

**MILLBRAE ELEMENTARY SCHOOL DISTRICT  
REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P) # 2025-2026.002  
PROGRAM MANAGEMENT SERVICES**

**NOTICE IS HEREBY GIVEN** that Millbrae Elementary School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide comprehensive program management ("PM") services for the District's Measure J Bond Program and projects thereunder.

Respondents to this Request for Qualifications and Proposals ("RFQ/P") (each a "Respondent") should mail or deliver five (5) bound copies, one (1) unbound copy, and one (1) electronic copy on flash drive of their Statement of Qualifications ("SOQ") and Proposal (together, "Submittal"), as further described herein, labeled "Submittal for Program Management Services" to:

MILLBRAE ELEMENTARY SCHOOL DISTRICT  
555 Richmond Avenue  
Millbrae, CA 94030  
ATTN: Mary Pollett  
RFQ/P#2025-2026.002

**ALL RESPONSES ARE DUE BY 4:00 P.M., ON AUGUST 11, 2025.** Any Submittal received after that date and time will not be accepted and will be returned unopened. **FAXED OR EMAILED RESPONSES WILL NOT BE ACCEPTED.**

**The RFQ/P can be located on the District website at:**

**<https://www.millbraeschooldistrict.org/Page/546>**

Each Submittal must conform and be responsive to the requirements set forth in this RFQ/P. The District reserves the right to waive any informalities or irregularities in received Submittals. Further, the District reserves the right to reject any and all Submittals and to negotiate contract terms with one or more Respondents for one or more of the work items. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified.

If you have any questions regarding this RFQ/P, please email **Mary Pollett**, at **[mpollett@millbraesd.org](mailto:mpollett@millbraesd.org)**, before 12:00 p.m. on August 1, 2025. Answers will be posted on the District website by 12:00 p.m. on August 5, 2025.

### **RFQ/P RESPONSE SCHEDULE SUMMARY**

The District reserves the right to change the dates on the schedule without prior notice.

<b>DATE / TIME</b>	<b>EVENT</b>
July 21, 2025	Release of RFQ/P.
August 1, 2025, at 2:00 p.m.	Deadline for submission of written questions to District concerning RFQ/P.
August 11, 2025, at 2:00 p.m.	<b>Deadline for all Submittals in response to RFQ/P.</b>
Week of August 18, 2025	Release of short-listed Respondents.
Week of August 18, 2025	Interviews of short-listed Respondents.
Anticipated by August 29, 2025	Notification to Respondent(s) selected for contract negotiation.

## **I. BACKGROUND**

Millbrae Elementary School District ("District") is a TK-8 district situated in northern San Mateo County adjacent to the San Francisco International Airport. The District operates five schools: Green Hills Elementary, Lomita Park Elementary, Meadows Elementary, Spring Valley Elementary and Taylor Middle School within the city of Millbrae.

Briefly stated, the District is seeking experienced and proven firms to provide program management services for District's Measure J Bond Program and projects thereunder. This RFQ/P defines the services sought and generally outlines the District's requirements.

## **II. SCOPE OF SERVICES**

Any firm selected based on this RFQ/P process must be capable of providing full program management services through all phases of any and all selected projects under the Measure J Bond Program in accordance with District's form of Agreement for Program Management Services ("Agreement"), attached hereto as **APPENDIX A**. The detailed scope of services is set forth at **Exhibit A** to District's form Agreement.

It is vital that the selected firm(s) have the ability to work cooperatively and effectively with the District's Board of Education ("Board"), Superintendent, staff and the various school site planning committees, and the community. The District places great emphasis on facilitation and communication with all of its stakeholders. The firm(s) retained by the District will be part of the District team and will be expected to operate in a team environment.

## **III. LIMITATIONS**

The District reserves the right to contract with any person or entity responding to this RFQ/P. The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing a response to this RFQ/P.

The Submittals and any other supporting materials submitted to the District in response to this RFQ/P, will not be returned and will become the property of the District unless portions of the material are designated as proprietary at the time of the Submittal and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, Submittals shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an agreement, or (2) the District has rejected all Submittals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any Submittal.

## **IV. FULL OPPORTUNITY**

No Respondent will be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person in any consideration leading to the award of the contract. The District hereby affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), and Disabled

Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to submit in response to this RFQ/P.

## **V. RESTRICTIONS ON LOBBYING AND CONTACTS**

From the period beginning on the date of the issuance of this RFQ/P and ending on the date of selection, no person or entity submitting in response to this RFQ/P, nor any officer, employee, representative, agent, or consultant representing such a person or entity, shall contact through any means or engage in any discussion regarding this RFQ/P, the evaluation/selection process, or the award of any contract with any member of the District, Board of Education, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent.

## **VI. SUBMITTAL REQUIREMENTS**

### **A. Format Requirements**

Submittals shall be no more than twenty (20) single-sided pages or ten (10) double-sided pages in length. This page limitation excludes front/back covers, divider sheets/tabs, and allowed appendices. Submittals containing more than the authorized number of pages will not be considered. Material must be in 8-1/2 x 11-inch format with no less than 11-point font size. Submittals shall include divider tabs labeled with boldface headers below; e.g. the first tab would be entitled "Cover Letter", the second tab would be entitled "Business Information", etc.

Provide five (5) bound copies, one (1) unbound copy, and one (1) electronic copy of the Submittal. The electronic copy will only be accepted via flash drive in the following programs: Microsoft Office Suite or PDF. The unbound copy shall be marked "Copy for Reproduction", and shall be formatted as follows:

- No divider sheets or tab.
- Pages with proprietary information removed.
- A cover sheet listing Respondent's name, the total number of pages, and identifying those pages that were removed due to proprietary information.

### **B. Content Requirements**

#### **1. Cover Letter** (maximum of 2 pages)

- Provide a letter of introduction signed by an authorized officer of Respondent. If Respondent is a joint venture, duplicate the signature block and have a principal or officer also sign on behalf of each party to the joint venture.
- Include a brief description of why Respondent is well suited for, and can meet, the District's needs.
- Clearly identify the individual(s) who are authorized to speak for Respondent during the evaluation process.
- Include one (1) of the follow statements:

*"[INSERT RESPONDENT'S NAME] received a copy of the District's form of Agreement for Program Management Services ("Agreement") attached as*

*APPENDIX A to the RFQ/P. [INSERT RESPONDENT'S NAME] has reviewed the Agreement, including the indemnity provisions and insurance provisions contained therein. If given the opportunity to contract with the District, [INSERT RESPONDENT'S NAME] has no objections to the use of the Agreement."*

OR

*"[INSERT RESPONDENT'S NAME] received a copy of the District's form of Agreement for Program Management Services ("Agreement") attached as APPENDIX A to the RFQ/P. [INSERT RESPONDENT'S NAME] has reviewed the Agreement, including the indemnity provisions and insurance provisions contained therein. If given the opportunity to contract with the District, [INSERT RESPONDENT'S NAME] has objections to the use of the Agreement, listed as follows: [IDENTIFY ALL OBJECTIONS; REFER TO APPENDIX (TAB 9) IF NEEDED]."*

- Certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.
- Certify that no official or employee of Respondent has ever been convicted of an ethics violation.
- Include verification as follows: "By virtue of submission of this Submittal, [INSERT RESPONDENT'S NAME] declares that all information provided is true and correct."

## **2. Business Information**

- Company name.
- Address.
- Telephone and fax.
- Website.
- Name and email of main contact.
- Federal Tax I.D. Number.
- License Number.
- Type of organization (e.g., corporation, partnership, etc.). If a joint venture, describe the division of responsibilities between participating firms, offices (location) that would be the primary participants, and percentage interest of each firm.
- A brief description and history of the firm, including number of years the firm has been in business and date firm was established under its given name.
- Number of employees.
- Location of office where the bulk of services solicited will be performed.
- State of California certification for Respondent of Small Business or Disabled Veteran Business Enterprise status, if any.

### **3. Relevant Qualifications**

- Provide a statement demonstrating your firm's or team's ability to accomplish the scope of services in a comprehensive and thorough manner with an aggressive schedule.
- Describe your firm's approach to and experience with state and other agencies involved in the planning, design, and construction process for TK-12 and other school projects, in particular, the State Department of Education, the Division of the State Architect, and the Office of Public School Construction.
- Describe your firm's capabilities in valuating/reporting on program status to District staff, Board, and the public.
- Describe your firm's experience with design-build and lease-leaseback projects, and energy savings projects.
- Demonstrate your firm's flexibility in adapting to the changing needs and priorities of a TK-12 school district.
- Describe how your firm approaches modernization versus new construction projects.
- Describe your firm's approach to quality control/assurance procedures, including ability to monitor consultants.
- Identify established methods and approaches utilized by your firm to successfully meet completion deadlines and provide examples demonstrating effective use of stated methods and approaches.
- Provide a statement of your firm's work plan including your firm's present workload and number of current projects, and where possible, projected workload for the coming two (2) years, which should include available staff.
- Describe your firm's technical capabilities for program planning, condition assessments, scheduling, budgeting, cost estimating review and reconciliation, document control, and public information websites. Detail your firm's budgeting software and if District staff has the ability to inherit and maintain the system once established.

### **4. Relevant Experience**

- Program Management. Provide information about prior program management services furnished by your firm in the last ten (10) years on a minimum of three (3) K-12 bond programs, and list the following for each program:
  - Program name and location.
  - District name and name of contact person, title, telephone number, and email address to be contacted for a reference.
  - Main program elements.
  - Size of program.
  - Key individuals of the firm involved and their roles in the program.

- Briefly state relevance of programs included for consideration in this RFQ/P.

## **5. Team Summary**

- Identify key team members, including subconsultants, and state their qualifications relevant to the scope of services for the project(s). Describe how subconsultants are generally used by your firm and to what extent work is performed in-house versus by such subconsultants.
- Each Submittal must include evidence that the Respondent is legally permitted and properly licensed for the scope of work and to conduct business in the State of California.
- The District expects that the team shall remain intact through the duration of the project(s). If a team member must leave, the District reserves the right to approve that team member's replacement.

## **6. Litigation History**

Provide a comprehensive five (5)-year summary of the firm's litigation, arbitration and negotiated/settled history with previous clients. This includes current and ongoing matters. State the issues in the litigation, the status of the litigation, names of parties, and outcome. A Submittal failing to provide the requested information on lawsuits or litigation, including responses which assert attorney-client privilege instead of providing the information requested, will be considered non-responsive and will not be evaluated.

## **7. Form of Agreement**

Any Respondent selected based on this RFQ/P process must be able to execute the District's form of Agreement for Program Management Services ("Agreement"), which is distributed with this RFQ/P as **APPENDIX A** and incorporated herein by this reference. Any objections/proposed changes to the form of agreement shall be stated in writing in the submittal. An explanation of the objection and proposed revised language shall be provided. The District will not consider any objections/proposed changes to the agreement that are raised after the deadline for submittals. Respondents must provide proposed language in redline, merely providing comments or objections is not acceptable. **The District will not entertain unidentified or vaguely described objections during any contract negotiation.**

## **8. Fee Proposal**

The final form of the Agreement will incorporate the final scope of services and not-to-exceed fee, which shall be negotiated if a Respondent is selected for a project or projects by the District.

Accordingly, Respondents should include a general fee proposal that will enable future consideration by and negotiation with the District. The fee proposal shall include hourly billing rates by position (proposed), staffing plan (proposed), and reimbursable schedule (proposed). Proposal shall provide a Schedule of Rates ("SOR") by position, by company entity, for each position proposed by Respondent. The SOR should identify proposed reimbursables by category. Travel and related expenses shall be reimbursed in accordance with the federal government Joint Travel Regulation.

## **9. Appendices**

- Form of Agreement for Program Management Services. (**APPENDIX A.**)
- Non-Collusion Declaration. (**APPENDIX B.**)
- Iran Contracting Act Certification, if fees will exceed \$1 million. (**APPENDIX C.**)

## **VII. SELECTION PROCESS**

The District's selection committee will evaluate all submissions. Each Submittal must be complete. Incomplete Submittals will be considered nonresponsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified. Based upon the information presented in the submissions, the District may elect to conduct interviews with some or all of the Respondents. After the interviews, if any, the District will identify the Respondent(s) selected based on the criteria set forth below.

### **A. Criteria**

The criteria for evaluating submissions may include, without limitation, the following:

- Firm's management experience, including successful experience with similar bond programs and projects for California TK-12 school districts, including successful experience with DIR, DSA, OPSC, modernization and new construction projects; experience with presentation of reports to governing bodies; experience with project delivery systems other than design-bid-build; experience with energy management/conservation projects; and experience with information technology and telecommunications projects.
- Experience of proposed key personnel.
- Assessment of the firm's approach or methodology, including, without limitation, the firm's experience with preconstruction support, scheduling, and budgeting, and skill, creativity, and experience in problem-solving.
- Knowledge of the community and local construction market.
- An evaluation of the firm's proposed fee.
- Quality of interview responses.
- Firm's successful experience developing and implementing programs for California TK-12 public school districts, including the types of delivery methods, experience with budgeting and value engineering, and experience with scheduling and solving scheduling challenges.
- Assessment of the firm's experience and approach to drafting board policy regarding facilities and their funding.
- Assessment of the firm's experience and approach to analysis and recommendations on facilities staffing.



- Assessment of the firm's experience and approach to financial analysis that compares bond rate comparisons to construction cost escalators and how to make recommendations on schedule.

#### **B. Interviews**

The District, at its sole discretion, may elect to interview selected Respondents. If a Respondent is requested to come for an interview, the key proposed program staff will be expected to attend the interview. The interview will be an opportunity for the District to review the Submittal and any other matters the District deems relevant to its evaluation. Any objections/proposed changes to the form of Agreement attached hereto as **APPENDIX A** shall be stated in writing in the Submittal and may be the subject of inquiry at the interview. The District will not consider any objections/proposed changes to the Agreement that are raised after the deadline for Submittals.

#### **C. District Investigations**

The District may perform investigations of Respondents that extend beyond contacting the references identified in the Submittals. The District may request a Respondent to submit additional information pertinent to the review process. The District also reserves the right to investigate and rely upon information from other available sources in addition to any documents or information submitted.

### **VIII. FINAL DETERMINATION AND AWARD**

The District reserves the right to contract with any entity or entities responding to this RFQ/P for all or any portion of the work described herein, to reject any Submittal as non-responsive, and/or not to contract with any Respondent for the services described herein. The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District reserves the right to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any Submittal in response to this RFQ/P, including any supporting materials.

Award of the contract(s) is at the sole discretion of District. District may, at its option, determine to award contract(s) only for portions of the scope of work identified herein. In such case, the successful firm(s) will be given the option not to agree to enter into the Agreement and District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, District will retain the right to enter into negotiations with any other firm responding to this RFQ/P.

**WE THANK YOU FOR YOUR INTEREST!**

**APPENDIX A**  
**Form of Agreement**

*[Appendix begins on next page.]*

**APPENDIX B**

**NON-COLLUSION DECLARATION  
(Public Contract Code section 7106)**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing  
[Title] [Name of Firm]  
bid/proposal.

The bid/proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid/proposal is genuine and not collusive or sham. The bidder/proposer has not directly or indirectly induced or solicited any other bidder/proposer to put in a false or sham bid/proposal. The bidder/proposer has not directly or indirectly colluded, conspired, connived, or agreed with any bidder/proposer or anyone else to put in a sham bid/proposal, or to refrain from bidding/proposing. The bidder/proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid/proposal price of the bidder/proposer or any other bidder/proposer, or to fix any overhead, profit, or cost element of the bid/proposal price, or of that of any other bidder/proposer. All statements contained in the bid/proposal are true. The bidder/proposer has not, directly or indirectly, submitted its bid/proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, depository, or to any member or agent thereof, to effectuate a collusive or sham bid/proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder/proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder/proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_,  
[Date]

at \_\_\_\_\_,  
[City] [State]

Date: \_\_\_\_\_  
Proper Name of Bidder/Proposer: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

END OF DOCUMENT

## APPENDIX C

### **IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code sections 2202-2208)**

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more, the bidder/proposer must submit this certification pursuant to Public Contract Code section 2204.

The bidder/proposer must complete **ONLY ONE** of the following two options. To complete OPTION 1, check the corresponding box **and** complete the certification below. To complete OPTION 2, check the corresponding box, complete the certification below, and attach documentation demonstrating the exemption approval.

- ☐ **OPTION 1.** Bidder/Proposer 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 section 2203(b), and we are 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.
- ☐ **OPTION 2.** Bidder/Proposer has received a written exemption from the certification requirement pursuant to Public Contract Code sections 2203(c) and (d). *A copy of the written documentation demonstrating the exemption approval is included with our bid/proposal.*

#### **CERTIFICATION:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder/proposer to the OPTION selected above. This certification is made under the laws of the State of California.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

END OF DOCUMENT

**AGREEMENT FOR PROGRAM MANAGEMENT SERVICES**

**MILLBRAE ELEMENTARY SCHOOL DISTRICT**

**WITH**

---

**FOR**

**MEASURE J BOND PROGRAM**

**\_\_\_\_\_, 2025**

## TABLE OF CONTENTS

ARTICLE 1.	Definitions .....	1
ARTICLE 2.	Term .....	3
ARTICLE 3.	Scope, Responsibilities and Services of PM .....	4
ARTICLE 4.	PM Staff.....	6
ARTICLE 5.	Schedule of Work.....	6
ARTICLE 6.	Construction Cost Budget.....	7
ARTICLE 7.	Fee and Method of Payment for Basic Services .....	7
ARTICLE 8.	Payment for Extra Services .....	8
ARTICLE 9.	Ownership of Data .....	8
ARTICLE 10.	Termination of Contract .....	9
ARTICLE 11.	Indemnity .....	10
ARTICLE 12.	Conduct on Project Site and Fingerprinting.....	10
ARTICLE 13.	Responsibilities of District .....	11
ARTICLE 14.	Liability of District.....	11
ARTICLE 15.	Insurance .....	12
ARTICLE 16.	Nondiscrimination .....	16
ARTICLE 17.	Covenant Against Contingent Fees .....	16
ARTICLE 18.	Entire Agreement/Modification.....	16
ARTICLE 19.	Non-Assignment of Agreement .....	16
ARTICLE 20.	Law, Venue .....	16
ARTICLE 21.	Alternative Dispute Resolution .....	17
ARTICLE 22.	Tolling of Claims .....	17
ARTICLE 23.	Severability .....	17
ARTICLE 24.	Employment Status.....	17
ARTICLE 25.	Warranty of PM.....	18
ARTICLE 26.	Cost Disclosure - Documents and Written Reports.....	19
ARTICLE 27.	Communications / Notice .....	19
ARTICLE 28.	[RESERVED] .....	<b>Error! Bookmark not defined.</b>
ARTICLE 29.	District's Right to Audit.....	20
ARTICLE 30.	Other Provisions .....	20
ARTICLE 31.	Exhibits. ....	22

EXHIBIT A – RESPONSIBILITIES AND SERVICES OF PROGRAM MANAGER	A-1
EXHIBIT B – CRITERIA AND BILLING FOR EXTRA SERVICES	B-1
EXHIBIT C – SCHEDULE OF WORK	C-1
EXHIBIT D – FEE SCHEDULE	D-1
EXHIBIT E – FINGERPRINTING CERTIFICATION	E-1

## **AGREEMENT FOR PROGRAM MANAGEMENT SERVICES**

This Agreement for Program Management Services ("Agreement") is made as of \_\_\_\_\_, 202\_\_, between the Millbrae Elementary School District, a California public school district ("District"), and \_\_\_\_\_ ("PM") (both collectively "Parties"), for District's Measure J Bond Program ("Program") as follows:

The administration of the Program, including oversight and coordination of the projects comprising the Program management of projects that comprise the Program. PM will perform Program Management Services for the Program.

PM shall render services and furnish the work as described herein, including acting as District's agent for the Program, commencing upon execution of the Agreement and provision of the required insurance certificates and endorsements.

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

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 District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
  - 1.1.3 **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by District's construction Contractor on a Conforming Set.
  - 1.1.4 **Board:** District's Governing Board.
  - 1.1.5 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.



- 1.1.6 **Construction Budget:** The total amount indicated by District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
- 1.1.7 **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
- 1.1.8 **Construction Cost Budget:** The total cost to District of all elements of a Project designed or specified by the Architect, as adjusted during and at the end of the design phase in accordance with this Agreement and the Agreement for Architectural Services. The Construction Cost Budget does not include the compensation of the Project Design Team, PM and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of District.
- 1.1.9 **Construction Manager ("CM"):** May refer to third party providing construction management services to District.
- 1.1.10 **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to PM.
- 1.1.11 **Contractor:** One or more licensed and registered contractors under contract with District for construction of all or a portion of the Project.
- 1.1.12 **Design Team:** The Architect(s) that District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** Millbrae Elementary School District.
- 1.1.15 **District's Representative:** The individual identified herein that is authorized to act on District's behalf with respect to the Project. The initial District's Representative shall be Mary Pollett, Chief Business Official. District may change District's Representative by notice as set forth herein.
- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.

- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit A** or District-authorized reimbursables not included in PM's fee.
- 1.1.18 **Fee:** PM's Fee is defined in Article 7 and payable as set forth in **Exhibit D**.
- 1.1.19 **Program:** District's Measure J Bond Program.
- 1.1.20 **Program Budget:** The total amount available for all costs related to the Program including, but not limited to, Program design, Program administration, Program financing, the services pursuant to this Agreement, and the construction of the Program. The Program Budget is the sum of all the Construction Budgets for each Project and all other Program expenses. The Program Budget is derived from the funds designated by District for the Program, and PM shall ensure that no additional funds are necessary for the Program. The Board may, at its sole discretion, determine to expand the Program Budget based on receipt of additional funding.
- 1.1.21 **Program Manager ("PM"):** The entity listed in the first paragraph of this Agreement, including all Consultant(s) to PM.
- 1.1.22 **Project(s):** The projects identified in District's Bond Measure J Program.
- 1.1.23 **Project Inspector, Inspector of Record ("IOR"):** The agent of the DSA at the project site whose primary responsibility will be to ensure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.
- 1.1.24 **Record Drawings:** A final set of drawings prepared by the Architect incorporating all changes from all As-Built, sketches, details, and clarifications.
- 1.1.25 **Service(s):** All labor, materials, supervision, services, tasks, and work that PM 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 each Project and the management and coordination of the Program.

## **ARTICLE 2. Term**

- 2.1 **Term:** This Agreement shall become effective on \_\_\_\_\_, 202\_, and, except as otherwise provided herein, will continue in effect until \_\_\_\_\_, 20\_\_.

### **ARTICLE 3. Scope, Responsibilities and Services of PM**

- 3.1 **Scope:** PM shall provide the Services described herein and under **Exhibit A** for the Project.
- 3.2 **Standard of Care:** PM, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom PM is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. District's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that PM has complied, nor in any way relieve PM of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.
- 3.3 **Coordination:** In the performance of PM's services under this Agreement, PM agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of District's Design Team, the Project Inspector, and the third-party Construction Manager(s), if any.
- 3.4 **Other Consultants:** If PM employs sub-consultant(s), PM shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 3.5 **PM as District Representative:** PM will act as District's agent to render the Services and furnish the work as described in **Exhibit A**, commencing with the receipt of a written Notice to Proceed signed by District Representative. PM's services will be completed in accordance with the schedule attached as **Exhibit C**. During the Project's Construction Phase, District may require that the Contractors submit all notices and communication relating to the Project directly to PM.
- 3.6 **Review of General Obligation Bond Program Report and District's Facilities Master Plan:** PM will review District's Facilities Master Plan for District and other written materials District makes available by District to PM to understand fully the nature, extent and intent of the Facilities Plan and the Project.
- 3.7 **Review of Measure J:** PM will review Measure J and other written materials made available by District to PM that relate to Measure J to fully understand the extent of funding available to implement District's Facilities Master Plan, the anticipated schedule for issuance of Bonds under Measure J relative to the anticipated design, bidding and construction of projects.

### **3.8 Conflicts of Interest Prohibited:**

- 3.8.1 PM understands that District officials and employees are prohibited from involvement in decisions in which they may have a financial interest pursuant to Government Code sections 1090 and 87100 et seq., and certifies that it does not know of any facts indicating that any District official or employee has an ownership or other financial interest, direct or indirect, in this Agreement. Further, PM hereby certifies that no current District official or employee of District, and no one who has been a District official or employee of District within the past two years has participated in bidding, selling or promoting this Agreement. PM understands that in addition to the remedies available at law, that any failure to provide an accurate certification or any violation of this provision shall make the Agreement voidable by District.
- 3.8.2 The District shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. PM's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. PM shall cooperate with the District to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by PM pursuant to this Agreement.
- 3.8.3 If involved in the preparation of request for proposals or selection thereof, PM shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by District in connection with any project covered by this Agreement: Design Professional, Construction Manager, IOR or Test/Inspection. If PM identifies potential Design Professional, Construction Manager, Project Inspector or Test/Inspection services in connection with a project, PM shall affirmatively and unequivocally represent and warrant to District that neither PM nor any person who holds equity interest in PM's organization is a former or current holder of any equity interest in the firm identified or has any financial interest in the firm identified. District reserves the sole discretion to waive this subsection's requirements on a case-by-case basis.

**ARTICLE 4. PM Staff**

- 4.1 District selected PM to perform the Services because of PM's skills and expertise of key personnel.
- 4.2 PM agrees that the following key personnel in PM's firm shall be associated with the Program and perform the Services in the following capacities:
- Principal In Charge: \_\_\_\_\_
- Project Director: \_\_\_\_\_
- Project Manager: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- 4.3 PM shall not change any of the key personnel listed above without District's prior written approval, unless said personnel cease to be employed by PM. Regardless of the reason for the change in key personnel, District shall be allowed to interview and retains the right to approve replacement personnel.
- 4.4 All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this Agreement.
- 4.5 If any designated lead or key person fails to perform to the satisfaction of District, then upon District's written notice, PM will have seven (7) calendar days to remove that person from the Project and shall provide a replacement person acceptable to District.
- 4.6 PM represents that it has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement. PM agrees further that no person having any such interest shall be employed by PM.

**ARTICLE 5. Schedule of Work**

PM shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit A** so as to proceed with and complete the Services in compliance with the schedule attached as **Exhibit C**. Time is of the essence and failure of PM to perform work on time as specified in this Agreement is a material breach of this Agreement. If the time to complete the scope of work under **Exhibit C** exceeds five (5) years, District may, at its sole discretion, extend the term of this Agreement pursuant to Article 2 of this Agreement.

## **ARTICLE 6. Construction Cost Budget**

- 6.1 PM shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget per Project with the Architect and District throughout the design process and construction.
- 6.2 The Construction Cost Budget shall be the total cost to District of all Project elements the Design Team designs or specifies.
- 6.3 PM shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit A**, so that the Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with District's written approval. PM shall notify District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. PM, however, shall not perform or be responsible for any design or architectural services.
- 6.4 Evaluations of District's Construction Budget, and PM's preliminary and detailed cost estimates, represent PM's best judgment as a professional familiar with the construction industry.
- 6.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval of the plans and specifications, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to District and the date on which proposals are sought.

## **ARTICLE 7. Fee and Method of Payment for Basic Services**

- 7.1 District shall pay PM an amount not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for all services contracted for under this Agreement and based on the Fee Schedule set forth in **Exhibit D**.
- 7.2 District shall pay PM the Fee pursuant to the provisions herein and the method of payment set forth in **Exhibit D**.
- 7.3 PM shall bill its work under this Agreement on a percent of completion basis in accordance with **Exhibit D**.
- 7.4 No increase in fee will be due from change orders generated during the construction period to the extent caused by PM's error(s) or omission(s).
- 7.5 PM's fee set forth in this Agreement shall be full compensation for all of PM's Services incurred in the performance hereof as indicated in **Exhibit D**, 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 A**.

- 7.6 Regardless of the structure of Fee, the Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by District in accordance with this Agreement.

## **ARTICLE 8. Payment for Extra Services**

- 8.1 Any charges for Extra Services shall be paid by District as described in **Exhibit B** at the rates set forth in **Exhibit D** only upon certification of District's prior written authorization of the claimed Extra Services and the Extra Services have been satisfactorily completed.
- 8.2 PM shall submit to District a written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost. PM shall proceed with Extra Services only upon receiving District's prior written authorization. PM will not be entitled to any compensation for Extra Services performed prior to receiving District's written authorization.
- 8.3 If PM performs any Extra Services without District's authorized representative's prior written authorization, District will not be obligated to pay for such Extra Services. The foregoing provision notwithstanding, PM will be paid by District as described in **Exhibit B** for Extra Services District's authorized representative verbally requests, provided PM confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after District receives PM's written confirmation of the request.

## **ARTICLE 9. Ownership of Data**

- 9.1 All of PM's work product prepared or generated in connection with this Agreement is District's property.
- 9.2 Upon District's request, PM shall make available to District all work product completed or in progress at the time of such a request.
- 9.3 After Project completion or, if District exercises the right to terminate this Agreement pursuant to the Agreement terms, PM shall assemble and deliver to District within five (5) calendar days of District's written request, all of PM's work product of the generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, all PM generated documents, copies of all documents PM exchanged with or copied to or from all other Project participants, and all closeout documents. PM shall be index and organize appropriately said Project records for easy use by District personnel.
- 9.4 All Project records are District property, whether or not those records are in PM's possession. District retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents

that PM or its Consultants prepare or cause to be prepared pursuant to this Agreement. Notwithstanding the preceding sentence, PM and its Consultants shall be entitled to reuse work product generated under this Agreement.

## **ARTICLE 10. Termination of Contract**

- 10.1 District's Request for Assurances: If District at any time reasonably believes PM is or may be in default under this Agreement, District may in its sole discretion notify PM of this fact and request written assurances from PM of performance of Services and a written plan from PM to remedy any potential default under the terms this Agreement that District may advise PM of in writing. PM shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets District's requirements in its request for assurances. PM's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 10.2 District's Termination of PM for Cause: If PM fails to perform PM's duties to District's satisfaction, or if PM fails to fulfill in a timely and professional manner PM's material obligations under this Agreement, or if PM violates any of the material terms or provisions of this Agreement, District shall have the right to terminate this Agreement effective immediately upon District giving PM written notice thereof. In the event of a termination pursuant to this subdivision, PM 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 District's costs because of PM's actions, errors, or omissions.
- 10.3 District's Termination of PM for Convenience: District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, PM 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 PM if there is a termination for convenience.
- 10.4 PM's Termination of Agreement for Cause: PM has the right to terminate this Agreement if District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from PM. Such termination shall be effective after receipt of written notice from PM to District.
- 10.5 Effect on Pre-Termination Services: 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.



- 10.6 Ceasing Services upon Termination: If, at any time in the progress of performing Services under this Agreement, District determines that PM's Services should be terminated, PM, upon District's written notice of such termination, shall immediately cease providing Services, except to transfer files as directed by District. District shall pay PM only the fee associated with the Services provided and approved by District since the last paid invoice and up to the notice of termination.
- 10.7 Suspension: If PM's Services are suspended by District for more than one hundred and eighty (180) consecutive days, PM shall be compensated for services performed prior to notice of such suspension. When PM's Services are resumed, the schedule shall be adjusted and PM's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of PM's Services. PM shall make every effort to maintain the same Program personnel after suspension.

## **ARTICLE 11. Indemnity**

- 11.1 To the furthest extent permitted by California law, PM shall indemnify and hold free and harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of PM, its officers, employees, subcontractors, consultants, or agents, including without limitation, the payment of all consequential damages. PM shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at PM's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.
- 11.2 PM shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. PM's obligation pursuant to Article 11.1 includes reimbursing District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to, legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. PM's obligation to indemnify shall not be restricted to insurance proceeds.
- 11.3 District may withhold from amounts owing to PM any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of PM.

## **ARTICLE 12. Conduct on Project Site and Fingerprinting**

- 12.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.

- 12.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.
- 12.3 PM shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. PM shall not permit any employee to have any contact with District pupils until such time as PM has verified in writing to the governing board of District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. PM's responsibility shall extend to all employees, agents, and employees or agents of its Consultants regardless of whether those individuals are paid or unpaid, concurrently employed by District, or acting as PM's independent contractors. PM shall provide to District verification of compliance with this section by submitting an executed Criminal Background Investigation Certification (**Exhibit E**) prior to commencing employment or participating on the Program and prior to permitting contact with any student.

#### **ARTICLE 13. Responsibilities of District**

- 13.1 District shall examine the documents submitted by PM and shall render decisions so as to avoid unreasonable delay in the process of PM's Services.
- 13.2 District shall provide to PM as complete information as is available to District regarding District's Project requirements.
- 13.3 District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between District and design professional(s).
- 13.4 District shall designate an officer, employee and/or other authorized representatives to act on District's behalf with respect to the Program. District's Program representative 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 14. Liability of District**

- 14.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation as 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.

- 14.2 PM shall pay to District any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of PM in its performance of its Services.
- 14.3 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 PM, or by its employees, even though such equipment be furnished or loaned to PM by District.
- 14.4 PM hereby waives any and all claim(s) for recovery from District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. PM agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by PM's insurance company on District's behalf.

## **ARTICLE 15. Insurance**

- 15.1 PM shall procure, prior to commencement of Services, and will maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by PM, their agents, representatives, employees and sub-consultant(s). PM's liabilities, including but not limited to, PM's indemnity or defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and PM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by District, subject to its sole discretion, as a material breach of contract.
- 15.2 **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
  - 15.2.1 **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
  - 15.2.2 **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.
  - 15.2.3 **Workers' Compensation.** Statutory limits required by the State of California. For all of PM's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, PM shall keep in full force and effect, a Workers' Compensation policy. PM

shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

- 15.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease. For all of PM's employees who are subject to this Agreement, PM shall keep in full force and effect, an Employer's Liability policy. PM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 15.2.5 **Professional Liability.** This insurance shall cover PM and its sub-consultant(s), if any, for one million dollars (\$1,000,000) per occurrence or claim with two million dollars (\$2,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 15.3 District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 15.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by District. At the option of District, either:
  - 15.4.1 District can accept the higher deductible;
  - 15.4.2 PM's insurer shall reduce or eliminate such deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers; or
  - 15.4.3 PM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 15.5 **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - 15.5.1 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent, and length of notice period.

- 15.5.2 All policies except for the worker's compensation, employer's liability and professional liability insurance policy shall be written on an occurrence form.
- 15.5.3 Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes PM's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by PM for a period of five (5) years following termination of this Agreement. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover PM for all claims made.
- 15.5.4 District, its 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 PM; Instruments of Service and completed operations of PM; premises owned, occupied or used by PM; or automobiles owned, leased, hired or borrowed by PM. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. All endorsements shall waive any right to subrogation against any of the Additional Insureds.
- 15.5.5 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.
- 15.5.6 PM shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If PM fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due PM under the Agreement.
- 15.5.7 PM'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.
- 15.5.8 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.
- 15.5.9 PM's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds shall be

in excess of PM's insurance and shall not contribute with it.

- 15.5.10 PM shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
  - 15.5.11 PM shall require all subconsultants to maintain the level of insurance PM deems appropriate with respect to the consultant's scope of the Work unless otherwise indicated in the Agreement. PM shall cause the subconsultants to furnish proof thereof to District within ten (10) Days of District's request. Should PM not require subconsultants to provide the same level of insurance as is required of PM, as provided in this Agreement, PM is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
  - 15.5.12 If PM normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, PM hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 15.6 **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. PM shall inform District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of District, District may either:
- 15.6.1 Accept the lower rating; or
  - 15.6.2 Require PM to procure insurance from another insurer.
- 15.7 **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, but no later than three (3) calendar days after the Notice of Award, PM shall furnish District with:
- 15.7.1 Certificates of insurance showing maintenance of the required insurance coverage;
  - 15.7.2 Original endorsements affecting 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 District before work commences.
- 15.8 **Copy of Insurance Policy(ies):** Upon District's request, PM will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

15.9 The insurance requirements set forth herein shall in no way limit PM's liability arising out of or relating to the performance of the Work or related activities.

15.10 Failure of PM to comply with the insurance requirements herein shall be deemed a material breach of the Agreement and constitute a Default by PM pursuant to this Agreement.

#### **ARTICLE 16. Nondiscrimination**

PM agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 14173; and all administrative rules and regulations found to be applicable to PM and all of its subcontractors. In addition, PM agrees to require like compliance by all of its subcontractor(s).

#### **ARTICLE 17. Covenant Against Contingent Fees**

PM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for PM, 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 PM, 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, 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 18. Entire Agreement/Modification**

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

#### **ARTICLE 19. Non-Assignment of Agreement**

This Agreement is intended to secure PM's specialized services. PM may not assign, transfer, delegate or sublet any interest therein without District's prior written consent. Any assignment, transfer, delegation or sublease without District's prior written consent shall be considered null and void.

#### **ARTICLE 20. Law, Venue**

20.1 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.

- 20.2 To the fullest extent permitted by California law, San Mateo County 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 21. Alternative Dispute Resolution**

- 21.1 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. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.
- 21.2 If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the PM shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the PM's right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time the PM submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 21.3 Notwithstanding any disputes, claims or other disagreements between PM and District, PM shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

## **ARTICLE 22. Tolling of Claims**

PM agrees to toll all statutes of limitations for District's assertion of claims against PM that arise out of, pertain to, or relate to Design Team's, Contractors' or subcontractors' claims against District involving PM's work, until the Design Team's, Contractors' or subcontractors' claims are finally resolved.

## **ARTICLE 23. Severability**

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 24. Employment Status**

- 24.1 PM represents and warrants that PM is an independent contractor or business entity that is: (i) free from the control and direction of District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that



involved in the Services performed, District being interested only in the results obtained. Nothing in this Agreement is intended nor shall it 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 PM performs the Services that are the subject matter of this Agreement; provided always, however, that the Services to be provided by PM shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

- 24.2 PM understands and agrees that PM's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.
- 24.3 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 PM or any employee of PM is an employee of District 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 PM which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 24.4 Should a relevant taxing authority determine a liability for past services performed by PM for District, upon notification of such fact by District, PM shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to PM under this Agreement (again, offsetting any amounts already paid by PM which can be applied as a credit against that liability).
- 24.5 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, PM shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine PM is an employee for any other purpose, then PM 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 PM was not an employee.
- 24.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

## **ARTICLE 25. Warranty of PM**

- 25.1 PM warrants that PM is properly licensed and/or certified under the laws and regulations of the State of California to provide the Services that it has herein agreed to perform. PM further warrants that all of the work PM performs under this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. PM also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of San Mateo County.
- 25.2 PM certifies that it is aware of the provisions of the California Labor Code of the State of California, requiring 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, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 25.3 To the extent that the work performed under this contract is subject to labor compliance and enforcement by the DIR, PM specifically acknowledges and understands that it shall perform the Services while complying with all applicable provisions of Division 2, Part 7, Chapter 1 of the Labor Code and Title 8 of the California Code of Regulations.

**ARTICLE 26. Cost Disclosure - Documents and Written Reports**

PM 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 27. Communications / Notice**

Notices and communications between the Parties to this Agreement may be sent to the following addresses by registered or certified mail with postage prepaid, return receipt requested, by overnight delivery service, or by personal delivery:

**District:**

Millbrae Elementary School District  
 555 Richmond Avenue  
 Millbrae, CA 94030  
 ATTN: Mary Pollett, Chief Business Official  
 EMAIL: [mpollett@millbraesd.org](mailto:mpollett@millbraesd.org)

**PM:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 ATTN: \_\_\_\_\_  
 EMAIL: \_\_\_\_\_

*With a copy to:*

Dannis Woliver Kelley  
 200 California Street, Suite 400  
 San Francisco, CA 94111  
 ATTN: Deidree Sakai, Esq.

If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is

signed for. If notice is given by overnight delivery service, it shall be considered delivered on the date stated in the proof of delivery.

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

**ARTICLE 28. [RESERVED]**

**ARTICLE 29. District's Right to Audit**

- 29.1 District retains the right to review and audit, and the reasonable right of access to PM's and any Consultant's premises to review and audit PM's compliance with the provisions of this Agreement ("District's Right"). District's Right includes the right to inspect, photocopy, and to retain copies, outside of PM's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by District in its sole discretion. District shall keep this information confidential, as allowed by applicable law.
- 29.2 District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that District determines is necessary to discover and verify whether PM is in compliance with all requirements of this Agreement.
- 29.3 If there is a claim for additional compensation or for Extra Services, District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 29.4 PM shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. PM shall make available to District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, PM shall submit exact duplicates of originals of all requested records to District.
- 29.5 PM shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 29.6 PM shall comply with these provisions within fifteen (15) days of District's written request to review and audit any or all of PM's Project-related records and information.

**ARTICLE 30. Other Provisions**

- 30.1 PM shall be responsible for the cost of construction change orders caused directly by PM's willful misconduct or negligent acts, errors or omissions. Without limiting PM's liability for indirect or consequential cost impacts, the direct costs for which PM 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. These amounts shall be paid by PM to District or District may withhold those costs from amounts due or to become due to PM.

- 30.2 Neither 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 PM shall remain liable to District in accordance with this Agreement for all damages to District caused by PM's failure to perform any of the Services furnished under this Agreement to the standard of care of PM for its Services, which shall be, at a minimum, the standard of care of program and construction managers performing similar work for California public school districts at or around the same time and in or around the same geographic area of District.
- 30.3 PM shall share, credit, or reimburse District fifty percent (50%) of the amount of any tax deduction and/or credit PM receives for District Projects under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D ("Section 179D"). PM shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction. PM shall notify District in writing of the Section 179D tax deduction within 30 days of when PM receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.
- 30.4 PM acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that PM may not be apprised of all facts surrounding the Program. Accordingly, PM shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and PM shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement, or the effects caused thereby. If PM receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 30.5 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.
- 30.6 The individual executing this Agreement on behalf of PM warrants and represents that she/he is authorized to execute this Agreement and bind PM to all terms hereof.

30.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

**ARTICLE 31. Exhibits.**

Exhibits A through E attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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

**MILLBRAE ELEMENTARY SCHOOL  
DISTRICT**

**[PM]**

Date: \_\_\_\_\_, 202\_\_

Date: \_\_\_\_\_, 202\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**RESPONSIBILITIES AND SERVICES OF PROGRAM MANAGER**

	<b><u>Page</u></b>
1. BASIC SERVICES	1
2. GENERAL PROGRAM SERVICES	3
3. PLANNING AND ADMINISTRATION OF THE PROJECTS	4
4. PRECONSTRUCTION PHASE	4
5. PRE-BID PHASE	5
6. BIDDING PHASE	5
7. CONSTRUCTION PHASE	5
8. PROJECT COMPLETION	7

## **EXHIBIT A**

### **RESPONSIBILITIES AND SERVICES OF PROGRAM MANAGER**

Program Manager ("PM") shall provide professional services necessary for completing the following:

#### **1. BASIC SERVICES**

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Prepare methods to track and report on schedule status for the Program. PM shall develop master schedules and milestone schedules for the Program, and shall report on same each month to District.
- 1.3. PM shall work cooperatively with the Design Team and District to:
  - 1.3.1. Define and schedule the Program.
  - 1.3.2. Provide Services that will result in the development of an overall Program strategy with regard to phases, construction schedules, timing, budget, prequalification, contactor and consultant procurement, construction materials, building systems, and equipment.
- 1.4. Organize an initial planning workshop to create baseline parameters for the Project(s), to define overall building requirements, Project(s) strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, PM will develop an implementation plan that identifies the various phases of the Project(s), coordination among phases, and budget and time constraints for each phase of the Project(s). The plan will include a detailed strategy, Program Budget and Program schedule as well as identification of critical events and milestone activities.
- 1.5. Monitor and advise District as to all material developments in the Program. Maintain reporting systems for scope, sequencing, scheduling, budgets and communication for each of the Projects.
- 1.6. Develop and implement methods to budget and track all expenditures on each of the Projects. PM shall generate monthly reports to District reflecting this information.
- 1.7. PM will be required to attend and provide updates at each Board meeting. PM shall work cooperatively with District to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 1.8. Advise District as to the regulatory agencies that have jurisdiction over any portion or all of the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation DSA.
- 1.9. Contract for or employ, at PM's expense, sub-consultant(s) to the extent deemed necessary for PM's services. Nothing in the foregoing shall create any contractual relationship between District and any sub-consultant(s) employed by PM under terms of this Agreement.

- 1.10. Cooperate with District, Board, and other professionals employed by District for the design, coordination or management of other work related to the Program and the Project(s), including District staff and consultants, project manager(s), citizens' oversight committee, other District committees, and the community to facilitate the timely completion of the Project within Board-approved budgets and to District design standards.
- 1.11. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Project. PM shall invite District and/or its representative and the Project Inspector to participate in these meetings. PM shall keep meeting minutes to document comments generated in these meetings.
- 1.12. Develop for District approval a Program time schedule at the start of Project development that does the following:
  - 1.12.1. Provides sufficient time for prequalification, and if necessary, the resolution of any appeals, bidding, and, if necessary, rebidding, or negotiating, if applicable, the award of contract for the Project;
  - 1.12.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;
  - 1.12.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
  - 1.12.4. Takes into account District's occupancy requirements (showing portions of the Project having occupancy priority and ongoing operational occupancy requirements).
- 1.13. Be responsible for the professional quality and technical accuracy of all cost estimates, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by PM under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to PM. PM shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 1.14. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the Program, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to District and/or its representative for inclusion in the overall Program documentation.
- 1.15. At the request of District, develop a Management Information System ("MIS") to assist in establishing communications between District, PM, design professionals(s), Contractors(s), Project Inspector(s) and other parties on the various Project(s) in the Program. In developing the MIS, PM shall interview District's key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system.



- 1.16. Coordinate transmittal of documents to regulatory agencies for review and advise District of potential problems in completion of such reviews.
- 1.17. PM is **NOT** responsible for:
  - 1.17.1. Ground contamination or hazardous material analysis.
  - 1.17.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
  - 1.17.3. Compliance with the California Environmental Quality Act ("CEQA"), except that PM agrees to coordinate its work with that of any CEQA consultants retained by District, and the work of Contractor and the Design Team to provide current information for use in CEQA compliance documents and to identify and carry out mitigation measures.
  - 1.17.4. Historical significance report.
  - 1.17.5. Soils investigation.
  - 1.17.6. Geotechnical hazard report.
  - 1.17.7. Topographic survey, including utility locating services.

## **2. GENERAL PROGRAM SERVICES**

- 2.1 **General:** Monitor and advise District as to all material developments on the Program. PM shall implement with District approval reporting methods for schedules, cost and budget status, and projections for each Project in District's Program. The PM shall be a focal point of all communication to and from Construction Manager(s) ("CM"), if any, and shall be copied on all communications between District and its design professionals.
- 2.2 **Scheduling:** Track and report on schedule status for Program. PM shall develop Project master schedules and milestone schedules, and review and in approve Contractor project schedules and milestone schedules for the project per specifications and shall report on same each month to District.
- 2.3 **Cost Controls:** Implement methods to budget and track all expenditures for the Program and on each Project. PM shall generate monthly reports to District reflecting this information. PM shall be responsible for oversight of costs and adherence to cost controls throughout the Program.
- 2.4 **Design Management:** Manage Design Teams on behalf of the District across the Program and through all phases of design to ensure design deliverables adhere to the Program's needs, schedule, and budget. PM shall remain responsible for design management on all Projects, including Projects with a CM.
- 2.5 **Communications to Board:** PM may be required to attend Board meetings, and to provide updates at each meeting.

### **3. PLANNING AND ADMINISTRATION OF THE PROJECTS**

- 3.1 Cost Control. PM shall develop and monitor an effective system of construction cost control for the Projects. PM shall identify variances between actual and budgeted or estimated costs and advise District, CM(s), and design professional(s) whenever a Project cost exceeds budgets or estimates. PM shall manage the construction bids and contracts in accordance with the Program Budget.
- 3.2 Develop and implement District-approved implementation procedures, forms, and reporting requirements for the Project(s) that involve all members of the Project(s) teams, including District, design professional(s), CM(s), and construction Contractor(s).
- 3.3 Develop and implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Program and the various Projects within the Program. The system will allow for monthly progress reports to District regarding the schedule for the Program and the various Projects within the Program.

### **4. PRECONSTRUCTION PHASE**

- 4.1 Supervise and manage CMs, who provide overall coordination of the Projects.
- 4.2 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, PM 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.
- 4.3 Assist with the detailed definition of Project scope, budget, and schedule, as needed. Review and reconcile cost estimates from the assigned architect and coordinate peer review estimates when requested by District. Assist in organizing and, if relevant, segregating bid packages for maximum cost effectiveness for District. Advise District regarding owner-supplied equipment and other potential cost-saving measures.
- 4.4 Assist District in the solicitation and retention of design and engineering consultants, and coordinate design consultants' activities and delivery schedules, as needed.
- 4.5 Supervise work with the Architect to conform and refine designs to correlate designs to budget and Facilities Master Plan, if applicable.
- 4.6 Monitor and report to District on status of design and state approval in relation to the schedule for the Project. Attend meetings to coordinate design efforts for the Program. Assist in identifying and obtaining all necessary approvals.
- 4.7 Solicit proposals, evaluate, and recommend other professional consultants needed to complete the Project.

- 4.8 Supervise District-approved implementation procedures, forms and reporting requirements for the Project that involve all members of the Project team, including District, design professional(s), and construction Contractor(s).
- 4.9 Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Project.
- 4.10 Supervise management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress, and identifying and documenting problems and solutions for the Project.
- 4.11 Supervise updated cost estimates for the Project at the Phases; coordinate with CM and design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 4.12 Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 4.13 Supervise coordination of all changes requested by any utility company needed to complete the Project.
- 4.14 Supervise tailoring District's front end documents for the Project.

## **5. PRE-BID PHASE**

- 5.1 Supervise budget(s) for the Project based on construction cost estimates.
- 5.2 Supervise the development of documents necessary for the bidding phase.
- 5.3 Make recommendations for development and implementation of procedures to comply with applicable bidding or RFP requirements for the Project as applicable and for expediting completion of the bidding process for the Project.

## **6. BIDDING PHASE**

- 6.1 Supervise pre-qualification process for the selection of prime and/or sub-contractors based on the detailed definition of Project scope, budget, schedule, and programming support.
- 6.2 Supervise review of bid proposals for responsiveness to bid requirements, evaluate bidder responsibility, and conduct reference checks. Make recommendations to District for award of contracts or rejection of bids.
- 6.3 Assist and supervise the preparation of agenda items for Board approval.

## **7. CONSTRUCTION PHASE**

- 7.1 Monitor whether construction contract requirements are being fulfilled and recommend courses of action to District when CM fails to fulfill contractual requirements.
- 7.2 Work cooperatively with District, CM, Architect, and Contractor to ensure that Project is delivered on time and within budget.

- 7.3 PM shall supervise CM's review construction of Contractor's construction schedules for conformity with the requirements of the construction Contract and conformity with the overall schedule for the Project. Where construction Contractor's construction schedules do not so conform, PM will take appropriate measures to secure compliance, if necessary, subject to District approval.
- 7.4 Cost Control. PM shall supervise CM monitoring the construction cost control for the Project in accordance with the Construction Budget.
- 7.5 Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide District timely notice of any potential increase in costs in excess of approved budgets.
- 7.6 Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to District when Contractor fails to fulfill contractual requirements.
- 7.7 Evaluate and recommend process payment applications and verify progress.
- 7.8 Supervise, evaluate, and recommend change order requests.
- 7.9 Assist District in coordinating the services of special consultants and testing laboratories on the Project.
- 7.10 In conjunction with the CM(s), monitor work of the construction Contractor to determine that the work is being performed in accordance with the requirements of the respective construction documents for the Project. As appropriate, with assistance of CM(s), make recommendations to District regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents.
- 7.11 To guard District against defects in the work of the construction Contractor, PM shall supervise the quality control program implemented by CM to monitor the quality and workmanship of construction for conformity with:
  - 7.11.1 Accepted industry standards;
  - 7.11.2 Applicable laws, rules, or ordinances; and
  - 7.11.3 The design documents and contract documents.
  - 7.11.4 Where the work of a construction Contractor does not conform as set forth above, PM shall, with the input of CM and design professional(s):
    - 7.11.4.1 Notify District of any non-conforming work observed by PM;
    - 7.11.4.2 Reject the non-conforming work; and
    - 7.11.4.3 Take any and all action(s) necessary to compel the construction Contractor to correct the work.
- 7.12 Prepare and distribute monthly project status reports for the Project including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.

- 7.13 Supervise the move into the Projects.
- 7.14 Supervise development of lists of incomplete or unsatisfactory work ("punch lists").
- 7.15 Supervise final completion and payment.
- 7.16 Supervise procurement and installation of Furniture, Fixtures, and Equipment ("FF&E").

## **8. PROJECT COMPLETION**

- 8.1 PM shall observe and supervise check-outs of utilities, operational systems and equipment, and start-up and testing, and determine, with the CM, Architect and District, that all work has been performed and accepted, and that all systems are complete and operative.
- 8.2 PM shall determine, and recommend with the Architect to District, when the Project or designated portions thereof are complete.
- 8.3 PM shall conduct, with the Architect and District, final inspections of the Project or designated portions thereof. PM shall notify District of final completion.
- 8.4 PM shall supervise and make recommendations on preparation of final accounting reports.
- 8.5 DSA Closeout: The PM shall coordinate and monitor the work of the Project Architects, CMs, and construction Contractors to ensure that all documents necessary to obtain Project Closed with Certification status from the Division of State Architect are promptly provided to the District as required by the DSA Project Closeout checklist.
- 8.6 OPSC Closeout: The PM shall support the District and OPSC Consultant, if any, in coordination with the District, Project Architects, and CMs to ensure compliance with the Office of Public School Construction (OPSC) requirements for project closeout. PM shall maintain project records pursuant to the OPSC closeout checklist.

END OF EXHIBIT A.

## **EXHIBIT B**

### **CRITERIA AND BILLING FOR EXTRA SERVICES**

The following Extra Services to this Agreement shall be performed by PM if needed and requested by District:

1. Providing services required because of significant documented changes in the Project initiated by District, including but not limited to size, quality, complexity, or District's schedule.
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 Contractor, or by major defects or deficiencies in the work of the Contractor, or by failure of performance of District's consultants.
4. Seeking variances or changes to agency guidelines on behalf of District when so directed by District.
5. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of PM or where PM is a party thereto, except for a Contractor's hearing necessitated by a bid protest or by a Contractor's request to substitute a subcontractor, or by handling of any stop payment notices.
6. Performing technical inspection and testing.
7. Providing other services not otherwise included in this Agreement and not customarily furnished in accordance with the generally accepted scope of construction management practice.

#### **Format and Content of Invoices**

PM acknowledges that District requires PM's invoices to include detailed explanations of the Services performed. For example, a six-hour charge for the entire day is unacceptable and will not be payable. A more detailed explanation describing specific tasks is required.

#### **Hourly Rates for Extra Services**

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. PM shall bill in quarter-hour increments for all Extra Services.

<b><u>Job Title</u></b>	<b><u>Hourly Rate</u></b>
Principal in Charge	\$____.____
Project Director	\$____.____
Project Manager(s)	\$____.____
Other: _____	\$____.____

2. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed five percent (5%).

END OF EXHIBIT B.

**EXHIBIT C**  
**SCHEDULE OF WORK**

[To be completed/inserted]



## **EXHIBIT D**

### **FEE SCHEDULE**

#### **Compensation**

1. PM's fee set forth in this Agreement shall be full compensation for all of PM's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location (travel reimbursements must be approved by District prior to travel), offices, per diem expenses, office supplies, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit A**.
2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses. No compensation will be paid or due, without advance written approval of District.

#### **Method of Payment of Basic Services**

1. PM shall submit monthly invoices for the portion of the overall fee reflecting the services performed and costs incurred for each respective month. In no event shall the total payments exceed PM's fee set forth in Article 7 this Agreement except as authorized under **Exhibit B**.
2. PM shall submit these invoices in duplicate to District via District's authorized representative.
3. PM shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.
4. Upon receipt and approval of PM's invoices, District agrees to make payments on all undisputed amounts after the funds are available to District and approved by the County Office of Education but no later than thirty (30) days from receipt of the invoice.
5. District may withhold or deduct from amounts otherwise due PM hereunder if PM fails 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 PM has fully cured such failure of performance, less costs, damages or losses sustained by District resulting therefrom.

END OF EXHIBIT D.

## **EXHIBIT E**

### **FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION**

The undersigned does hereby certify to District that I am a representative of PM entering into this Agreement with District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of PM.

PM certifies that it has taken at least one of the following actions (check all that apply):

- ☐ The Work of the Agreement is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Agreement shall come in contact with District pupils or (ii) if PM's employees or any subcontractor or supplier of any tier of the Agreement interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to PM under the Agreement.
- ☐ PM, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all PM's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When PM performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that PM's employees and any subcontractors' employees have not been convicted of a felony as defined in Education Code section 45122.1.

**A complete and accurate list of PM's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.**

- ☐ PM is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all PM's employees who may have contact with District pupils in the course of providing services pursuant to the Agreement, and hereby agrees to District's preparation and submission of fingerprints such that the California Department of Justice may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that PM has not been convicted of a felony as defined in Education Code section 45122.1.

PM's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of PM.

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

Name of PM: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FINGERPRINTING CERTIFICATION/CRIMINAL BACKGROUND INVESTIGATION**

**ATTACHMENT**

**List of Employees/Subcontractors**

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

END OF EXHIBIT E