

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ of _____, 202_, in the City of Dublin, County of Alameda, State of California, by and between CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT, a California Community College District, (hereinafter referred to as 'DISTRICT') and _____ (hereinafter referred to as "CONSULTANT") having its principal place of business at _____.

WITNESSETH:

WHEREAS, DISTRICT desires to engage CONSULTANT to perform certain of the professional services related, but not limited to Project/Construction Management and Related Services,

WHEREAS, CONSULTANT represents that it is fully qualified and willing to perform the services required hereunder.

NOW THEREFORE, for and in consideration of the covenants and conditions hereinafter set forth, the parties do mutually agree as follows:

I. STATEMENT OF WORK

CONSULTANT hereby agrees to perform the tasks and services set forth in Exhibit "A", entitled "Statement of Services", attached hereto and made a part hereof, in accordance with the terms and conditions sequence, time, and manner expressed herein.

II. COMPENSATION

For and in consideration of the services performed by CONSULTANT hereunder, DISTRICT agrees to pay CONSULTANT the sums set forth under Exhibit 'B' entitled "Compensation and Payment", attached hereto and made a part herein.

III. TERMS AND CONDITIONS

CONSULTANT agrees to be bound by the General Provisions for Professional Services Agreement identified as Exhibit "C" entitled "General Provisions for Professional Services Agreement" attached hereto and made a part herein.

IV. TERM

The initial term of this Agreement shall expire twelve (12) calendar months or end of project, whichever is later and after the date upon which the DISTRICT and the CONSULTANT each execute the initial "Consulting Assignment" as identified in Exhibit "A", a counterpart copy hereof, deliver an executed counterpart copy hereof to the other.

IN WITNESS WHEREOF the authorized representatives of the parties hereto have executed this Agreement effective on the date first written above.

"DISTRICT"
CHABOT-LAS POSITAS
COLLEGE DISTRICT

"CONSULTANT"

By: _____
Mr. Jonah Nicholas
Vice Chancellor,
Business Services

_____ Date

By: _____
_____ Date

Print Name: _____
Title: _____

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EXHIBIT "A"
STATEMENT OF SERVICES

1. CONSULTANT represents that it has the expertise, experience, personnel, and resources to perform the desired services. The CONSULTANT further represents that CONSULTANT and all personnel engaged to provide/perform services hereunder are and shall remain fully qualified and authorized, permitted and/or licensed under applicable law or regulations to perform such services. None of the work or services shall be subcontracted without the prior written approval of DISTRICT.

2. CONSULTANT will perform or cause to be performed those services described below in accordance with all laws, regulations, and applicable codes and with the provisions of this agreement. CONSULTANT shall use its best efforts to conduct the services in an expeditious and timely manner. All services hereunder shall be provided/performed in accordance with the standard of care for consultants providing/performing similar services.

3. CONSULTANT SERVICES shall include:

Provide project management and construction management services to coordinate, manage and report on the Bond Measures funded projects currently underway or Board Approved. Revisions to the below scope of services shall be based upon mutual agreement.

The scope of services includes all technical support and expertise provided by CONSULTANT for the project(s) and shall be highly familiar with web-based, electronic project management, construction management and document control software; the District utilizes MS Project latest version exclusively for scheduling. The consultant shall report to the District during all phases of the design and construction process through closeout and includes the activities as listed below:

Project Management Responsibilities

Design Phase

- a. Become knowledgeable of the District standards and educational facility specifications and apply these standards to project scoping.
- b. Assist the District in the development of project scope, schedule and cost estimates, including an independent cost estimate at the end of schematics, design development and at 50% construction documents and at DSA submittal (90% CDs). At the end of each phase, participate in a value engineering and cost reconciliation process with the other cost estimators as provided by the architect (or others).
- c. Review and monitor the architects' design schedule.
- d. Coordinate with Division of State Architect (DSA) for reviews and approval of project designs as appropriate.
- e. Review of drawings at Design Development phase, provide written commentary on constructability.
- f. Attend and/or conduct meetings necessary for coordination with all interested stakeholders and parties.
- g. Attend design meeting(s) and review and distribute meeting minutes prepared by others.
- h. Provide periodic reports that summarize design progress, schedule and cost status, changes and other significant project information.
- i. At the 50% & 90% completion milestones of the construction documentation phase,

- provide a constructability review.
- j. Assist the District with CEQA approval.
- k. Develop project phasing and interim housing plans as required.
- l. Assist in the packaging of the specifications, Div.00, Div.01 and bid set and coordinate the work with the architect/engineer for project of varying delivery methods.
- m. Assist project architect to identify and obtain all necessary regulatory agency approvals.

Project LEED Certification

The District has a standard for all new construction to meet LEED Silver Certification.

Coordinated and assist the District in providing LEED Certified projects by working with the designer and consultants by:

- a. Identifying materials and resources.
- b. Managing, reviewing and implanting LEED–related materials to the project documents.
- c. Assisting with the implementation of recycling plan for the project.
- d. Reviewing LEED score sheet and identifying LEED credit opportunities within the project.
- e. Reviewing and assist the District with submission of documentation through LEED on-line.
- f. Reviewing and assist the architect and contractor during construction to assure LEED requirements are being met and submitted in timely manner.

Furniture, Fixtures and Equipment (FF&E) Project Management Responsibilities

- a. Provide FF&E planning, specifications and implementation (including process recommendations) for furniture, fixtures, and equipment.
- b. Coordinate and plan the development of furniture layouts, infrastructure requirements, budget and procurement strategies, specifications, competitive bids and contracts, order and delivery schedules, project submittal review, installation, coordination, inspection and project start up. Maintain project related information over the duration of the contract.
- c. Consult with District Facilities Team, Project Design Teams, building user groups, and other mission critical entities within the District, including Information Technologies, Maintenance and Operations, Purchasing and Contracting, and other District appointed consultants and staff.

Construction Phase

1. Bid & Award
 - a. Prepare and review bid schedules with the District Staff.
 - b. Assist the District Staff in developing and solicitations and/or bid documents for the selection of construction firms for various delivery methods.
 - c. Coordinate prequalification if applicable.
 - d. Prepare and participate in pre-bid and/or pre-proposal conferences along with site visits.
 - e. Provide project bid marketing.
2. Construction Phase
 - a. Coordinate schedule of work with appropriate campus representatives, including creation of temporary pathways around the construction site in order to create a safe environment on an active campus.

- b. Assist the District with management and administration of construction contracts, including, but not limited to, scope change orders, payments, submittals, RFI's, monitoring of construction, document interpretations, and other procedural aspects.
- c. Attend weekly site meetings, prepare complete and accurate meeting minutes and distribute.
- d. Monitor, review and comment on the contractor's construction schedule. Advise the District regarding sequencing to facilitate productivity and occupancy objectives
- e. Assist the District in the development of appropriate construction procedures and protocols, include safety and efficiency. Review and comment on the construction logistics plan provided by the contractor.
- f. Assist and review for Quality Assurance/Quality Control ensuring adherence to contract documents.
- g. Review and evaluate all Change Order Requests issued by the contractor. Advise the District on the form and content of such change orders in relation to the contract documents. Negotiate with the contractor as necessary to provide the District with the best value.
- h. Prior to distributing the submittals and materials to the architect, review all submittals, product samples, shop drawings for completeness, accuracy and compliance to the contract documents as submitted by the entity contracted with for the project.
- i. Analyze recommendations from contractor, architect, or other consultants which might lead to a quality improvement or decrease construction time and/or costs.
- j. Review schedule of values as proposed by the contractor and make recommendations on completeness and format per the contract documents. Sign-off on all contractor payment requests pursuant to the contract documents, as well as architect and consultant pay applications, or other consultant agreements related to the contract.
- k. Identify payment defaults on the part of the contractors, subcontractors, material suppliers, or any party who may have lien rights against the project.
- l. Track all preliminary lien and stop notices related to the project.
- m. Review and inspect the project daily to verify:
 - i. Materials and labor being furnished are in accordance to the contract documents.
 - ii. Work billed for each payment requested is completed in accordance with the contract documents.
 - iii. Contractors time schedule is being maintained, as required by the construction contract documents.
 - iv. Provide proactive communication to the campus community about any construction related issues so as to minimize disturbances on campus during construction.
- n. Provide monthly accounting and project related status reports to the satisfaction of the District, including but not limited to projected costs, encumbrances, and actual costs.

3. Project Commissioning

- a. Coordinate the commissioning of each project and work with the commissioning agent to verify that the building's energy related systems are installed, calibrated, and performed in accordance to the owner's project requirements, basis of design and construction documents.

- b. Review the Districts Project Requirements or Basis of Design Documents for clarity and completeness.
 - c. Assist in supporting the commission agent by scheduling and facilitating commissioning meetings with the project team and campus representatives to assure adequate system documentation and training.
4. Close-Out
- a. Assist architect in the preparation of the punch list for the contractor, subcontractors and other consultants on the project.
 - b. Coordinate and assist the architect in scheduling the completion of all corrective work, and participate with sign-off on all inspections.
 - c. Coordinate and assemble all warranties and guarantees as required by the contract documents and specification from the contractor and subcontractors.
 - d. Manage the collection of the As-built documentation as required by the construction documents from the contractor and submit to the architect for review and approval.

No other terms and conditions shall apply other than as specified in Exhibit "C", Section 18, "Extent of Agreement."

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EXHIBIT "B"
COMPENSATION AND PAYMENT

1. For and in consideration of the performance and completion of the services hereunder, DISTRICT agrees to pay CONSULTANT as follows:

A written definition of the compensation to be paid to the CONSULTANT will be as stipulated in those subsequent Consulting Assignment(s) issued by the District to the Consultant, pursuant to Paragraph 3 of the Exhibit above. Subject to the specific terms and conditions of any subsequent Consulting Assignment(s)/Task Order issued to the CONSULTANT, payment of fees will be on a Time and Materials/Fixed Price basis, inclusive of all related expenses, not to exceed _____ (\$00.00).

2. Once each month, CONSULTANT shall submit an invoice for services rendered during the previous month. The DISTRICT shall promptly pay CONSULTANT the amount due within thirty (30) days. If the consultant fails to timely and fully perform material obligations of the Consultant hereunder, notwithstanding any provision of the Agreement to the contrary, the DISTRICT may withhold from any amount due the CONSULTANT, with the withheld amounts being disbursed to the CONSULTANT after the CONSULTANT has fully cured such failure to performance, less costs, expenses, losses or damages sustained by the DISTRICT as a result of such failure to performance.

3. The Compensation shall be paid in the manner and at the times set forth below:

The CONSULTANT will be paid monthly on progress billings based upon time and materials expended, based upon the fully burdened rates provided in Exhibit "A" of the RFQ. Invoices shall be submitted in a format approved by the District and shall include appropriate documentation of amounts invoiced, including but not limited to time cards, receipts, etc. Reimbursable expenses shall be invoiced as set forth and described in the documents attached hereto and referred in Exhibit C, Item 3.

4. CONSULTANT shall not perform any additional service, or incur any additional expense in the performance of this Agreement without the prior written approval of DISTRICT.
5. The maximum billing per employee is forty (40) hours per week and eight (8) hours per day. There is no overtime for management (exempt employees). Overtime may be authorized for hourly (non-exempt) employees only. Such overtime authorization must be issued by the DISTRICT in writing.
6. DISTRICT shall not be responsible for payment or reimbursement of monies for additional services performed without the prior written approval of DISTRICT.
7. Should a change of scope or additional services be required, payment for such services will be determined at the time of DISTRICT's written approval, and such shall be amended to this Agreement.
8. DISTRICT will not be responsible for reimbursement for costs invoiced more than 90 days after the costs were incurred.

EXHIBIT "C"
GENERAL PROVISIONS FOR PROFESSIONAL SERVICES AGREEMENT

1. Responsibility

CONSULTANT shall be solely responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, calculations, data, reports or other services to be provided hereunder, and shall, without any additional compensation, correct or revise any errors or deficiencies promptly upon notice or discovery thereof, provided that the CONSULTANTS obligation to correct or revise errors/discrepancies in the services provided is in addition to and not in lieu of the consultant's liability to the DISTRICT for losses, costs, expenses or damages sustained by the DISTRICT as a result of such errors/deficiencies. Neither a review, approval or acceptance of, nor payment for, any of the services required hereunder shall be construed as a waiver of any rights under this Agreement by DISTRICT or of any cause of action arising out of the performance of this Agreement, and Subcontractor shall be liable for all damages caused by or arising out of CONSULTANT'S negligent performance of any Services provided or required hereunder.

2. Changes

DISTRICT may, upon ten (10) days written notice, make changes in the Scope of Services to be provided hereunder. If such changes result in an increase or a decrease in Services, the time required to performance thereof, or the compensation thereof, this Agreement shall be modified accordingly in writing in order for such changes to be valid.

3. Reimbursable Expenses

Reimbursable costs shall be defined as expenditures approved in advance by the DISTRICT and shall include any non-payroll costs to the CONSULTANT. Reimbursable expenses shall be invoiced at actual cost plus five percent (5%) mark-up.

Photocopying, postal charges, telephone and internet charges, office equipment and supplies at each campus will be supplied by the District.

Cell phone, transportation, relocation, temporary housing and non-DISTRICT directed travel are not reimbursable.

4. Termination

A. Performance of the work and Services hereunder may be terminated by DISTRICT at any time, in whole or in part:

- (1) Whenever CONSULTANT shall default in its obligations hereunder or fails to make progress in the prosecution of the work or Services; or
- (2) For the convenience of DISTRICT.

B. Termination shall be effected by delivery to CONSULTANT of the Notice of Termination, specifying whether said termination is for default of CONSULTANT or for the convenience of DISTRICT, the extent to which performance of the work and Services is terminated; and the date upon which said termination is to become effective. If, after Notice of Termination for default, it is determined that CONSULTANT was not in default, or that CONSULTANT 's failure to fulfill its

obligations was due to causes beyond its control and without its fault or negligence, the Notice of Termination shall be deemed to have been issued for the convenience of DISTRICT.

- C. Following receipt of Notice of Termination, CONSULTANT shall discontinue performance on the date and to the extent specified therein, and deliver to DISTRICT the completed or partially completed plans, information, data, reports, estimates: summaries, materials, or other documents which, if performance had been completed, would be furnished to DISTRICT. CONSULTANT shall continue performance of such part of the work and Services which are not terminated by the Notice of Termination. CONSULTANT shall prepare and submit a termination claim for services satisfactorily performed, which shall include costs and expenses, reimbursable in accordance with the Terms of this Agreement, not previously paid to CONSULTANT, incurred prior to the effective date specified in the Notice of Termination, and DISTRICT may agree upon the whole or any part of the amount(s) claimed by CONSULTANT on account of the termination or partial termination.
- D. In the event of termination for default, DISTRICT shall be entitled to complete the work and Services hereunder or engage others to do so and in addition to whatever remedies it may have at law if the expense of completing said work and Services is greater than the amount CONSULTANT was to receive as compensation therefore, DISTRICT shall be entitled to recover the difference from CONSULTANT.
5. Confidentiality
CONSULTANT hereby agrees that all information provided by DISTRICT relating to the Services hereunder shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONSULTANT without the written consent of DISTRICT, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder, provided that the limitation shall not apply to any information or portion thereof, which is within the public domain at the time of its disclosure. The requirements of this provision shall survive the term of this Agreement.
6. Ownership and Reuse of Documents
All non-proprietary data, information, reports, drawings, renderings, or other documents or materials prepared by CONSULTANT hereunder shall become the property of DISTRICT whether or not the work covered thereby is executed; provided that CONSULTANT may at the CONSULTANT'S cost and expense reproduce such items to retain as a record copy for its files.
7. Relationship
The legal relationship of CONSULTANT to DISTRICT hereunder shall be that of an independent contractor and not that of an agent, employee or joint venturer.
8. Examination of Records
If the Services performed by CONSULTANT hereunder are in support of any government contract or program, or under a cost reimbursable type agreement, or for any authorized additional service or reimbursable expense, Subcontractor shall until the expiration of three (3) years after final payment hereunder, maintain such books and records under

generally recognized accounting methods and permit inspection by DISTRICT or any of its authorized representatives.

9. Compliance with Laws

CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders in effect throughout the term of this Agreement, including, but not limited to Executive Order No. 1 1246 of September 24, 1965, as amended (regarding Equal Employment Opportunity) and the orders of the Secretary of Labor pursuant thereto.

10. Insurance

Prior to commencing work, the CONSULTANT shall procure and maintain at CONSULTANT'S own cost and expense for the duration of this Agreement the following insurance against claims which may arise from or in connection with the performance of the work or services hereunder by the CONSULTANT, its agents, representatives, employees or sub-consultants.

A. Minimum Limits of Insurance

CONSULTANT shall maintain limits of no less than:

(1) Commercial General Liability

Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury and property damage. Coverage shall be provided on an "occurrence" basis.

(1) Comprehensive Automobile Liability Insurance:

One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage. The following coverages shall be included:

- (a) Owned Automobiles.
- (b) Hired Automobiles.
- (c) Non-Owned Automobiles

(3) Professional Liability Errors and Omissions Insurance: With a limit of not less than One Million Dollars (\$1,000,000.00).

(4) Workers Compensation and Employer's Liability: Workers compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars (\$1,000,000.00) per accident.

B. Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. At the option of the DISTRICT, the insurer shall reduce or eliminate such deductibles (limited to general and automobile liability insurance only) or self-insured retentions with respect to the DISTRICT, its officials and employees, or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

C. Other Insurance Provisions

(1) General Liability and Automobile Liability Coverage's Only:

(a) The DISTRICT members of its boards and commissions, officers, and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; premises owned, leased, or used by the CONSULTANT; and premises on which CONSULTANT is performing services on behalf of the DISTRICT. The coverage shall contain no special limitations on the scope of protection afforded to the DISTRICT, members of its boards and commissions, officers, and employees.

(b) The CONSULTANT'S insurance coverage shall be primary insurance as respects the DISTRICT, members of its boards and commissions, officers, and employees. Any insurance or self-insurance maintained by the DISTRICT, its officials, and employees, shall be in excess of Consultant's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the DISTRICT, members of its boards and commissions, officers, or employees.

(d) Coverage shall state that CONSULTANT'S insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) Workers' Compensation and Employer's Liability Coverage's:

The insurer shall agree to waive all rights of subrogation against the DISTRICT, members of its boards and commissions, officers, and employees for losses arising from work performed by CONSULTANT for the DISTRICT.

(3) All Coverage's.

(a) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage limits except after thirty (30) days prior written notice has been given to the DISTRICT.

(b) If CONSULTANT, for any reason fails to maintain insurance coverage which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. The DISTRICT, at its sole option, may terminate this Agreement in accordance with Provision Number 14, Termination. Alternatively, the DISTRICT may purchase such required insurance and may deduct that cost from sums owed to Consultant provided CONSULTANT does not obtain the insurance itself within five (5) days of receipt of the DISTRICTS notice of intent,

(c) CONSULTANT agrees to add designated agents of the DISTRICT as additional insured under the above policies as mutually agreed,

(4) Acceptability of Insurers.

Insurance is to be placed with insurers rated A: 6 or better by A.M. Best's rating-service.

(5) Verification of Coverage

CONSULTANT shall furnish the DISTRICT with written evidence acceptable to the DISTRICT of insurance and minimum coverage amounts required by this Agreement.

(6) Sub-consultants

Prior to authorizing work by a Sub-consultant to proceed, CONSULTANT shall provide to the DISTRICT evidence acceptable to the DISTRICT of insurance demonstrating satisfactory compliance by each Sub-consultant with the insurance requirements stated herein.

1.1. Indemnity

To the fullest extent permitted by law, the CONSULTANT shall indemnify, defend and hold harmless the District and its employees, officers, Board of Trustee, Trustees, agents and representatives from any and all claims, demands, losses, responsibilities or liabilities for: (i) injury or death of persons; (ii) damage to property or: (iii) other costs or charges, directly or indirectly arising out of or attributable, in whole or in part, to the negligent or wrongful acts, omissions, errors and/or other conduct of CONSULTANT, its Design Consultants or the employees, agents and representatives of CONSULTANT or any of its Design Consultants in the performance of obligations or services or in providing work product under this Agreement. The foregoing shall include without limitation, attorney's fees and costs incurred by the District. The provisions hereof shall apply during the period of CONSULTANT'S performance under this Agreement and shall survive the termination of this Agreement until any such claim, demand, loss responsibility or liability covered by the provisions hereof is barred by the applicable Statute of Limitations.

1.2. Remedies

The rights and remedies set forth herein shall be in addition to any other remedies, provided by law and deliver by DISTRICT of any provision hereunder or a breach thereof by DISTRICT shall not be deemed a waiver of future compliance thereof and such provision shall continue in full force

1.3. Severability

In the event that any term or provision of this Agreement is held to be illegal, invalid, or unenforceable under the laws, regulations or ordinances of any federal, state, or other government to which this Agreement is subject, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain unaffected thereby and continue in full force.

1.4. Notices

All notices required or permitted under this Agreement shall be considered as duly given to any party for all purposes hereof only if given in writing and hand delivered; or sent by registered or certified mail, postage prepaid and return receipt requested; or sent by electronic email; with confirming receipt; telex, or telegram, and also confirmed by registered mail, postage prepaid and return receipt requested, addressed as set forth

below or to such other address as may be designated by notice given as provided above. All notices shall be effective upon first receipt, unless otherwise specified herein.

DISTRICT: Chabot-Las Positas Community College District
7600 Dublin Blvd., 3rd Floor
Dublin, CA, 94568
Attention: Mr. Owen Letcher, Vice Chancellor, Facilities/Bond
Program and Operations
Ms. Ann Kroll, Project Planner/Manager, Facilities Bond Program
Las Positas College

CONSULTANT: Company Name
Company Address
Attention:
Title:

1 5. Modification

This Agreement may only be modified by a written amendment hereto, duly executed by both parties.

1 6. Successors and Assignment

CONSULTANT binds itself, its successors, assigns, and legal representatives to DISTRICT with respect to all of the covenants of this Agreement and further agrees that it shall not sell, assign, transfer, mortgage, pledge or in any manner encumber its interests in this Agreement or in any proceeds from this Agreement Without the prior written consent of DISTRICT. In the event that CONSULTANT violates the foregoing prohibition, or in the event that CONSULTANT without the prior written consent of DISTRICT, which consent shall not be unreasonably withheld, sells, assigns, transfers, mortgages, pledges or in any manner encumbers, except as security for credit agreements, all or substantially all of its corporate assets, or directly or indirectly undergoes a change in control of its ownership, DISTRICT shall be entitled, at its sole option:

- A. To require the CONSULTANT'S successor to continue to perform under this Agreement and to continue to satisfactorily fulfill CONSULTANT'S obligations under this Agreement; or
- B. To terminate this Agreement. In such case CONSULTANT shall be responsible for any and all liabilities arising from such termination. In the event that DISTRICT replaces CONSULTANT with another consultant after such termination, CONSULTANT shall be responsible for any and all costs, expenses and liabilities arising from such substitution, In any event, CONSULTANT shall remain liable for any and all work product or services provided by it prior to the termination.

This Agreement and the terms hereof are binding upon and inure to the benefit of the successors and assigns of both the DISTRICT and the CONSULTANT.

1 7. Disputes

- A. Continuation of Consultant Services. Except in the event of the Districts failure to make undisputed payment of the Contract Price due the Consultant, notwithstanding any disputes between District and Consultant hereunder, Consultant and District shall each continue to perform their respective obligations hereunder; including the obligation of the Consultant to continue to provide and perform services hereunder pending a subsequent resolution of such disputes.
- B. Mandatory Mediation. All claims, disputes and other matters in controversy between the Consultant 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 American Arbitration Association ("AAA") and the Construction Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Consultant commencing arbitration proceedings.
- C. Binding Arbitration. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof which are not resolved through the mandatory mediation procedures set forth above shall be resolved by binding arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of the filing of a Demand for Arbitration, provided that the Parties may by mutual agreement modify such Rules or adopt other rules governing the conduct of arbitration proceedings.
- D. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.
- E. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement except by written consent containing a specific reference to the Agreement signed by the District, CONSULTANT and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof,
- F. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

18. Extent of Agreement

The Agreement and Exhibit A "Statement of Services, " Exhibit B "Compensation and Payment," and Exhibit C," General Provisions for Professional Services Agreement," contain all of the promises, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written, and may only be modified as hereinbefore provided.

19. Governing Laws

Unless otherwise specified herein, this Agreement shall be governed by the law of the State of California.

20. Professional Registration

If the CONSULTANT's Services under this Agreement involve the production of documents or drawings that require signing or sealing by a registered professional, CONSULTANT warrants that it has such qualified person assigned to this Project who is registered in the State(s) of California.

21. Annual Recertification

The DISTRICT may request the annual recertification of the CONSULTANT. Should the CONSULTANT fail to reply to such a request for recertification, the DISTRICT, at its discretion, may delete the CONSULTANT from consideration for subsequent Consulting Assignment(s) without further notice to the CONSULTANT.

22. Time

Time is of the essence in the performance and completion of the CONSULTANT'S obligations under the Agreement.

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