This Master Agreement for On-Going Construction Project Management Services ("Agreement") is entered into this ___ day of ________________, 2009 by and between Cabrillo Community College District, a California Community College District ("District") and ___________________, herein referred to as Construction Project Manager ("CPM").

WHEREAS, the District has, by a request for qualifications and request for proposal selection process, selected one or more qualified construction project management firms to provide construction project management services for works of improvement to be design/constructed by the District; the CPM is one of the qualified construction project management firms under contract with the District.

WHEREAS, the District desires to retain CPM to provide and perform construction management and related services in connection the design, bidding and construction phases of the Projects as assigned from time-to-time by the District to the CPM under this Agreement; the specific terms and conditions for a Project assigned to the CPM under this Agreement ("Assigned Project") will be as set forth in the Task Order in substantially the form attached hereto as Exhibit A.

WHEREAS, Assigned Projects under this Agreement are anticipated to be generally in the nature of scheduled maintenance of existing facilities and improvements, and materials, equipment or building systems situated therein.

WHEREAS, the CPM is a professional construction project manager, duly qualified and capable of providing the Basic Services described herein in accordance with the terms hereof.

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

AGREEMENT

1 BASIC SERVICES; GENERAL

1.1 General. CPM shall provide Basic Services and authorized Additional Services for an Assigned Project, as more particularly enumerated in this Agreement and in the Task Order for the Assigned Project.

1.2 Completion of Assigned Project Basic Services. All Basic Services and authorized Additional Services for an Assigned Project shall be performed and completed by employees of the CPM and Sub-Consultants approved in advance by the District. CPM's services in connection with an Assigned Project shall be performed or provided consistent with the Basic Services Completion Schedule set forth in the Task Order for the Assigned Project and with professional skill and care and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of the design, bidding and construction of an Assigned Project. To the extent that Project Manager has established, and the District has accepted, a Construction Budget and/or a schedule for completion of the design, bidding and construction of an Assigned Project, the Basic Services of the CPM shall include confirmation that the Construction Budget and schedule for an Assigned Project conform to the Construction Budget and...
schedule established for the Assigned Project. If, in the course of performing Basic Services for an Assigned Project, the CPM determines that the Construction Budget or schedule for an Assigned Project is not in conformity to the Construction Budget or schedule established for the Assigned Project, the CPM shall notify the District Representative and Architect of such determination, along with specific recommendations for measures to conform the Construction Budget or schedule of an Assigned Project with the District accepted Construction Budget or schedule for the Assigned Project. The CPM’s Basic Services shall include the implementation of remedial measures as directed or authorized by the District. The scope of Basic Services to be provided by the CPM for an Assigned Project shall be in accordance with the Task Order issued by the District for the Assigned Project; the form of Task Order is attached hereto as Exhibit A and incorporated herein by this reference.

1.3 Meetings and Conferences. The CPM acknowledges that completing the design, bidding and/or construction of an Assigned Project under this Agreement involves the input or collaboration of a number of parties, including without limitation, the District’s personnel, District Campus Committees, academic and operational departments of the District, the District’s Board of Trustees, the Measure D Citizen’s Oversight Committee and the community at large. The CPM agrees that although not specifically enumerated in this Agreement, the scope of the CPM’s Basic Services in connection with an Assigned Project shall be its attendance and participation in meetings and conferences with the various parties engaged in an element of the design, bidding or construction of an Assigned Project as requested or directed by the District.

1.4 Relationship of CPM to Other Project Participants. CPM’s services hereunder shall be provided in conjunction with contracts between the District and: (i) the Architect; (ii) the Contractor(s); (iii) the Project Inspector; (iv) Test/Inspection Service Providers; (v) others providing services in connection with design, bidding and/or construction of an Assigned Project; and (vi) Program Manager, if any. The Architect is responsible for the adequacy, sufficiency and contents of Design Documents for an Assigned Project. The Architect shall perform its duties in accordance with its contract(s) with the District for an Assigned Project. Except as expressly set forth herein, neither this Agreement, nor CPM’s rendition of services hereunder shall be deemed CPM’s assumption of responsibility for the adequacy or sufficiency of the Design Documents for an Assigned Project.

1.5 Project Inspector; Test/Inspection Services. The CPM shall assist the District in the selection and retention of the Project Inspector and Test/Inspection Service Providers and generally coordinating the services of the Project Inspector and Test/Inspection Service Providers with the progress of construction during the Construction Phase of an Assigned Project. The CPM is not, however, responsible for the completeness or accuracy of the work product or services provided by the Project Inspector or Test/Inspection Service Providers.

1.6 CPM Construction Management Team. CPM will establish a construction management team appropriately staffed to perform the Basic Services for each Assigned Project. CPM’s personnel and the specific roles, authority and responsibility of the CPM’s personnel are subject to the reasonable approval of the District. For each Assigned Project, the CPM shall designate a Project Manager who shall be reasonably satisfactory to the District and who shall have the overall responsibility for performance of CPM’s obligations hereunder and be authorized to act on behalf of the CPM in discharge of CPM’s services hereunder in connection with such an Assigned Project. Personnel of the CPM for an Assigned Project and the tasks assigned such personnel
shall be set forth in the Task Order issued for such an Assigned Project. Personnel identified and tasks assigned to such personnel, as set forth in the Task Order for an Assigned Project shall not be replaced or changed without the prior consent of the District, which may be granted, denied or conditioned in the sole and exclusive discretion of the District.

1.7 Regulatory Agencies. The Basic Services of the CPM shall include assistance to the District and/or the Architect to submit, process, coordinate and/or manage the issuance of approvals, permits and other authorizations from regulatory agencies relating to the design, bidding or construction of an Assigned Project. The foregoing shall include without limitation, and as applicable to an Assigned Project, the approvals, permits and other authorizations issued by the Division of State Architect, the California Community Colleges Chancellor’s Office, State of California Department of Finance, State of California Public Works Board, the Cities of Aptos, Santa Cruz and Watsonville and the County of Santa Cruz.

1.8 CPM Standard of Care. The CPM covenants with the District to furnish its services hereunder properly, in accordance with the standards of its profession, and in accordance with applicable federal, state and local laws and regulations. CPM’s services hereunder shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and timely completion of the design, bidding and construction of an Assigned Project.

2 BASIC SERVICES; DESIGN PHASE

2.1 Selection and Retention of Architect for Assigned Project. If the District has not selected and retained an Architect for an Assigned Project, as requested or directed by the District, the CPM shall assist the District in: (i) development documents, and implementation of, procedures and processes for issuance of requests for proposals/qualifications to potential architectural services firms; (ii) review and evaluations of proposals submitted in response to such requests; (ii) participate with the District and/or Program Manager in interviews of potential architectural services firms for an Assigned Project; and (iv) make recommendations to the District for the selection of an Architect for an Assigned Project. As requested by the District, the CPM shall assist in the preparation of the Contract between the District and the Architect for an Assigned Project.

2.2 Review of Design Documents; General. The CPM, including the CPM’s Project Manager and Field Superintendent for an Assigned Project shall review the Design Documents prepared by the Architect for the Assigned Project during the Design Documents Phase of an Assigned Project to: (i) obtain a complete understanding of the design intent and scope of the Assigned Project; (ii) verify that the Design Documents reflect conformity to the District’s requirements for the Project, including without limitation, budget, schedule and occupancy requirements; and (iii) verify that the progress in completing Design Documents for the Assigned Project conforms to the schedule established for the Assigned Project.

2.3 Value Engineering. The CPM’s review of Design Documents for an Assigned Project shall include value engineering and life-cycle cost analysis at the intervals noted in the Task Order if such services are indicated in the Task Order for the Assigned Project. If, upon completing its Value Engineering review of the Design Documents, the CPM believes that Work of the Assigned Project depicted in the Design Documents, construction processes/procedures, specified materials/equipment or other aspects of
the Design Documents can be modified to reduce Construction Costs and/or the time for achieving Final Completion of the Assigned Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Assigned Project, the CPM shall identify the same in writing (“the Value Engineering Recommendations”) for review and acceptance by the District. The CPM shall submit the Value Engineering Recommendations to the District Representative for review and consideration by the District. The District shall have the sole and exclusive discretion to accept some, all or none of the CPM’s Value Engineering Recommendations. If the District accepts any of the CPM’s Value Engineering Recommendations, the CPM shall review the Design Documents as modified by the Architect for confirmation that the District accepted Value Engineering Recommendations are incorporated into the Construction Documents to be issued on behalf of the District for bidding and construction of the Assigned Project. If the CPM determines that the Architect has not incorporated into the Design Documents the Value Engineering Recommendations accepted by the District, the CPM shall advise the District of measures to ensure that the Construction Documents incorporate the District accepted Value Engineering Recommendations. The CPM shall implement such measures to obtain the Architect’s compliance as directed or authorized by the District.

2.4 Constructability Review. If indicated in the Task Order for an Assigned Project, at the intervals noted in the Task Order, the CPM shall review the Design Documents to ascertain: (i) whether the Assigned Project, as depicted in the Design Documents accurately and completely reflects the District’s use/occupancy and Project Budget objectives for the Assigned Project; and (ii) whether the Design Documents for the Assigned Project are free of errors, omissions, conflicts, or other deficiencies that are patently observable so that the Contractor can construct the Assigned Project as depicted in the Design Documents without delays, disruptions or additional costs resulting from errors, omissions, conflicts or other deficiencies in the Design Documents (“Constructability Reviews”). The scope of the CPM’s Constructability Reviews shall include: (i) confirmation that the various components of Design Documents prepared by the Architect and its Design Consultants have been coordinated and are consistent with each other so as to eliminate conflicts within or between components of the Design Documents; (ii) confirmation that there are no errors, omissions or other deficiencies in the Design Documents except for compliance with code requirements, structural calculations, specified dimensions, and the sufficiency of the Architect’s design of building systems including, but not limited to, roofing, building skin, mechanical, electrical, data, fire alarm and security to perform as intended. The CPM’s Constructability Reviews do not supersede the responsibility of the Architect to provide complete, correct and coordinated Design Documents for the Assigned Project. The CPM shall submit written Constructability Review comments (“Constructability Comments”) to the District Representative for review and consideration by the District. The District shall have the sole and exclusive discretion to accept some, all or none of the CPM’s Constructability Comments. If the District accepts any of the CPM’s Constructability Comments, the CPM shall review the Design Documents modified by the Architect for confirmation that the District accepted Constructability Comments are incorporated into the Design Documents issued on behalf of the District for bidding and construction by Contractors. If the CPM determines that the Architect has not incorporated into the Design Documents the Constructability Comments accepted by the District, the CPM shall advise the District of measures to ensure that the Design Documents issued for bidding by Contractors incorporate the District accepted Constructability Comments. The CPM shall implement such measures as directed or authorized by the District.
2.5 **District Review of Value Engineering Recommendations and Constructability Review Comments.** Upon receipt of the CPM’s Value Engineering Recommendations and the CPM’s Constructability Comments, the District shall promptly complete review of the same. Upon the District’s completion of such reviews, the CPM and the District Representative shall meet and confer, as necessary, to determine which of the CPM’s Value Engineering Recommendations and Constructability Comments are to be incorporated by the Architect into the Design Documents for the Assigned Project.

2.6 **Construction Budget; CPM Estimate of Construction Costs.** The CPM shall review the District’s Construction Budget for the Assigned Project. If upon completing review of the District’s Construction Budget for an Assigned Project, the CPM determines that any line-item of the Construction Budget is insufficient for completion of the task(s) associated with such line-item or if the CPM determines that the overall Construction Budget is insufficient to complete design, bidding and construction of the entirety of the Assigned Project, the CPM shall notify the District Representative and Architect of such determination, along with recommendations for adjustment of the scope of the Assigned Project and/or adjustment of the Construction Budget for the Assigned Project.

2.6.1 **CPM Estimate.** If indicated in the Task Order for an Assigned Project, the CPM shall prepare and submit to the District Representative the CPM’s Estimate(s) of Construction Costs for the Assigned Project at the intervals noted in the Task Order. If indicated in the Task Order for an Assigned Project, upon completion of the CPM’s Value Engineering and Constructability Reviews for the Assigned Project, the CPM shall prepare the Final Estimate of Construction Costs which shall reflect modifications to the Design Documents resulting from District accepted Value Engineering Recommendations and District accepted Constructability Comments for the Assigned Project. The CPM’s Final Estimate of Construction Costs shall be prepared and submitted to the District Representative in accordance with the time-frames set forth in the Task Order for the Assigned Project. All of the CPM’s Estimates of Construction Costs shall: (i) be in such format and with such detailed breakdown as directed by the District Representative including, without limitation, a detailed breakdown of estimated costs for construction of the Assigned Project; (ii) be organized by the standard specifications sections established by the Construction Specifications Institute; and (iii) be based upon the then current market conditions for labor, materials and equipment in the locality of the Assigned Project necessary to complete construction of the Assigned Project in accordance with the Design Documents. If the CPM’s Final Estimate of Construction Costs for an Assigned Project exceeds the Construction Budget established by the District for the Assigned Project by ten percent (10%) or greater, the CPM shall make recommendations to the District, for measures to reduce the Estimate of Construction Costs to conform to the Construction Budget for the Assigned Project. If the CPM’s Final Estimate of Construction Costs for an Assigned Project is less than the Construction Budget for the Assigned Project by ten percent (10%) or more, the CPM shall make recommendations to the District for items to incorporate into the Assigned Project to conform the CPM’s Estimate of Construction Costs with the Construction Budget for the Assigned Project.

2.6.2 **Verification of Others’ Estimate of Construction Costs.** Whether or not the Basic Services of the CPM for an Assigned Project includes the CPM’s preparation of Estimate(s) of Construction Costs, the Basic Services of the CPM for each Assigned Project shall include the CPM’s review of Estimate(s) of...
Construction Costs for an Assigned Project prepared by others. Such review shall include, without limitation, confirmation by the CPM that the Estimate(s) of Construction Costs: (i) accurately and completely reflect the scope of work depicted in the then existing Design Documents for the Assigned Project; (ii) reflect the then current marketplace prices for labor, materials and other items or services necessary for completing construction of the Assigned Project in accordance with the then existing Design Documents for the Assigned Project; and (iii) conform (within five percent (5%)) to the District accepted Construction Budget for the Assigned Project. If the CPM determines that it cannot confirm any of the foregoing, the CPM shall notify the District Representative and Architect in writing of such determination, along with recommendations for modification of the Design Documents for the Assigned Project or the Estimate of Construction Costs for the Assigned Project so that the CPM can confirm conformation of such requirements.

2.7 **Bidding and Construction Strategy.** At or about the time that the Architect for an Assigned Project achieves fifty percent (50%) completion of the final “for construction” Design Documents for an Assigned Project, the CPM shall meet and confer with the District Representative and/or Architect to develop an overall strategy for bidding and constructing the Assigned Project, taking into account factors affecting time and/or costs for completing construction of the Assigned Project. The CPM shall conduct such interviews and participate in meetings and conferences with the Architect, District staff, Program Manager and others as necessary to develop a bidding and construction strategy for the Assigned Project consistent with the foregoing objectives. Not later than thirty (30) days prior to the anticipated first day of issuance of Bid Documents to Bidders for the Assigned Project, the CPM shall submit its written bidding/construction strategy for the Assigned Project to the District Representative and Architect for review and acceptance by the District. The CPM shall modify its written bidding/construction strategy for the Assigned Project as necessary to obtain the District’s acceptance thereof.

3 **BASIC SERVICES; BIDDING PHASE**

3.1 **Review and Assembly of Bid Documents.** The CPM shall review and recommend modifications, if any, to the District’s standard forms of bid and contract documents for each Assigned Project. Modifications to the District’s standard forms of bid and contract documents shall include, without limitation, the CPM shall develop, prepare and incorporate into the District’s standard forms of bid and contract documents special, unique requirements of each Assigned Project. The CPM shall assist the District in assembly of bid and contract documents for each Assigned Project.

3.2 **Advertisements.** The CPM shall assist the District in development and placement of advertisements and other notices required by applicable law for bidding and constructing an Asssigned Project. The CPM shall also make recommendations to the District Representative for placement of notices and issuance of other communications for the purpose of publicizing the availability of the Assigned Project for bidding by Contractors. The CPM shall assist the District in placing such notices and issuing communications for such purposes.

3.3 **Contractors’ Campaign.** The CPM shall, by all appropriate means of communication, advise Contractors of the availability of the Assigned Project for bidding. The CPM shall endeavor to maximize the participation of qualified Contractors whose principal place of business is situated in Santa Barbara County. The CPM shall maintain records...
of contacts made and communications transmitted to/received from potential bidders for the Assigned Project. All such records shall be available for review and/or reproduction by the District or Program Manager upon request.

3.4 Pre-Bid Conference(s). The CPM shall conduct pre-bid conferences, including the job walk(s), if one is required or scheduled in the Bid Documents. The pre-bid conference shall include, without limitation: (i) description of the Assigned Project; (ii) description of the process for bidding and award of the Construction Contract for the Assigned Project; and (iii) requirements relating to bonds, insurance coverages and similar administrative requirements. The job walk shall provide bidders with an overview of the Site of the Assigned Project and an understanding of the physical limitations and constraints affecting the Work of the Assigned Project or portions thereof. The CPM shall record and transcribe minutes of the pre-bid conferences and job walk(s). Minutes maintained by the CPM shall be issued to all bidders who have theretofore obtained the Bid Documents, the District, the Architect and other parties as directed by the District Representative.

3.5 Review of Bid Proposals; Recommendations for Award of Contract(s). The CPM shall review submitted Bid Proposals to determine: (i) whether the bidder submitting the Bid Proposal is a responsible bidder; (ii) whether the Bid Proposal is responsive to material bidding requirements; and (iii) the price proposed for the base scope of Work of the Assigned Project and for each Alternate Bid Item, if any, included in the bidding. CPM shall make recommendations to the District regarding: (i) rejection of a Bid Proposal based upon the “non-responsibility” of the bidder; (ii) rejection of a Bid Proposal for non-responsiveness to material bidding requirements; (iii) rejection of a Bid Proposal for any other reason; (iv) rejection of all Bid Proposals; and (v) award of the Construction Contract for an Assigned Project. To the extent that the bidding included Alternate Bid Items, the CPM shall make recommendations for the Alternate Bid Items, if any, to be included in the scope of the Construction Contract for the Assigned Project awarded by the District. The CPM shall make recommendations to the District Representative for award of the Construction Contract for the Assigned Project.

4 BASIC SERVICES; CONSTRUCTION PHASE

4.1 Administration of Construction Contract.

4.1.1 CPM Contract Administration. CPM will provide administrative, management and related services necessary to administer the Construction Contract of an Assigned Project and to oversee the Contractor’s scheduling, sequencing and coordination of the Work of the Assigned Project. Without limiting the scope of the CPM’s Basic Services relating to administration of the Construction Contract, the CPM shall: (i) receive, review and forward to the District, Program Manager and the Architect the Contractor(s)’ Certificates of Insurance and Bonds along with commentary as to the extent to which the same comply with requirements of the Construction Contract; (ii) advise and make recommendations to the District for issuance of Notice(s) to Proceed directing commencement of construction of the Assigned Project or portions thereof; (iii) schedule, coordinate and conduct pre-construction and construction meetings; record, maintain and distribute minutes thereof; (iv) in consultation with the Architect, develop and implement procedures for the submittal and processing of Submittals; (v) in consultation with the District and the Architect, develop and implement procedures for the handling and disposition of the Contractor(s)’ requests for information or clarifications; (vi) establish and implement procedures for the transmittal and receipt of communications, drawings and
other information between CPM, Architect and the Contractor relating to construction of the Assigned Project; (vii) assist the District in selection and retention of Test/Inspection Service Providers and the Project Inspector; (viii) review the Contractor's Construction Schedules and implement provisions to monitor, oversee and enforce Contractor's compliance with Article 7.3 of the Construction Contract relating to the Contractor's development, maintenance, updating and compliance with the Construction Schedule for the Assigned Project; (ix) allocate Site staging and storage areas; and (x) such other activities as appropriate or necessary to administer the Construction Contract. Review of the Preliminary and/or Approved Progress Schedule and updates and any comments thereto by the District, CPM and/or the Architect shall not be deemed to be the assumption of construction means, methods or sequences by the District, CPM or the Architect, all of which remain the Contractor's obligations under the Contract Documents.

4.1.2 Project Management Programs/Software. The District intends to implement project management programs for management of the construction process of the Projects and administration of the Construction Contracts awarded by the District for the Projects. The software implemented may include, without limitation, software programs facilitating the generation, submittal, response and logging of correspondence, Requests for Information, Applications for Progress Payment/Final Payment, Submittals, test/inspection requests/results, and other similar items, functions or activities. The District will acquire the right to use such software and will provide the CPM and its personnel with appropriate licenses to use such software implemented by the District for the Project(s), without cost or expense to the CPM. The District will provide the CPM and its personnel, without cost or expense to the CPM, access to such software, provided that such access shall be for the sole and limited purpose of functions, activities and usage directly related to an Assigned Project subject to this Agreement. All of the CPM's personnel engaged in activities relating to administration of the Construction Contracts for Assigned Projects shall be trained to use the software implemented by the District for the Assigned Projects. Software training for the CPM's personnel shall be provided without cost or expense to the CPM. Neither the CPM nor its personnel shall be entitled to any compensation, costs, fees, expenses or other charges for the time associated with software training sessions and the use of such software shall be borne by the CPM without adjustment of the Contract Price due the CPM for an Assigned Project.

4.2 Construction Phase Meetings and Conferences. The CPM shall conduct meetings and conferences during the Construction Phase of an Assigned Project; the CPM shall maintain and issue minutes of Construction Phase Meetings and Conferences to the Contractor(s), the District, the Architect, the Project Inspector, Program Manager and others as directed or authorized by the District.

4.2.1 Pre-Construction Conference. The CPM shall conduct a Pre-Construction Conference after award of the Construction Contract for an Assigned Project and prior to the date for commencement of Assigned Project construction at the Site to address matters relating to: (i) scope and other requirements of the Assigned Project; (ii) the schedule for completion of the Assigned Project; (iii) administrative matters, including the submission and processing of payment requests, requests for information, Submittals and other similar matters; (iv) prevailing wage rates, Certified Payroll Records and other matters relating to the employment of labor; (v) test and inspection requirements; and (vi) other matters relating to the Assigned Project.
4.2.2 Regular Construction Conferences. During the course of construction of an Assigned Project, the CPM shall conduct Construction Conferences on a weekly basis. The Construction Conference shall address at least the following: (i) Project Progress Schedule reviews, updates and look-aheads; (ii) outstanding and open matters from prior Construction Conferences; (iii) coordination of installation activities; and (iv) other matters relating to the construction, progress of construction and workmanship of the Assigned Project.

4.2.3 Special Construction Conferences. As required by the circumstances of construction of the Assigned Project, the CPM shall call and conduct Special Construction Conferences to address matters not subject to the agenda or subject matter of Regular Construction Conferences.

4.2.4 Minutes of Conferences. The CPM shall, within five (5) days after the completion of a Construction Phase Meeting or Conference, issue minutes of such meeting or conference. Minutes prepared by the CPM shall accurately and completely reflect the discussions and conclusions reached on each separate agenda item considered during the course of a meeting or conference. If there are objections or corrections requested to any minutes of a meeting or conference issued by the CPM, the CPM shall review such objections or correction requests and address the same at the next Regular Construction Conference.

4.3 Monitoring of Construction Costs. CPM shall monitor on-going Construction Costs and advise the District of the financial condition of the Assigned Project by: (i) developing Project cash flow reports, forecasts and other financial reports for the Assigned Project to the District and Program Manager, including those reflecting variations between actual Construction Costs and the Construction Budget and estimated costs of unperformed activities of the Assigned Project; (ii) maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis; (iii) monitoring and advising the District of costs pertaining to potential, pending and completed Changes; and (iv) advising and making recommendations to the District for adjustments to the Construction Budget relative to actual or anticipated Construction Costs. The CPM shall prepare and submit cost reports of each Assigned Project to the District Representative and Program Manager on a monthly basis; provided that if the District Representative reasonably determines that more frequent cost reports for an Assigned Project are required, the CPM shall comply with the directive(s) of the District Representative. The information compiled by the CPM and reports generated by the CPM relating to Construction Costs of the Assigned Project shall be in such detail and format as required by the District Representative and processes/procedures established by the District and/or Program Manager. In addition, the extent of detail and the nature of the format of such reports, the information compiled by the CPM and reports generated by the CPM shall specifically indicate the original Contract Price, the extent of adjustment of the Contract Price by Change Orders approved by the District and the extent of potential further adjustment of the Contract Price as of the date of the CPM’s report based upon the Changes or potential Changes known at the time of the CPM’s preparation of a cost report. All major changes and cost factors shall be described in a narrative that shall be attached to the monthly cost report. The current month’s report narrative shall identify any changes from the estimate in the previous month’s report.
4.4 Applications for Progress Payments. CPM will participate in the review of Applications for Progress Payments of the Contractor(s) and in consultation with the District, Project Inspector and the Architect, make recommendations for the disbursement of Progress Payments to the Contractor for an Assigned Project as follows: (i) CPM will assist in the development of procedures for submittal, review, processing and disbursement of Progress Payments to the Contractor, along with associated forms and reporting systems; (ii) based upon CPM’s observations and evaluations of each Application for Progress Payment, CPM will review and certify to the District that the Progress Payment Application has been properly submitted and is undisputed including, without limitation, that the requisite reporting, documentation and submittals have been submitted with the Progress Payment Application and that the amount due on each such Application for Progress Payment; CPM’s certifications constitute a representation to the District that, based on CPM’s observations at the Site, the data in each Application for Progress Payment, and to the best of CPM’s knowledge, information and belief, the Work has progressed to the point indicated in the Application for Progress Payment and the quality of the Work is in generally in accordance with the Contract Documents; (iii) CPM’s representations relative to Applications for Progress Payment are subject to an evaluation of the Work for conformity with the requirements for the Substantial Completion, results of subsequent tests, inspections and other procedures, minor deviations from requirements correctable prior to completion and any specific qualifications expressed by CPM in its certification. CPM’s issuance of a Certificate pursuant to the preceding shall be a representation that the Contractor is entitled to payment in the amount so certified. The CPM’s review of Applications for Progress Payment shall be undertaken and completed in a timely manner so that the District can meet its obligations to make Progress Payment due Contractor within the time permitted by applicable law without incurring interest liability or other penalties/liabilities.

4.5 Substantial Completion; Punchlist. In consultation with the Architect, Project Inspector and the District, the CPM will assist in ascertaining the achievement of Substantial Completion of an Assigned Project. If upon inspection of the Work of an Assigned Project, the CPM determines that Substantial Completion has not been achieved, the CPM will assist the Architect in noting the conditions of the Assigned Project and the measures necessary to achieve Substantial Completion of the Assigned Project. Upon the Contractor achieving Substantial Completion of an Assigned Project, as applicable, the CPM will participate with the District, Project Inspector and the Architect to inspect the Work completed to note Punchlist items to be completed by the Contractor as a condition to achieving Final Completion.

4.6 Request for Information. Based upon the processes and procedures established for the submission, review and response to the Contractor’s Requests for Information, the CPM shall implement such processes and procedures during construction of an Assigned Project. In addition to such processes and procedures, the CPM shall maintain a log of Requests for Information which sets forth at least the following: (i) sequential numbering of Requests for Information; (ii) dates of: submission of a Request for Information, transmittal of the Request for Information to the Architect, the Architect’s response to the Request for Information and the transmittal of the Architect’s response to the Contractor; and (iii) actual or potential cost/time impact of each Request for Information and the response to each Request for Information. If requested by the District or Program Manager, the CPM’s Request for Information log shall include an assessment of the responsibility for any time or cost impacts arising out of a Request for Information or the response thereto.
4.7 Submittals. Based upon the processes and procedures established for the submission, review and evaluation of the Contractor's Submittals, the CPM shall implement such processes and procedures during construction of an Assigned Project. In addition to such processes and procedures, the CPM shall maintain a log of Submittals for an Assigned Project which set forth at least the following information: (i) sequential numbering or other means of tracking Submittals; (ii) the dates of: scheduled submission of a Submittal to the CPM from the Contractor, actual submission of a Submittal to the CPM from the Contractor, the CPM’s transmittal of each Submittal to the Architect, the Architect’s response to the Submittal, and the CPM’s transmittal of the Architect’s Submittal response to the Contractor; and (iii) brief summary of Architect’s Submittal response, including the requirement, if any, for revised or additional Submittals. CPM shall also assist Architect, as requested by District, in obtaining back-up documentation, shop drawings, and materials submittals from Contractor.

4.8 Project Progress.

4.8.1 Progress Records. CPM will maintain records of the progress of construction of Project construction, including written progress reports and photographs reflecting the status of construction and percentage completion of the Assigned Project. CPM will maintain daily records during construction of the Assigned Project showing weather conditions, personnel and manpower of the Contractor and its Subcontractors at the Site, work accomplished and other matters materially affecting the Assigned Project, completion of the Assigned Project or Construction Costs to complete construction of the Assigned Project.

4.8.2 Substantial Completion and Final Completion. Upon request of the Contractor, CPM will, in conjunction with the District Representative, Project Inspector and the Architect to determine that Substantial Completion and Final Completion have been achieved. CPM shall, in conjunction with the District Representative, Project Inspector and the Architect, jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor and establish a reasonable time for Contractor’s completion of all items requiring correction or completion. Upon determining that Substantial Completion/Final Completion has been achieved, the CPM shall issue Certificates of Substantial Completion and Final Completion, as applicable.

4.9 Department of Industrial Relation Compliance Monitoring Unit (“DIR CMU”). If DIR CMU requirements apply to an Assigned Project, the Basic Services of the CPM relating to such an Assigned Project shall include the following:

4.9.1 Take cognizance of and report any suspected violations of prevailing wage requirements to the Labor Commissioner.

4.9.2 Cooperate with the Labor Commissioner/Division of Labor Standards Enforcement (DLSE) in any investigation of suspected violations, and withhold contract payments in accordance with any lawful order by DLSE.

4.9.3 Ensure compliance with District public works procedures (i.e. Provide notice of the state’s prevailing wage requirements in every bid document and public works contract, as well as provide for applicable prevailing wage determinations to be posted at each job site).

4.9.3.1 Include language in bid invitation and public works contract that the project will be subject to monitoring and enforcement by DLSE, including the obligation to submit CPRs directly to the CMU.

4.9.3.2 At each job site post (or require the contractor to post) the notice required by 8 Cal. Code Reg. section 16451(d). The CMU provides the
required posters to awarding bodies. Posters are also available at the DLSE District Offices or by emailing a request to CMU@dir.ca.gov.

4.9.3.3 Ensure compliance with any CMU notification requiring contract payments to be withheld due to a contractor's failure to submit proper eCPRs.

4.9.4 **Pre-Construction Conference.** When conducting pre-construction conference(s) with the Contractor and Subcontractors, discuss and answer questions regarding federal and state labor law requirements and procedures applicable to the Assigned Project, including, but not limited to, record keeping, wage rate determinations, apprenticeship requirements, required form filing(s) and other matters relating to the compliance by the Contractor and its Subcontractors with requirements of the DIR CMU.

4.9.5 **Prevailing Wage Rates.** The CPM shall review the Contractor's Certified Payroll records to generally confirm that appropriate classifications of labor are utilized and that the prevailing wage rates established for such classifications of labor are indicated in the Certified Payroll records as having been paid. If the CPM determines, based upon the foregoing reviews, that the Contractor or any of its Subcontractors have failed to comply with prevailing wage rate obligations or other obligations relating to the employment and payment of labor for the Assigned Project, the CPM shall notify the District Representative and Program Manager in writing of such determination, the basis upon which such determination was reached and recommendations for securing compliance by the Contractor and/or its Subcontractors. The CPM shall implement such measures to secure compliance as directed or authorized by the District.

4.10 **Site Observations.**

4.10.1 **CPM On-Site.** Provided that the Construction Phase Basic Services are timely and fully completed by the CPM, to the extent feasible, Construction Phase Basic Services may be completed by the CPM's personnel at locations other than the Site, as outlined in each Task Order. The foregoing notwithstanding, the CPM's personnel shall be at the Site: (i) for all Project meetings; (ii) during critical construction activities; (iii) to monitor and coordinate special tests/inspections; (iv) for periodic Site observations; and (v) as requested by the District. CPM shall maintain at the Site (or other mutually agreeable location) the Construction Contract, Drawings, Specifications, approved Change Orders and Submittals. CPM will record/track all CPM and Consultants' personnel hours and efforts (both onsite and offsite) utilizing Primavera software implemented for an Assigned Project by the District.

4.10.2 **Construction Quality.** The CPM will endeavor to guard the District against defects and deficiencies in construction and workmanship of each Assigned Project on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor construction workmanship for conformity with: (i) accepted industry standards; (ii) applicable laws, codes, regulations, ordinances or rules; (iii) and the requirements of the Construction Documents.

4.10.3 **Rejection of Work.** Whenever in the ordinary course of discharging its services hereunder CPM shall discover or observe patent conditions of defective, non-conforming or deficient construction or workmanship which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, CPM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District, Architect and Project Inspector in writing. In other circumstances where defective, non-conforming or deficient Work is
observed by CPM, the District, Architect and Project Inspector shall be notified in writing by the CPM of such conditions and if directed by the District, the CPM shall stop or reject such Work. CPM’s responsibilities hereunder shall be limited to defective, non-conforming or deficient work or an apparent and patent nature.

4.10.4 Mitigation of Time/Cost Related Impacts. A material obligation of the CPM relating to the Construction Phase of each Assigned Project shall be the CPM’s shall develop and issue the Bid Schedule, Preliminary Baseline Construction Schedule, Baseline Construction Schedule and Updated Construction Schedules for the Project in accordance with Article 7.3, together with the continuous monitoring of the progression of construction of such Assigned Project relative to the District accepted Baseline Construction Schedule, Updated Construction Schedule and any designated milestones for the Assigned Project and the CPM’s continuing monitoring of the costs incurred and to be incurred for the Assigned Project relative to the Construction Budget established by the District for the Assigned Project. If the CPM, in the discharge of the foregoing obligations, determines that the time for construction of the Assigned Project or the costs for construction of the Assigned Project have deviated from the accepted Construction Schedule and/or the Construction Budget for the Assigned Project, the CPM shall: (i) notify the District and the Architect in writing of the scope, nature and extent of such deviations; (ii) provide the District and the Architect with written recommendations for measures to eliminate or mitigate the impact of such deviations; (iii) upon direction from the District, carry out and enforce such measures necessary to eliminate or mitigate the impact of such deviations; and (iv) continuously maintain detailed records of the factors, activities or other circumstances causing or contributing to such deviations, along with notations as to the CPM’s preliminary assessment(s) of the parties’ responsible for such factor, activities or other circumstances and assessment(s) of the degree of responsibility.

**

4.11 Site Safety.

4.11.1 District Safety Program. Prior to any performance of Work at the Site, the CPM shall review the District’s safety program, meet and confer with the District’s Director of Safety and Health to review the District’s safety program and to address measures to be implemented by the CPM to coordinate the safety programs of the Contractor with the District’s safety program and the District safety requirements.

4.11.2 Contractor Safety Programs. CPM shall review safety programs of the Contractor for conformity with requirements of the Construction Documents and applicable law; CPM shall monitor the Contractor’s compliance with its safety programs and advise the District of measures, if any, necessary or appropriate to obtain the Contractor’s compliance. By undertaking the obligations hereunder, CPM shall not be deemed to have assumed responsibility for the adequacy or sufficiency of safety programs implemented by the Contractor, but the CPM is responsible for verifying that the Contractor has established a safety program, that the safety program established by the Contractor is in compliance with the Construction Documents and applicable law, rule or regulation and that the Contractor implements its safety program during construction of the Assigned Project.

4.11.3 Safety Violations; Safety Conditions. The CPM shall promptly notify the District Representative in writing of all CPM observed instances of a Contractor’s failure to comply with applicable safety requirements or safety programs. In the
event of a safety violation or other unsafe conditions on or about the Site of the Assigned Project which have an immediate potential or actual adverse effect on life or property, the CPM is authorized, without prior notice to the District or prior directive of the District, to take all actions deemed necessary and appropriate by the CPM under the then existing circumstances to prevent such actual or potential adverse effect.

4.12 Changes and Claims.

4.12.1 Coordination of Changes. CPM will coordinate and disseminate correspondence, Drawings and other written materials by and between the Contractor, the District, Project Inspector, Test/Inspection Service Providers and the Architect relating to Changes to the Work of an Assigned Project. CPM will coordinate the Contractor’s performance of Changes authorized by the District. CPM will maintain a log or other written records to monitor the pendency and disposition of Changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular Change or Change Order or the cumulative effects thereof on Construction Costs or time for completing construction of the Assigned Project. The CPM shall maintain a log, in such form and format along with such detail as required by the District, setting forth each Change and Change Order along with the individual and cumulative cost and time impacts of Changes and Change Orders. If requested by the District or Program Manager, the CPM’s log of Changes and Change Orders shall include an evaluation of the underlying reason(s) for implementing a Change or Change Order. The log of Changes and Change Orders maintained by the CPM shall be available for review, inspection and reproduction upon advance request of the District or Program Manager.

4.12.2 Processing of Changes and Change Orders. CPM will assist the District and the Architect in evaluation of requests by the Contractor for issuance of Change Orders, assist in negotiations with the Contractor relative to Change Orders proposals and the adjustment of Contract Price or Contract Time under the Construction Contract. CPM will make recommendations to the District and the Architect for handling and disposition of the Contractor’s proposals relative to Change Orders. If a Change to a Construction Contract is approved or authorized by the District, CPM will assist the District and the Architect in the preparation of a Change Order reflecting such approved or authorized change to the Construction Contract. The CPM is not authorized, without the prior consent and approval of the District, to effectuate or authorize any Change to the Work of an Assigned Project. The CPM shall be liable to the District for all direct and consequential costs, losses or damages resulting from the CPM’s direction or authorization to effectuate a Change to the Work of an Assigned Project with the prior direction and authorization of the District.

4.12.3 General Conditions. CPM shall review and familiarize itself with the Contract Documents for an Assigned Project including, without limitation, the General Conditions. CPM acknowledges and agrees that all tasks, work or other obligations identified in the General Conditions and delegated therein to the CM, CPM or Project Manager are hereby incorporated by reference into this Agreement in their entirety, and CPM shall be obligated to fully and timely perform all such tasks, work or other obligations as if such tasks, work or other obligations were set forth separately in this Agreement.

4.12.4 Claims Handling. CPM will assist the Architect in the review, evaluation and processing of claims asserted by the Contractor; CPM will make recommendations to the District as to merit, handling and disposition of the
Contractor’s claims. Except in the event that the CPM is alleged to have caused or contributed to the circumstances giving rise to a Contractor claim or other Contractor demand for compensation, services of the CPM to prepare documentation or provide testimony in a mediation, arbitration or judicial proceeding arising out of such a claim or demand for compensation shall be deemed Additional Services. If the CPM is alleged to have caused or contributed to a Contractor claim, the CPM’s claims handling services including, without limitation, claims analysis, assistance in preparing briefs/graphic materials in connection with negotiations or dispute resolution proceedings relating to a Contractor claim and participation in negotiations or dispute resolution proceedings relating to a Contractor claim shall be deemed part of the CPM’s Basic Services under this Agreement.

5 PHASE BASIC SERVICES; POST-CONSTRUCTION

5.1 Review and Transmittal of Contractor Closeout Documents. The CPM shall receive from the Contractor the closeout documents and items to be submitted by the Contractor under the terms of the Construction Contract upon completion of their obligations under the Construction Contract. The CPM shall review the Contractor’s closeout submittals to determine conformity with requirements of the Construction Contract; if the CPM determines that the Contractor’s closeout submittals are not in conformity with requirements of the Construction Contract, the CPM shall make recommendations to the District for measures to secure compliance with the requirements of the Construction Contract, and upon direction from the District shall carry out and enforce such measures necessary to secure compliance with the requirements of the Construction Contract. The CPM shall deliver to the District Representative all of the Contractor’s close-out submittals, except for the Contractor’s as-built drawings which the CPM shall transmit to the Architect for preparation of the Record Drawings. The CPM shall monitor the Architect’s preparation and completion the Record Drawings for the Assigned Project.

5.2 CPM Project Records. Within thirty (30) days of the date after Final Completion of an Assigned Project, the CPM shall assemble and deliver to the District all of the records in the possession, custody or control of the CPM relating to the Assigned Project. The foregoing shall include, without limitation, all written records (whether in a final or draft form), graphic materials (including drawings, sketches, calculations, etc.) and electronic files of written or graphic materials.

5.3 Contractor’s Post-Construction Obligations. If the Contractor is obligated under the terms of the Construction Contract for an Assigned Project to provide work, labor, materials or services after completing construction of the Assigned Project, the CPM shall monitor such Contractor’s post-construction activities for conformity with requirements of the Contract. The CPM shall make recommendations, as necessary, for securing Contractor(s) compliance with post-construction obligations and upon direction from the District, CPM shall carry out such recommendations, as necessary, for securing Contractor(s) compliance with post-construction obligations..

5.4 Project Reports. The CPM shall monitor the filing of DSA reports and other actions required by applicable law, rule or regulation to be undertaken by the Architect, Project Inspector or the Contractor during construction of an Assigned Project and upon completing construction of the Assigned Project. If the Architect, Project Inspector or the Contractor have not filed reports or taken other actions required during construction of the Assigned Project or upon completing construction of the Assigned Project, the
CPM shall make recommendations to the District for measures to secure compliance by the Architect, Project Inspector or Contractor with regard to such requirements. The CPM will assist the District in completion and submission of reports and other actions required to be undertaken by the District during construction of the Assigned Project or upon completing construction of the Assigned Project pursuant to applicable law, rule or regulation.

6 Additional Services

6.1 District Right to Direct Additional Services. The District may, at its sole and exclusive discretion, direct the CPM to provide or perform Additional Services without invalidating this Agreement or any Task Order issued hereunder provided that the CPM shall not provide any Additional Services nor shall the District be obligated to compensate the CPM for any Additional Services provided by the CPM unless the District has authorized or directed such Additional Services by a written instrument.

6.2 Additional Services. The scope and nature of Additional Services which the District may direct the CPM to provide or perform may include, without limitation, the following:

6.2.1 Material Scope Changes. Services required or necessary as a result of significant changes in the Assigned Project scope or other requirements of the Assigned Project, including size, quality or complexity or material changes to the Assigned Project Schedule.

6.2.2 Termination of Architect or Contractor. Services required or necessary as a result of the default or termination of the Architect or Contractor for an Assigned Project, failure of performance the Contractor under a Construction Contract, or major defects or deficiencies in the work of a Contractor.

6.2.3 Damage or Destruction. Except to the extent caused by the CPM, services and consultation associated or necessitated by damage to the Assigned Project prior to completion by fire or other casualty.

6.2.4 Future Systems. Services relative to future systems, facilities or equipment not included within the scope of the Assigned Project as reflected in the Construction Contract awarded by the District for construction of the Assigned Project.

6.2.5 Investigation of Existing Conditions. Services to investigate existing conditions or facilities or to provide measured drawings thereof.

7 CPM COMPENSATION

7.1 Contract Price. The compensation due the CPM for Basic Services for each Assigned Project shall be as set forth in the Task Order for each Assigned Project. Payment of the Task Order Contract Price for an Assigned Project will be made by the District in accordance with the terms hereof. The Contract Price includes the fee of the CPM and any sub-consultants to the CPM, personnel expense of the CPM and sub-consultants, inclusive of all benefits and burdens, travel for personnel of the CPM and sub-consultants to and from the Site, travel within the Counties of Santa Cruz, Monterey, Santa Clara, San Mateo, Alameda and San Benito, insurance and other overhead costs associated with or arising out of performance and completion of Basic Services for an Assigned Project.

7.2 Reimbursable Expenses. Unless authorized in advance in writing by the District, there shall be no expenses, costs or other charges arising out of or related to providing Basic Services or authorized Additional Services under this Agreement (“Reimbursable Expenses”) which are reimbursable to the CPM. If any Reimbursable Expense is approved in advance by the District, the CPM’s reimbursement shall be limited to the actual costs, without mark-ups or multiples.
7.3 Additional Services. If the District shall authorize or direct CPM to perform or provide Additional Services described generally in this Agreement, CPM shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule attached hereto as Exhibit “B” (“the Rate Schedule”) and incorporated herein by this reference.

7.4 District Payments.

7.4.1 CPM Billings to District. During the Term of this Agreement, the CPM will submit monthly billings for payment of the Contract Price due under each pending Task Order for an Assigned Project. If the compensation due the CPM under a Task Order is based on time incurred by the CPM’s personnel, the CPM’s billings shall: (i) identify each member of the CPM’s personnel who performed any Basic Services or authorized Additional Services in the preceding month; (ii) a detailed description of the services, tasks or other activities for each time entry; (iii) time shall be billed in increments of no more than one-quarter of an hour; and (iv) limited by the “not to exceed” amount(s) noted in the Task Order for the Assigned Project, or portions thereof. If the compensation due the CPM under a Task Order for an Assigned Project is a lump sum fixed price, the CPM’s monthly billings shall be for the portion of the lump sum, fixed price due for the immediately preceding month, as set forth in the Task Order for the Assigned Project. If requested by the District, the CPM shall provide reasonably satisfactory substantiating data for payment requested by the CPM. When compensation to the CPM for the Basic Services of an Assigned Project is a fixed price lump sum, CPM will notify District in writing when CPM Billings reach seventy-five percent (75%) of the Task Order Contract Price.

7.4.2 Allocation of Contract Price. The Contract Price for an Assigned Project is allocated to each Phase of the Basic Services as described in the Task Order. The portion of the Contract Price for each Phase or portion of Basic Services for an Assigned Project shall be limited by the allocation thereof as set forth in the Task Order for an Assigned Project.

7.4.3 District Payments to CPM. Within thirty (30) days of receipt of CPM’s billing invoices, District will make payment to CPM of undisputed amounts of the Contract Price due for Basic Services and authorized Additional Services under a Task Order for an Assigned Project. No deductions shall be made or withheld from payments due CPM hereunder because of any penalty, assessment liquidated damages or other amounts withheld by the District from payment to the Architect or the Contractor for the Assigned Project. The District may, however, withhold or deduct from amounts otherwise due CPM hereunder if CPM shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after CPM has fully cured it failure(s) of performance, less costs, damages or losses sustained by the District as a result of such failure(s) of performance of material obligations hereunder. If at any time the District does not pay to CPM all sums invoiced, District shall within thirty (30) days of the CPM’s submission of its billing invoice, provide CPM with written documentation describing the basis for the District’s withhold or deduction of the Contract Price under a Task Order and shall pay the balance of CPM’s invoice not subject to withholding or deduction.
8 TERM OF AGREEMENT; TIME

8.1 Term. The Term of this Agreement shall commence on _______________ and shall terminate sixty (60) months thereafter on ________________. Notwithstanding expiration of the Term, if at such time, there are remaining Basic Services or authorized Additional Services to be performed by the CPM in connection with an Assigned Project under a Task Order issued prior to expiration of the Term of this Agreement, the CPM shall continue to diligently perform and complete all such remaining Basic Services or authorized Additional Services for the Term of the Assigned Project subject to such a Task Order; notwithstanding expiration of this Agreement, the District will continue to make payment for the Basic Services and authorized Additional Services performed in connection with such an Assigned Project after expiration of the Term of this Agreement, in accordance with the terms of the Task Order for such an Assigned Project.

8.2 Time. All of the Basic Services and authorized Additional Services set forth in the Task Order for an Assigned Project shall be completed by the CPM in a prompt and diligent manner. If a schedule for completion of Basic Services in connection with an Assigned Project is set forth in the Task Order for an Assigned Project, the CPM’s performance and completion of Basic Services shall be in accordance with such schedule. The CPM shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the CPM to complete Basic Services for an Assigned Project in accordance with an agreed upon schedule, provided that the CPM’s liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the CPM.

9 TERMINATION; SUSPENSION

9.1 Termination for Default. Either the District or CPM may terminate this Agreement upon seven (7) calendar days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District’s right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to CPM if: (i) CPM becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by CPM or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for CPM or any of CPM’s property on account of CPM’s insolvency; or (ii) if CPM disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder, the amount due CPM, if any shall be based upon Basic Services, authorized Additional Services and Authorized Reimbursable Expenses incurred or provided prior the effective date of the District’s termination of this Agreement, reduced by losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Payment of the amount due, if any, at the effective date of termination of this Agreement, shall be made by District only after completion of the Construction Phase of all outstanding Assigned Projects. CPM shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of CPM’s default hereunder, to the extent that such losses,
damages or other costs exceed any amount due CPM hereunder for Basic Services or authorized Additional Services for outstanding Assigned Projects.

9.2 **District's Right to Suspend.** The District may, in its discretion, suspend all or any part of the construction of an Assigned Project, work under a Construction Contract or CPM's services under a Task Order provided, however, that if the District shall suspend construction of an Assigned Project, work under a Construction Contract or CPM's services under a Task Order for an Assigned Project for a period of sixty (60) consecutive days or more and such suspension is not caused by CPM or the acts or omissions of CPM, upon rescission of such suspension, the Contract Price for an Assigned Project will be adjusted to provide for actual costs and expenses incurred by CPM as a direct result of the suspension and resumption of construction of the Assigned Project or construction under a Construction Contract or CPM's services under the Task Order for an Assigned Project.

9.3 **District's Termination of Agreement for Convenience.** The District may, at any time, upon seven (7) days advance written notice to CPM terminate this Agreement or a Task Order for an Assigned Project for the District's convenience and without fault, neglect or default on the part of CPM. In such event, the Agreement or Task Order, as applicable, shall be deemed terminated seven (7) days after the date of the District's written notice to CPM or such other time as the District and CPM may mutually agree upon. In such event, the District shall make payment of the Contract Price for outstanding Assigned Project(s) to the CPM for services provided through the date of termination plus actual costs incurred by CPM directly attributable to such termination. Except as set forth herein, no other payment or compensation shall be due the CPM upon the District's termination of this Agreement or a Task Order pursuant to the preceding.

9.4 **CPM Suspension of Services.** If the District shall fail to make payment of undisputed portions of the Contract Price for an Assigned Project when due CPM hereunder, CPM may, upon seven (7) calendar days advance written notice to the District, suspend further performance of services hereunder until payment in full is received. In such event, CPM shall have no liability for any delays or additional costs to construct the Assigned Project due to, or arising out of, such suspension. Except as expressly set forth above, the CPM shall not suspend its services under this Agreement or a Task Order for an Assigned Project.

10 **Insurance and Indemnity.**

10.1 **CPM Insurance Policies.** At all times during performance of services under this Agreement, the CPM shall obtain and maintain the following policies of insurance: (i) Workers Compensation; (ii) Employers Liability; (iii) Commercial General Liability and (iv) Professional Liability. The CPM’s Workers’ Compensation Insurance shall provide coverage for claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts under which the CPM may be liable. The Employer’s Liability Insurance shall cover bodily injury (including death) by accident or disease to any employee, which arises out of an employee’s employment by the CPM. The Employer’s Liability Insurance required of CPM hereunder may be obtained by the CPM as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained by CPM hereunder. The Commercial General Liability and Property Insurance shall cover the types of claims set forth herein: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (ii)
claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the CPM, or (b) by another person; (iii) claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (v) contractual liability insurance applicable to the CPM’s obligations under the Agreement. The District shall be an additional insured under the CPM’s Commercial General Liability insurance policy. The Professional Liability insurance policy shall cover liabilities of the CPM arising out of the performance of services under this Agreement.

10.2 Insurer Qualifications. Each policy of insurance the CPM is required to obtain and maintain shall be acceptable to the District only if issued by insurers who are: (i) A.M. Best rated A- or better; (ii) A.M. Best Financial Size Category VII or higher; and (iii) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California.

10.3 Certificates of Insurance. Concurrently with execution of this Agreement, the CPM shall deliver to the District Certificates of Insurance evidencing the insurance coverages required under this Agreement. Failure or refusal of the CPM to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. Should any policy of insurance be canceled or expire at any time during the Term of this Agreement, the CPM procure replacement insurance conforming to the requirements set forth in this Agreement so that there is no lapse or gap in any insurance coverage required of the CPM hereunder. The CPM shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by Agreement; failure of the CPM to comply with the District’s request may be deemed by the District to be a default of a material obligation of the CPM.

10.4 CPM’s Insurance Minimum Coverage Amounts. Minimum coverage amounts for policies of insurance to be obtained and maintained by the CPM are:

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers Compensation</td>
<td>In accordance with applicable law</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Commercial General Liability (including Bodily Injury or Death and Property Damage)</td>
<td></td>
</tr>
<tr>
<td>Per Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Aggregate</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Automobile Liability - Bodily Injury or Death</td>
<td></td>
</tr>
<tr>
<td>Per Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Aggregate</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Professional Liability</td>
<td></td>
</tr>
<tr>
<td>Per Claim</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Aggregate</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

10.5 CPM Indemnity. To the fullest extent permitted by law, the CPM shall indemnify, defend and hold harmless the District and its employees, officers, Board of Trustees, Trustees, agents and representatives (collectively “the Indemnified Parties”) from any and all claims, actions, demands, losses, responsibilities or liabilities for: (i) injury or
death of CPM’s employees; (ii) injury or death of persons, damage to property, or (iii) other costs or charges arising out of or attributable, in whole or in part, to the negligent or willful acts, omissions, errors and/or other conduct of the CPM or its employees, agents and representatives in performing or providing any of the obligations, services or other work product contemplated under this Agreement. The foregoing shall include without limitation, reasonable attorneys fees and costs incurred by the Indemnified Parties and shall survive the termination of this Agreement until any such claim, demand, loss, responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

11 MISCELLANEOUS

11.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or CPM. In the event of conflict or inconsistency between this Agreement or the Conditions to this Agreement and the RFP Response, the terms of this Agreement and/or the Conditions to this Agreement shall prevail, as applicable.

11.2 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of CPM and the District. Neither CPM nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

11.3 Authority. The individual(s) executing this Agreement on behalf of CPM warrant and represent that she/he is authorized to execute this Agreement and bind CPM to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District’s Board of Trustees, to bind District to all terms hereof.

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

If to District:
Director of Purchasing Contracts & Risk Management
Cabrillo Community College District
6500 Soquel Drive
Aptos, CA 95003
Facsimile: 831-477-5640

If to CPM:

11.5 Disputes.

11.5.1 Continuation of CPM Services. Except in the event of the District’s failure to make undisputed payment of the Contract Price due CPM, notwithstanding any disputes between District and CPM hereunder, CPM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
11.5.2 Mandatory Mediation. All claims, disputes and other matters in controversy between the CPM and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the Judicial Arbitration and Mediation Services ("JAMS"). The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the CPM commencing arbitration proceedings pursuant to Paragraph 11.5.3 below.

11.5.3 Arbitration. All claims, disputes or other matters in controversy between CPM and District arising out of or pertaining to an Assigned Project or this Agreement which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted under the auspices of JAMS. The award rendered by the Arbitrator(s) shall be final and binding upon the District and the CPM only if it is supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296. Any arbitration award that does not include findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. The District and CPM hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the arbitration award if, after review thereof, the Court determines either that the arbitration award is not supported by substantial evidence or that it is based on an error of law. If any claim or dispute is asserted by the Architect or a Contractor or the District relating to an Assigned Project and arising in whole or in part out of this Agreement, CPM and District agree that any arbitration proceedings initiated between CPM and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or Contractor.

11.5.4 CPM Compliance with Government Code §900 et seq. The foregoing dispute resolution procedures notwithstanding, neither this Agreement, any Task Order nor the provisions of this Agreement or any Task Order issued hereunder, shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the CPM’s submission of claims to the District. The CPM’s strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the CPM’s initiation of any other dispute resolution procedure or proceeding.

11.6 Definitions.

11.6.1 Contractor. The entity or individual under direct contract to the District for construction of an Assigned Project.


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

11.6.4 Architect. The Architect is the firm or individual retained by the District in connection with an Assigned Project to provide architectural and related design services in connection with the Assigned Project. References to the Architect include consultants retained by the Architect to prepare or provide any portion of the Design Documents for an Assigned Project.

11.6.5 Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or a Subcontractor to the Contractor or suppliers illustrating some portion of the work of an Assigned Project.
11.6.6 Site. The physical area for construction and activities relating to construction of an Assigned Project.

11.6.7 Assigned Project Budget. The Assigned Project Budget is to the total costs allocated by the District for bidding and construction of the Assigned Project by Contractors, exclusive of fees and costs of the Architect, CPM and other consultants of the District, Site acquisition costs and the costs of furniture, furnishing and/or equipment for the Assigned Project which are not included in the scope of the Construction Contracts. The Project Budget established by the District may be modified by the District from time-to-time.

11.6.8 Construction Cost Estimates. Construction Cost Estimates are estimates of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractors’ profit, overhead and administrative cost as necessary to complete construction of an Assigned Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of bids for construction of the Assigned Project and Changes to the Assigned Project during construction of the Assigned Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Assigned Project Budget, if any.

11.6.9 Construction Costs. The costs of labor, materials, equipment (inclusive of the Contractors’ administrative costs/profit) necessary to complete construction of an Assigned Project.

11.6.10 Construction Schedule. A Construction Schedule is the written or graphic description of the scheduling, sequencing and interrelationships of activities necessary to complete construction of an Assigned Project.

11.6.11 Construction Documents. The Contract Documents issued by or on behalf of the District under a Construction Contract of all or a portion of an Assigned Project. Construction Contract Documents include all modifications issued by or on behalf of the District.

11.6.12 Substantial Completion. Substantial Completion is when the Work of a Construction Contract for an Assigned Project has been completed and installed and the Work can be used or occupied for its intended purposes, subject only to minor corrections, repairs or modifications.

11.6.13 Final Completion. Final Completion is when all of the Work of a Construction Contract for an Assigned Project has been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Contractor has completed all other obligations to be performed on its part under the Construction Contract for an Assigned Project.

11.7 Entire Agreement. This Agreement, the CPM’s Proposal and the documents enumerated below, if any, are all of the documents forming a part of the Agreement. In the event of any conflict or inconsistency between this Agreement and the RFP Response, the provisions of this Agreement shall govern and prevail.

EXHIBIT A: Form of Task Order
EXHIBIT B: CPM Hourly Rate Schedule
EXHIBIT C: Responsibilities Matrix

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

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

DISTRICT
CABRILLO COMMUNITY COLLEGE
6500 Soquel Drive
Aptos, CA 95003

By:______________________________
Title:____________________________
Date:____________________________

CONSTRUCTION PROJECT MANAGER

By:______________________________
Title:____________________________
Date:____________________________
PROJECT ASSIGNMENT
(EXHIBIT A TO AGREEMENT FOR ONGOING
CONSTRUCTION PROJECT MANAGEMENT SERVICES)

This Project Assignment is executed between CABRILLO COMMUNITY COLLEGE DISTRICT ("District") and __________ ("CPM") pursuant to the Agreement for Ongoing Architectural Services ("Agreement") between the CPM and the District dated ___________, 20___. By this reference, the Master Agreement for On-Going Construction Project Management Services is incorporated herein as if set forth in full.

1. Project Name.

2. Project Description.

3. Basic Services. The CPM will provide the following Basic Services noted below for the above-described Project (see Agreement for detailed description of each of the following identified Basic Services).

Basic Services Phases

☐ Pre-Design
☐ Preliminary Plans
  ☐ Preliminary Plans Value Engineering
  ☐ Preliminary Plans Phase Constructability Review
☐ Working Drawings
  ☐ Working Drawings Value Engineering
  ☐ Working Drawings Constructability Review
☐ Bidding
☐ Construction
☐ Post-Construction

Consultants Included in Basic Services

☐ _________________
☐ _________________
4. Project Budget. ______________________________Dollars ($__________).

5. CPM Compensation:

   A. Contract Price. [Describe basis for determining Contract Price i.e., hourly, fixed
      fee/lump sum, percentage of Construction Costs, etc.].

   B. Allocation of Contract Price to Phases of Basic Services.

      Pre-Design _______ %
      Preliminary Plans _______ %
      Working Drawings _______ %
      Bidding _______ %
      Construction _______ %
      Post-Construction _______ %

   C. Additional Services Rate Schedule:

      CPM Personnel

      Other Consultants Personnel