, or suspension, Construction Manager shall deliver to District a complete set of Project records (regardless of medium or format), including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Project records shall be indexed and appropriately organized for easy use by District personnel. All Project records are property of the District, whether or not those records are in the Construction Manager's possession.

Article 9. TERMINATION OF AGREEMENT

- 9.1. If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction Manager may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Construction Manager's actions, errors, or omissions that caused the District to terminate the Construction Manager.
- 9.2. District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager's if there is a termination for convenience.
- 9.3. RESERVED

- 9.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.5. If, at any time in the progress of the Project, the governing board of the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the Fee associated with the Services provided, since the last invoice that has been paid and up to the notice of termination.
- 9.6. If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the Project after suspension, the Construction Manager will take all reasonable efforts to maintain the same Project personnel.

Article 10. INDEMNITY

- 10.1. Construction Manager shall indemnify, defend, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, members, and volunteers ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death ("Claim(s)"), directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Construction Manager's liability resulting from the active or sole negligence or willful misconduct of the Indemnified Parties.
- 10.2. Construction Manager shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s) directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. District shall have the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties.

Article 11. RESERVED

Article 12. RESPONSIBILITIES OF THE DISTRICT

- 12.1. The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.
- 12.2. The District shall provide to the Construction Manager complete information regarding the District's requirements for the Project.
- 12.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 12.4. The District shall, in a timely manner, and with Construction Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Construction Manager's and/or the design professional(s) duties

to recommend or provide same.

- 12.5. The District, its representatives, and consultants shall communicate with the construction contractor either directly or through the Construction Manager.
- 12.6. During the Construction Phase of the Project, the District may require that the construction contractors submit all notices and communication relating to the Project directly to the Construction Manager.
- 12.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 13. LIABILITY OF DISTRICT

- 13.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 13.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays of Construction Manager in its performance hereunder, shall be paid to District by Construction Manager as provided for herein and/or under California law.
- 13.3. 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 Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.
- 13.4. The Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Construction Manager's insurance company on behalf of the District.

Article 14. INSURANCE

- 14.1. Construction Manager shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to the District which will protect Construction Manager and District from claims which may arise out of or result from Construction Manager's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 14.2. **Minimum Scope and limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
 - 14.2.1. **Commercial General Liability.** Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION

DOLLARS (\$3,000,000) aggregate and automobile liability of insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) for bodily injury and property damage liability, per occurrence, including coverage for the following:

- 14.2.1.1. Owned, non-owned and hired vehicles;
- 14.2.1.2. Blanket contractual;
- 14.2.1.3. Broad form property damage;
- 14.2.1.4. Products/completed operations; and
- 14.2.1.5. Personal injury.

14.2.2. **Workers' Compensation and Employers Liability Insurance.** In accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

14.2.3. **Professional Liability.** Including contractual liability, with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) aggregate. Such insurance shall be maintained during the terms of this Agreement and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation. In the event that Consultant subcontracts any portion of the Consultant's duties, Consultant shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this Agreement and ground for immediate termination.

14.3. **Additional Insured.** Article 14, Section 14.2.1 above shall name the District and its officers, agents and employees as additional insureds; and shall state that, with respect to the operations of Construction Manager hereunder, such policy is primary and any insurance carried by the District is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to the District prior to cancellation; and, shall waive all rights of subrogation. Construction Manager shall notify the District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Construction Manager shall deliver to the District certificates of insurance as evidence of compliance with the requirements herein. In the event Construction Manager fails to secure or maintain any policy of insurance required hereby, the District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Construction Manager, and in such event Construction Manager shall reimburse the District upon demand for the cost thereof.

14.4. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

14.5. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding \$25,000 must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

14.6. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 14.6.1. All policies except for the professional insurance policy shall be written on an occurrence form
- 14.6.2. The District, the Construction Manager, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 14.6.3. For any claims related to or arising out of the Construction Manager’s operations on this project, the Construction Manager’s insurance coverage shall be primary and any insurance or self-insurance maintained by the Additional Insureds shall be noncontributing with respect to Construction Manager’s insurance coverage.
- 14.6.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 14.6.5. The Construction Manager’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 14.6.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 14.7. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.
- 14.8. **Verification of Coverage:** Construction Manager shall furnish the District with:
 - 14.8.1. Certificates of insurance showing maintenance of the required insurance coverage;
 - 14.8.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.

Article 15. NONDISCRIMINATION

- 15.1. Construction Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical disability, sex, or sexual orientation of such person. Construction Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 16. COVENANT AGAINST CONTINGENT FEES

- 16.1. Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this

warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 17. ENTIRE AGREEMENT/MODIFICATION

- 17.1. This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Construction Manager shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

Article 18. NON-ASSIGNMENT OF AGREEMENT

- 18.1. In as much as this Agreement is intended to secure the specialized services of the Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Construction Manager and any such assignment, transfer, delegation or sublease without Construction Manager's prior written consent shall be considered null and void.

Article 19. LAW, VENUE

- 19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 20. ALTERNATIVE DISPUTE RESOLUTION

- 20.1. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties. Pending resolution of a dispute, Construction Manager agrees to continue the work diligently to completion. If the dispute is not resolved, Construction Manager agrees it shall neither rescind this Agreement nor stop the progress of the work and Services, but Construction Manager's sole remedy shall be to submit such controversy to arbitration or other agreed upon dispute resolution process, after the Project has been completed, and not before.

Article 21. SEVERABILITY

- 21.1. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 22. EMPLOYMENT STATUS

- 22.1. Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such services.
- 22.2. Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Construction Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (and offsetting any amounts already paid by Construction Manager which can be applied as a credit against such liability).
- 22.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 23. WARRANTY OF CONSTRUCTION MANAGER

- 23.1. Construction Manager warrants that it has the necessary license for a Construction Manager as provided for in Government Code section 4525, et seq.; that it has expertise and experience in construction supervision; bid evaluation; project scheduling; cost benefit analysis; claims review and negotiation; and general management and administration of construction projects.
- 23.2. Construction Manager covenants to provide its best skill and judgment in furthering the

interests of the District in the management of the construction of the Project. Construction Manager agrees to furnish efficient business administration and management services and to perform in a manner consistent with the interests of the District.

- 23.3. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.
- 23.4. Construction Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). Since the Construction Manager is performing work as part of an applicable “public works” or “maintenance” project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Construction Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.
- 23.5. This Project(s) is a public works project as defined in Labor Code section 1720. To the extent applicable, the Construction Manager and all subcontractors performing the work for the Project(s) must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations (“DIR”) and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of this Agreement. Failure to comply with these requirements shall be deemed a material breach of this Agreement and grounds for termination for cause. To the extent applicable, the Construction Manager and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

Article 24. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS

- 24.1. Construction Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

Article 25. COMMUNICATIONS / NOTICE

- 25.1. Communications between the Parties to this Agreement may be sent to the following addresses:

| <u>District</u> | <u>Construction Manager</u> |
|---|---|
| North Orange County Community College District | <<Legal Name of Firm>> |
| 1830 W. Romneya Drive | <<Address>>, |
| Anaheim, CA 92801 | <<City, State Zip>> |
| Attn: Jenney Ho, District Director, | Attn: <<Name>> |
| Purchasing | Telephone: <<#>> |
| Telephone: (714) 808-4776 | Email: <<email>> |

| | |
|---|--|
| Email: jho@nocccd.edu | |
|---|--|

The Parties, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Article 26. OTHER PROVISIONS

- 26.1. The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.
- 26.2. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California community districts at or around the same time and in or around the same geographic area of the District.
- 26.3. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 26.4. No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, or contractors are to use drugs on these sites.
- 26.5. Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 26.6. COVID-19. Construction Manager shall at all times comply with all federal, state, and local directives, ordinances, laws, health orders and regulations and District guidelines including, but not limited to, OSHA and Cal-OSHA concerning COVID-19. This may require scheduling site visits by appointment only, the ability to conduct business meetings via online or the internet, wearing required face mask protection and maintain social distancing guidelines if attendance on site is necessary to conduct essential business related to Services described herein.
- 26.7. Electronic and Digital. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Any such counterpart containing an electronic, digital or facsimile signature shall be deemed an original. Execution of this agreement, signifies the

parties mutual consent to conduct transactions electronically. Pursuant to the California Uniform Electronic Transactions act ("UETA") (Cal. Civic Code § 1633.1 et seq.) and California Government Code §16.5, the District reserves the right to conduct business electronically, unless otherwise communicated by the District to stop such electronic transactions, including without limitation to the use of electronic or digital signatures.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated below.

CONSTRUCTION MANAGER:

DISTRICT:

<<Legal Name of Firm>>

North Orange County Community College District

Name: _____

Name: Jenny Ho, District Purchasing Director

Signature: _____

Signature: _____

COPIES TO:

GENERATING OFFICE
Cypress College – Campus Capital Projects
capitalprojects@cypresscollege.edu

EXHIBIT “A” – FEE

1. Compensation – The Fee shall not exceed the amount set forth below, including all billed expenses, without advance written approval of the District. The total Not-to-Exceed fee is <<AMOUNT IN WORDS>> DOLLARS (\$<<AMOUNT IN NUMBERS>>). Included in this not-to-exceed fee is the following:

1. Hourly Not-to-Exceed Fee: The District shall compensate the Construction Manager for performing the Pre-Procurement and Procurement Phases, as described in Exhibit “A” an hourly, not-to-exceed fee of <<AMOUNT IN WORDS>> DOLLARS (\$<<AMOUNT IN NUMBERS>>). Billing shall be submitted in accordance with Article 6.
2. Fixed Fee: The DISTRICT shall compensate the Construction Manager for performing the Construction and Closeout Phases, as described in Exhibit “A” a fixed fee of <<AMOUNT IN WORDS>> DOLLARS (\$<<AMOUNT IN NUMBERS>>) in accordance with the fee schedule below. Billing shall be submitted in accordance with Article 6.
3. Allowance: Included in the aforementioned fee is an allowance of <<AMOUNT IN WORDS>> DOLLARS (\$<<AMOUNT IN NUMBERS>>) for Extra Services and/or reimbursable expenses subject to the District’s approval in accordance with Articles 6 and 7.

2. Fixed Fee Schedule

| PERCENTAGE OF TOTAL FIXED FEE PER PHASE | | |
|---|----|--------------|
| Phase | | Phase Amount |
| Construction Phase | | 90% |
| Project Completion Phase (Close Out) - (Divided as indicated below) | | 10% |
| Sign Off Punch List | 3% | |
| Receive and Review All M&O Documents | 3% | |
| Filing All DSA Required Close Out Documents | 2% | |
| Receiving DSA Close Out Certification | 2% | |

3. Hourly Rates / Key Personnel – The following rates, which include overhead, administrative cost, and profit shall be utilized in arriving at the fee for Hourly, Not-to-Exceed Services and Extra Services and shall not be changed for the term of the Agreement.

| Job Title | Key Personnel Name | Hourly Rate |
|-----------|--------------------|-------------|
| | | |
| | | |
| | | |
| | | |
| | | |

EXHIBIT “B” – RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager shall provide professional services necessary for completing the following:

1. BASIC SERVICES

- 1.1. **General:** Monitor and advise the District as to all material developments in the Project. Construction Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for the Project. Construction Manager shall be the focal point of all communication to and from construction contractor(s) and shall be copied on all communications between District and its Design Team during Construction Phase.
- 1.2. **Scheduling:** Prepare methods to track and report on construction schedule status for the Project. Construction Manager shall use Primavera software (or equal) to develop master construction schedules and milestone schedules for the Project, and shall report on same each month to the District. District shall have full access rights to the scheduling software used by Construction Manager.
- 1.3. **Coordination with Design Team, District, and Others:** Construction Manager shall coordinate with the Design Team, District, and other District Consultants on a numbering and indexing system to coordinate and track proposed change orders, change orders, requests for information, etc.
- 1.4. **Communications to Board:** The Construction Manager may be required to attend select District’s governing board meetings to provide updates. In addition, the Construction Manager may be required to attend District property committee meetings, Citizen Bond Oversight Committee (“COC”) meetings, or other Project-related meetings within the campus or community.
- 1.5. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.6. Advise the District as to the regulatory agencies or authorities that have jurisdiction over the Project, and as to coordination with and implementation of the requirements of the regulatory agencies or authorities, including without limitation the Division of the State Architect.
- 1.7. Contract for or employ, at Construction Manager’s expense, sub-consultant(s) to the extent deemed necessary for Construction Manager’s services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement.
- 1.8. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project, including but not limited to: Design Team, program manager, third party cost estimator, commissioning agent, geotechnical engineer, environmental engineer, project inspector, and special inspector.
- 1.9. Chair, conduct and take minutes of construction meetings during the course of the projects. Construction Manager shall invite the District and/or its representative to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings.
- 1.10. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement

as well as coordination with all Master Plans, facility design standards, studies, reports and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.

- 1.11. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.
- 1.12. Maintain project records (both hard copy and electronic) in accordance with the District's project filing system. All records, including but not limited to: correspondence, constructability reviews, value engineering reports, DSA forms, RFIs, change orders, and payment applications shall be provided to the District on a monthly basis for an accurate reflection of the project files. All files shall be transmitted to the District at the project completion.
- 1.13. Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.
- 1.14. Prepare a bidders list for each bid package for approval by District.
- 1.15. Assist the District in pre-qualifying bidders if prequalification is desired by the District. This service shall include the following:
 - 1.15.1. Preparation and distribution of prequalification questionnaires;
 - 1.15.2. Receiving and analyzing completed questionnaires;
 - 1.15.3. Interviewing possible bidders, bonding agents and financial institutions; and
 - 1.15.4. Preparing recommendations for the District.
- 1.16. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.17. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project, if requested.
- 1.18. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved Contract Documents from the Design Team and the Construction Manager shall arrange for printing, binding, wrapping, and delivery to the bidders. The Construction Manager shall not be responsible for the cost of printing Bid Documents. The Construction Manager shall maintain a list of bidders receiving Contract Documents.
- 1.19. Prepare an estimate of costs for all addenda and submit the estimate to the District for approval. The Construction Cost Budget and other Project costs shall be adjusted as indicated in the Agreement. Construction Manager shall not be entitled to an adjustment of its Fee as a result of any such addenda without the prior written approval of the District.
- 1.20. Provide and maintain a management team on the Project sites during construction.
- 1.21. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 1.22. Comply with any storm water management program that is approved by the State and County and applicable to the Project, at no additional cost to the District.
 - 1.22.1. Ensure that all Project contractor(s), Project sub-contractor(s) and

Construction Manager's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.

- 1.23. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all contractors and their subcontractors and Design Team and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 1.24. Construction Manager must be familiar with the District's Facility Design Standards (FDS) and assist the District in review of drawings for conformance to the FDS.
- 1.25. Construction Manager is NOT responsible for the following scopes of work or services, but shall assist the District in procuring these scopes of work or services when required and Construction Manager shall coordinate and integrate its work with any scopes of work or services provided by District related to the following:
 - 1.25.1. Ground contamination or hazardous material analysis.
 - 1.25.2. Any asbestos testing, design or abatement.
 - 1.25.3. Compliance with the CEQA, except that Construction Manager shall provide current information for use in CEQA compliance documents.
 - 1.25.4. Historical significance report.
 - 1.25.5. Soils investigation.
 - 1.25.6. Geotechnical hazard report.
 - 1.25.7. Topographic survey, including utility locating services.
 - 1.25.8. Other items specifically designated as the District's responsibilities under this Agreement.
 - 1.25.9. As-built documentation from previous construction projects.

2. PRECONSTRUCTION PHASE

- 2.1. Provide reports and/or analysis, as requested by the District, such as but not limited to: construction type comparison, market trend changes, risk analysis, schedule analysis, etc.
- 2.2. Attend bi-weekly project meetings with District and Design Team.
- 2.3. **Value Engineering.** Provide value engineering at each phase of the design process including: Schematic Design Phase, 100% Design Development Phase, 60% Construction Document Phase, and 100% Construction Document Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the Design Documents and shall be coordinated with the District's design guidelines and the Design Team. The Construction Manager will prepare a value engineering report that will document the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering

recommendations and cost/benefit analysis of those recommendations.

2.3.1. The Construction Manager shall organize and conduct a value engineering workshop for the Project.

2.3.1.1. The Construction Manager shall invite the District and Design Team to participate in the workshop.

2.3.1.2. Prior to the value engineering workshop, the Construction Manager and the Design Team will provide all participants with a preliminary list of value engineering items for discussion and order of magnitude estimates of cost both for design and construction.

2.3.1.3. The workshop will consist of an initial Project design review, research of alternative solutions, and evaluations of alternatives. The workshop will conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.

2.3.1.4. The Construction Manager will incorporate the workshop findings into one complete report for submittal to the District and Design Team.

2.3.2. Value engineering is expected to be an ongoing process to determine ways to build a more efficient and economical Project without reducing its quality and meet its goals and objectives.

2.3.3. Construction Manager shall keep a running log of all potential value engineering items and their associated cost savings. Cost savings shall be reconciled throughout the design phase.

2.4. **Constructability Reviews.** Perform constructability reviews and site verification of the Project at 100% Schematic Design, 100% Design Development, 60% Construction Documents, and 100% Construction Documents. The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided as written notations on the documents via Bluebeam to the District. The Construction Manager shall also make recommendations to the District with respect to constructability, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work and separate bid trade packages. However, the Construction Manager is not responsible for providing, nor does the Construction Manager control, the Project design or the contents of the design documents. The Construction Manager's actions in reviewing the Project design and design documents and in making recommendations as provided herein are advisory only to the District. The Design Team members are not third party beneficiaries of the Construction Manager's work described in this paragraph and the Design Team members remains solely responsible for the contents of design drawings and design documents.

2.5. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by District, in coordination with the Design Team and advise and consult with District. Construction Manager shall review and approve construction contractor(s)' schedules, but shall not dictate any construction contractor(s)' means and/or methods of performance.

2.6. Develop mockup project construction schedule and evaluate sequencing and logistics including traffic management plan. Construction schedule needs to take the College's schedule into account to ensure activities for construction don't interrupt planned campus activities/events.

- 2.7. Coordinate with District staff, construction contractor(s), and District site staff, and develop a logistics plan(s) including, but not limited to: parking, traffic, path of travel, fencing, and laydown areas for possible inclusion into the bidding documents.
- 2.8. Establish schedules for the soils consultant, for any hazardous materials testing and other consultants, and review costs, estimates, and invoices of each.
- 2.9. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.
- 2.10. Attend all planning, programming and master site planning meetings relating to the Project, as requested by the District.
- 2.11. Provide updated cost estimates for the Project at 100% Schematic Design, 100% Design Development, 60% Construction Documents, and 100% Construction Documents Phase as directed by District; coordinate with the Design Team and reconcile cost estimates with Design Team and District's third-party estimator.
- 2.12. Advise District regarding "green building" technology and lifecycle costing.
- 2.13. Assist District in selecting and retaining special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, commissioning agent, surveyors, and testing laboratories, and coordinate their services.

3. PRE-PROCUREMENT PHASE

- 3.1. Update project bid award and construction schedule for the Project.
- 3.2. Construction Manager shall in consultation with District and according to District approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 3.3. Work with the District and Design Team to modify or add to standard, special, or general conditions for Contract Documents that might be needed for unique Project or bid package conditions, for District's approval.
- 3.4. Work with the Design Team to separate the construction phase for the Project into bid packages.

4. PROCUREMENT PHASE

- 4.1. Conduct pre-bid / pre-proposal conferences to familiarize construction contractors with the bidding or procurement documents, and any special systems, materials or methods and with Project procedures. Receive questions from bidders or proposers, referring questions to the Design Team and District as required. Coordinate with the Design Team to respond to bidder or proposer questions by addenda.
- 4.2. Prepare bid or proposal analyses and advise District on compliance of bidders or proposers with District requirements and solicitation requirements. Report and recommend to District after review and evaluation. Make recommendations to District for

prequalification of bidders and proposers and award of contracts or rejection of bids or proposals.

- 4.3. Conduct pre-award conferences with successful construction contractors.
- 4.4. Schedule and conduct preconstruction meetings; maintain, prepare, and distribute minutes.
- 4.5. Update construction logistics plan(s).
- 4.6. Ensure that construction contractor(s) timely obtain all required permits, inspections, and approvals necessary to complete the Project.

5. CONSTRUCTION PHASE

- 5.1. Cost Controls: Prepare and implement methods to budget and track all expenditures on the Project.
- 5.2. Administer the construction contracts.
- 5.3. Monitor the construction contractor(s) to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the plans and specifications, to the satisfaction of the District. Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 5.4. Assist District in resolving issues pertaining to the plans and specifications and the development of District standards. Assist District in review and approval of requests for substitution of materials or any deviation from the plans and specifications that are made by the Design Team or construction contractor(s).
- 5.5. Coordinate work of the construction contractor(s) and effectively manage the Project to achieve the District's objectives in relation to cost, time and quality. Construction Manager shall not, however, be responsible for directing construction contractor(s)' means and methods.
- 5.6. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction contractor(s), and the Design Team.
- 5.7. Attend Project job site meetings.
- 5.8. Ensure that construction contractor(s) provide construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. Construction Manager shall review construction contractor(s)' construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where construction contractor(s)' construction schedules do not so conform, Construction Manager will take appropriate measures to secure compliance, subject to District approval.
- 5.9. Ensure construction contractor(s)' compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. Construction Manager shall incorporate construction

- contractor(s)' construction schedule updates and revisions into the Project construction schedule.
- 5.10. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when construction contractor(s) fails to fulfill contractual requirements.
 - 5.11. The Construction Manager may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The Construction Manager shall provide to the Design Team and the District copies of these authorizations.
 - 5.12. Develop, implement, and coordinate with assistance from the District, the Design Team, and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by construction contractor(s) for progress and final payments for all construction contracts.
 - 5.13. The Construction Manager shall review the construction contractor(s)' Safety Program submittals and review and document the implementation of the construction contractor(s)' Safety Program. The Construction Manager shall report any observed deviations from the construction contractor(s)' Safety Program and applicable CalOSHA requirements to the appropriate construction contractor personnel and follow-up with a written safety notice to both the construction contractor and the District. Neither the Construction Manager nor the District shall be responsible for or have any liability for construction contractor(s) failure to provide, comply with or enforce said safety programs.
 - 5.14. Record the progress of the Project by a daily log and historical progress of the Project through photographs.
 - 5.15. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.
 - 5.16. Negotiate construction contractor's proposals and review with the District. Ensure construction contractor's proposals have substantiated back-up and that proposed costs are reasonable. Review costs for time and materials. Prepare change orders and submit a pencil draft to District for review prior to circulating for signatures, with District and Design Team's input as needed, for approval by the District's governing board. Coordinate with Construction contractor(s) and Design Team to provide District change order documentation in standard District format. Assist District to prepare reports for the District's governing board on change orders and the status of all Project contingency funds. Follow the District's board calendar with timelines, deadlines, and approval process.
 - 5.17. Maintain a change order log for the Project and implement procedures to expedite processing of change orders.
 - 5.18. Implement procedures for issues identification and resolution of actual or potential claims of construction contractor(s) and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
 - 5.19. Provide ongoing, as needed, assistance to the District in oversight and invoice review of special consultants including, without limitation, project inspectors, hazardous materials consultants, geotechnical engineers, commissioning agent, surveyors, and testing laboratories, and coordinate their services.
 - 5.20. Assist District in review and approval of uses of any Project contingency fund.

- 5.21. In conjunction with the Inspector and the Design Team, monitor work of the construction contractor(s) to determine that the work is being performed in accordance with the requirements of the Construction Documents and all DSA requirements. As appropriate, with assistance from the Design Team and the Inspector, make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the construction Contract Documents.
- 5.22. Construction Manager shall ensure that as-built drawings are accurate and are timely submitted by the construction contractor(s).
- 5.23. To protect District against defects in the work of the construction contractor(s), Construction Manager shall establish and implement a quality control program to monitor the quality and workmanship of construction for conformity with:
 - 5.23.1. Accepted industry standards;
 - 5.23.2. Applicable laws, rules, or ordinances; and
 - 5.23.3. The design documents and Contract Documents;
 - 5.23.4. Where the work of a construction contractor does not conform as set forth above, Construction Manager shall, with the input of the Design Team:
 - 5.23.4.1. Notify the District of any non-conforming work observed by the Construction Manager;
 - 5.23.4.2. Reject the non-conforming work; and
 - 5.23.4.3. Take any and all action(s) necessary to compel the construction contractor(s) to correct the work.
- 5.24. Maintain logs of requests for information (“RFI”) and complete records of all RFIs received from construction contractor(s), based on information obtained from the Design Team. File RFIs electronically per District’s standard filing procedure.
- 5.25. Establish and implement procedures, in collaboration with the District and the Design Team, for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction contractor(s) to the Design Team for review and approval. Maintain submittal and shop drawing logs.
- 5.26. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 5.27. Prepare and distribute monthly project status reports for the Project, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, status of RFIs, change orders, and submittals.
- 5.28. Maintain at the Project site and, if necessary at the District Facilities office, a current copy of all approved documents, drawings, specifications, addenda, change orders, meeting minutes, RFIs, change order requests, construction change directives, and other modifications and drawings marked by the construction contractor(s) to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction contractor(s).

Construction Manager shall file all documents electronically and in hard copy in accordance with the District's filing procedures. At the completion of the Project, deliver all such records to District. Construction contractor(s) and the Design Team share responsibility to prepare "Record Drawings" and "As-Built" documents.

6. PROJECT COMPLETION

- 6.1. The Construction Manager shall observe, with District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the construction contractor(s), ensure District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative in conjunction with the District's commissioning agent.
- 6.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager shall, in consultation with the District, Design Team, and Inspector, ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction contractor(s). The Construction Manager shall coordinate construction contractors' performance and completion of punch list work. The Construction Manager shall review the completed punch list work with the District, Design Team, and Inspector. The Construction Manager shall ensure, with input from these entities, that the completed punch list work complies with applicable provisions of the Construction contract(s).
- 6.3. If the construction contractor(s) refuses to make punch list work corrections, Construction Manager shall provide pricing for each punch list item to assist the District in being able to determine the proper amount to back-charge the construction contractor(s).
- 6.4. The Construction Manager shall determine, with the District, Design Team, and Inspector, when the Project or designated portions thereof are complete.
- 6.5. The Construction Manager shall conduct, with the District, Design Team, and Inspector, final inspections of the Project or designated portions thereof. The Construction Manager shall notify District of final completion.
- 6.6. The Construction Manager shall consult with the District, Design Team, and Inspector and shall determine when the Project and the construction contractor's work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the construction contractors.

7. FINAL DOCUMENTS

- 7.1. The Construction Manager shall review, monitor and approve all as built drawings, maintenance and operations (M&O) manuals, warranty/guarantee certificates, and other closeout documents to be sure all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.
- 7.2. The Construction Manager shall use its best efforts and all due diligence to ensure all

Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or DSA's approval of the Project."

8. WARRANTY

- 8.1. The Construction Manager shall implement a Warranty Inspection and Warranty Work procedure that all construction contractors are to follow. The procedure shall include a twenty-four (24) month call back period and a final warranty inspection **twenty-three (23) months** after Project completion to inspect the Project and identify any outstanding warranty work.

9. AUDIT

- 9.1. Construction Manager shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Construction Manager transacted under this Agreement. Construction Manager shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Pursuant to Government Code Section 8546.7, this Agreement shall be subject to examination and audit of the State Auditor as specified in the code. Construction Manager shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Construction Manager and shall conduct audit(s) during Construction Manager's normal business hours, unless Construction Manager otherwise consents.

EXHIBIT “C” – SCHEDULE OF WORK

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

EXHIBIT “D” – CRITERIA AND BILLING FOR EXTRA SERVICES

[THESE TASKS WILL BE “EXTRA SERVICES” FOR ANY HOURLY / T&M FORM OF COMPENSATION]

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District as indicated in the Agreement. The rates identified in **Exhibit “A”** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services:

1. Providing services required because of significant documented changes in the Project after the Design Development phase initiated by the District, including but not limited to size, quality, complexity, the District’s schedule, or method of bidding or negotiating and contracting for construction.
2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
3. Providing services made necessary by the default of construction contractor(s), or by major defects or deficiencies in the work of the construction contractor(s), or by failure of performance of the District’s consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the Project involved.
4. The selection, layout, procurement or specification at the District’s request of movable furniture, furnishings, equipment or other articles that are not included in the Contract Documents.
5. Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.
6. Preparing to serve or serving as a witness in connection with any public hearing (except for a construction contractor’s hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is party thereto.
7. Performing technical inspection and testing.
8. Providing any other services not otherwise included or reasonably inferred by the terms in this Agreement or not customarily furnished in accordance with generally accepted scope of project construction management practice.

EXHIBIT “E” – PROJECT DESCRIPTION

<INSERT SPECIFIC PROJECT DESCRIPTION>

EXHIBIT "F" – ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION

(Public Contract Code section 3006)

_____ PROJECT between **North Orange County Community College District**
("District" or "Owner") and _____ ("Construction Manager") ("Contract" or "Project").

I _____, _____
Name Name of Construction Manager

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract on this project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____, _____
Name Name of Construction Manager

certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I _____, _____
Name Name of Construction Manager

Have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Construction Manager: _____

Signature: _____

Print Name: _____

Title: _____

EXHIBIT “G” – IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code § 2204)

PROJECT AT CYPRESS COLLEGE between NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT (“DISTRICT”) and (“CONSTRUCTION MANAGER”) (“CONTRACT” or “PROJECT”).

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

CONSTRUCTION MANAGER shall complete **ONLY ONE** of the following two paragraphs.

- ☐ 1. CONSTRUCTION MANAGER total Fee is less than one million dollars (\$1,000,000).

OR

- ☐ 2. CONSTRUCTION MANAGER total Fee is one million dollars (\$1,000,000) or more, but CONSTRUCTION MANAGER is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code § 2203(b), and CONSTRUCTION MANAGER is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

- ☐ 3. CONSTRUCTION MANAGER total Fee is one million dollars (\$1,000,000) or more, but the DISTRICT has given prior written permission to CONSTRUCTION MANAGER to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the DISTRICT is included with this CONTRACT.**

I certify that I am duly authorized to legally bind the ARCHITECT / ENGINEER to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of CONSTRUCTION MANAGER: _____

Signature: _____

Print Name: _____

Title: _____