SAN BERNARDINO COMMUNITY COLLEGE
DISTRICT

REQUEST FOR QUALIFICATIONS AND PROPOSALS
RFQ/P 2019-02

FOR

SBCCD MEASURE CC BOND PROGRAM

PROGRAM MANAGEMENT SERVICES

Issued: January 31, 2019
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1. ABOUT THE DISTRICT

The mission of the San Bernardino Community College District (“District” or “SBCCD”) is to transform lives through the education of our students for the benefit of our diverse communities. For nearly 100 years, San Bernardino Valley College and Crafton Hills College has provided award-winning, affordable higher education and career training to low and middle-income students from 21 cities and surrounding communities including, Big Bear Lake, Colton, Grand Terrace, Loma Linda, Redlands, Rialto, San Bernardino and Yucaipa. Today, the District serves about 21,000 students every year.

CRAFTON HILLS COLLEGE

With its dedicated professors, ample extracurricular opportunities, supportive staff, and beautiful surroundings, Crafton Hills College (“CHC”) is a place where students thrive. Since its opening in 1972, more than 100,000 people of different ages, interests, and backgrounds have attended CHC, drawn to the outstanding educational opportunities available to students interested in earning two-year associate degrees, transferring to four-year colleges and universities to obtain bachelor’s degrees, career and technical education programs, and general education to increase job effectiveness or learn new skills.

CHC offers more than 50 programs in the liberal arts and sciences, vocations, and technical studies, and currently serves about 6,300 students each semester. Students can receive multidisciplinary degrees, including Fine Arts, Health Sciences, Liberal Studies - Teacher Preparation, and Social Science, and the Fire Science and Emergency Medical Services-Paramedics programs are some of the finest community college programs in the state, with CHC the primary trainer for paramedics in San Bernardino and Riverside counties. CHC also has the distinction of being the top community college in the Inland Empire when it comes to degree/certificate completion rates and course retention/success rates.

CHC’s mission is to advance the educational, career, and personal success of our diverse campus community through engagement and learning.

SAN BERNARDINO VALLEY COLLEGE

Now in its 90th year, San Bernardino Valley College (SBVC) is a comprehensive community college offering a full range of degrees, transfer programs to four-year institutions, and certificates in a wide range of careers. As the original and largest of two colleges in the District, SBVC is a regional leader in career and technical education with programs in nursing, human services, computer information technology, welding, electrical and dozens more. Weekend, online, evening, short-term and distance learning classes are available along with classes in Big Bear.

SBVC’s mission is to prepare students for transfer to four-year universities, to enter the workforce by earning applied degrees and certificates, to foster economic growth and global competitiveness through workforce development, and to improve the quality of life in the Inland Empire and beyond.
Centrally located near the 10 and 215 freeways, San Bernardino Valley College serves 12,800 students every semester.

2. OVERVIEW OF THE MEASURE CC BOND PROGRAM

On November 6, 2018, the voters approved Measure CC, which will generate $470 million to upgrade the District’s facilities. The proceeds of this bond will be used to update aging facilities for safe, 21st-century education, to repair college facilities used to prepare students for university education, train firefighters, health care providers, police, engineers, and technicians who fuel our local economy (“Bond Program”).

The Bond Program will be managed by a “program manager” (“Program Manager”) retained by the District via this Request for Qualifications and Proposal (“RFQP”). In addition, there will be one or more construction/project managers (“Construction Management Team,” “CMT”) retained by the District to manage construction activity and provide field level management at the colleges. These Construction Management Teams will be retained via a separate RFQP.

The District will also have a direct hire District employee, a “Campus Project Manager” (“CPM”). These individuals will be fully dedicated for the bond program, paid by the bond, be part of the bond program organization. They will function as a representative for the District and corresponding Campus with responsibilities to collaborate with the campus administration, Program Manager, and Construction Management Team and other consultants, and will report to the District’s Director, Facilities Planning & Construction. The CPM’s role is not to direct the work, but to look out for the ongoing maintainability/functionality/operability of the campus during the planning, design, procurement, construction, commissioning and post-construction phases. This may include but is not limited to solving problems, developing solutions that work for the campus, contributing to the design and constructability of the plans, providing input on construction schedules and budget, assisting with the procurements of various consultants and contractors, communicating and coordinating with the Campus Administration, Program Manager, and the Construction Management Team, and reviewing necessary submittals to ensure compatibility with campus systems.

Additional information on the Bond Program may obtained by visiting the District’s website at http://www.sbccd.org/qualitycolleges.

3. OVERVIEW OF SERVICES SOUGHT BY THIS RFQP

As part of its Basic Services, the selected Proposer will also assist the District in: establishing the structure of the Bond Program, developing appropriate delivery methods for each project, procuring one or more CMT firms to manage on site construction activity, and provide field level management at the campuses as well as assisting the District with the procurement of various consultants and contractors necessary to implement the bond program, and otherwise generally perform the Scope of Basic services outlined below.

In addition to providing the highest level and quality of comprehensive program management services for the Bond Program, Proposers are advised that the Program Manager will report to the District Director of Facilities Planning & Construction with ongoing collaboration and coordination with the
Campus Project Manager. The CMT’s will report and be accountable to the Program Manager. The CMT will also be required to collaborate and coordinate with the corresponding Campus Project Manager. The District, Executive Vice Chancellor and Director of Facilities Planning & Construction and Campus Project Manager will work with the College Presidents and Vice President of Administrative Services to maintain the responsibility for making certain the projects satisfy the requirements of their educational and facility master plans in all matters of accreditation, and fully address the ongoing maintainability/functionality/operability of the campus during and after construction.

The Proposers are encouraged to refer to the following links in response to the RFQP:

- Districtwide Facilities Master Plan Project List (Board Approved 5/11/2017)
- San Bernardino Community College District 2017-22 Districtwide Support Services Strategic Plan
- San Bernardino Valley College 2017 Comprehensive Master Plan
- San Bernardino Valley College 2017 Comprehensive Master Plan Appendix
- Crafton Hills College 2017 Comprehensive Master Plan
- Crafton Hills College 2017 Comprehensive Master Plan Appendix
- Board Policy 6610, Minority, Women, and Veteran Owned Enterprise Program.

The following general descriptions of Basic Services to be provided by the Program Manager are intended to provide a guideline for Proposers in developing a Technical Approach in their Proposals that will ensure the highest level and quality of services. The descriptions provided herein are expressed in generality, it being the District’s expectation that the Proposers in their Proposals will supplement and expand upon that which is provided below (and elsewhere in this RFQP) with descriptions of their approach to meeting the District’s stated goals and objectives, including complete and detailed enumeration of services and a full list of deliverables that they envision providing as part of Basic Services. See also Article 2 of Attachment 14 (“Professional Services Agreement”); Attachment 10 to the RFQP; and the RFQP Documents consisting of Attachments 1A through 14.

A. Comprehensive Decision Management

“Comprehensive Decision Management” refers to the process of continuously identifying, assessing, comparing, evaluating, reconciling conflicts among, and providing realistic recommendations on ways to meet the expectations of the boards and committees that are the decision-makers and approval authorities for the Bond Program, including, without limitation, the Board of Trustees, District, Independent Taxpayer’s Oversight Committee, and other Bond Program leadership. The Program Manager will be expected to establish and implement a comprehensive plan for reporting and communication in order to keep these decision-makers apprised on a regular, on-going basis, of Bond Program status and issues needing attention, evaluation, resolution, and decision.

B. Integrated Process Management

“Integrated Process Management” refers to identifying, defining, combining, unifying, and coordinating the actions of those persons or departments, principally Facilities Planning & Construction (“FPC”), Program Manager, College Administration, Campus Project Managers,
and CMT’s, and various consultants and vendors; responsible for managing the processes designed to achieve the goals set by the decision-makers. The Program Manager will be expected to assess, make recommendations, review with the District, obtain approval, and revise accordingly the existing District process-oriented policies and procedures, including specifically and without limitation, the Bond Program Standard Operating Procedures, the Program Implementation Plan, and all associated District contract documents and forms. The Program Manager will be required to provide training to all necessary Bond Program personnel (within District and all consultants/contractors) on established processes and procedures.

C. **Contract Management and Administration.**

“Contract Management and Administration” refers to the document preparation, administration, and management of all Bond Program procurement activities (including, without limitation, requests for qualifications (RFQs), requests for contracts (RFC’s), request for proposals (RFPs), prequalification, competitive negotiations, on-call services, purchase orders, bidding, lease-leasebacks, design-build competitions, award, post-award submittals, bid/proposal, performance, contractor insurance, payment and stop payment notice bond reviews, approval and execution of contracts, invoice and payment application review and approval, and contract audit procedures, and related document control management. The Program Manager will be expected to provide comprehensive management services relative to all aspects of the procurement process for the Bond Program, including furniture, fixtures and equipment (FF&E) for the projects, and to assess, provide, revise as necessary, and implement recommendations on necessary improvements to any current document control management systems.

D. **Planning and Design Management.**

“Planning and Design Management” refers to the complete and comprehensive oversight, coordination, and management at the program-level of planning and design activities for new and revised College Projects (including, without limitation, third party professional service providers, existing facility and building systems assessment, building program evaluation, EIR assessment and tracking, DSA interface, constructability reviews, value engineering reviews, cost estimating, development and enforcement of District and/or College design standards, development and enforcement of the Owner Project Requirements (OPR), hazardous materials surveys, achievement of goals related to sustainability and LEED certifications and energy savings, setting the path for Zero Net Energy campuses, basis of design, utilities incentives, total costs of ownership, acquisition and distribution of furniture, fixtures, and equipment, technology requirements, phasing, maintenance and operation, accessibility, pre-purchases, FF&E, utilities re-location and expansion, temporary facilities, develop colleges site logistical plans, and related scheduling). The Program Manager will be expected to provide a comprehensive system, at the program-level, for managing all aspects of the planning and design process. The Program Manager is expected to develop a realistic comprehensive logistical, schedule milestone, budget and management plan to deliver the Measure CC projects for the Colleges and District.

E. **Quality Assurance/Quality Control.**

“Quality Assurance/Quality Control” refers to the establishment, implementation, and monitoring of a comprehensive program for ensuring that all aspects of the Bond Program, including, without limitation, program management, project design, project procurement, project construction, and project close-out are administered in a manner that reflects best practices and achievement of specific performance metrics. The Program Manager will be expected to provide complete and
comprehensive services for quality assurance and quality control consistent with the highest standards for educational institutions' facilities program management and to extend those standards to all participants in the program by means of developing performance metrics, informing program and project participants by means of guidelines and manuals on the standards that will be expected to be met, monitoring performance by program and project participants, and instituting procedures for continuous performance evaluation, training, and improvement.

F. Program Controls & Reporting.

“Program Controls & Reporting” refers to the document preparation, implementation, and monitoring of a program-wide system of controls and reporting on all pertinent matters relating to the Bond Program, including, without limitation, financial matters such as contracts, purchase orders, change management, and amendment, cash flow, budget reconciliation, forecasts, budgeting, fiscal and financial controls and reporting, account payable activities, etc. The Program Manager will be expected to administer and provide technical support for a comprehensive set of procedures for program controls and reporting, as well as an assessment of existing controls and reporting systems with the objectives of improving efficiency and effectiveness, including providing recommendation for: establishing an integrated system of cost/schedule reporting between CMT’s the Program Manager and Facilities Planning & Construction, maximizing use and/or assisting in developing a District’s Bond Program website, revising monthly reporting formats to align content with issues of relevance to decision-makers, developing an approach and system for “Earned Value Management Reporting,” utilizing the District asset management system and data base that tracks and values all assets purchased, held, and transferred to surplus property, providing for enhanced information and communications interfacing between funding and financial management functions, providing for enhanced means of managing changes, extending control and reporting systems beyond tracking project design and construction to include program management goals and objectives, establishing goals and indices for measuring success of goals and tracking performance relative to achievement of such goals and indices and Key Performance Indicators, and evaluating the current program management software and recommending and implementing any changes that may improve its security, operability, and functionality. This should include recommended strategies to implement a district wide document control system, compile and maintain district as-builts drawings, M&O manuals, program records, DSA applications, etc.

G. Risk Management.

“Risk Management” refers to the conventional processes of managing risk by means of insurance and bonding (including such matters as continued maintenance of insurance coverages by consultants, contractors, and vendors and maintaining a database of expiration dates of required in-place insurance), as well as a process for continuously and proactively anticipating, identifying, tracking, assessing, monitoring, and mitigating risk that includes both general guidelines (such as, for example, alternate project delivery methods, joint use of core facilities, bid packaging, reuse of plans and specifications, and bulk purchasing) and specific approaches targeted at particular risks. The Program Manager is expected to develop a program risk assessment matrix including probability and impact for the program’s budget, master schedule and educational and facilities master plan. This should help the decision-making process and develop recommendations that serve the best interest of the District.
H. **Dispute Resolution Support.**
“Dispute Resolution Support” refers to the reviewing and providing advice to the District on claims asserted and the supervision of the activities leading to their resolution by means of settlement or the dispute resolution procedures and/or applicable laws. The Program Manager will be expected to provide complete and comprehensive services for claims and dispute resolution support, including evaluating, making recommendations on, and implementing, under the direction of the Executive Vice Chancellor or its designee, terminations and suspension of contracts based upon default or for convenience, developing and maintaining a procedure for tracking the status and pertinent statutory deadlines relating to stop payment notices and related enforcement actions; under the oversight of the Executive Vice Chancellor or designee, responding to requests for production or copying of public records pertaining to the Bond Program, monitoring the handling of judicial, administrative, and extra-judicial proceedings by legal counsel assigned by the Executive Vice Chancellor or designee, and providing continuous reporting on status and critical decisions, administering contracts with claims consultants in a manner designed to preserve and protect all legal privileges and confidentiality; participating as an advisor in the processes for dispute resolution, including stepped negotiations, mediation, arbitration, litigation, and related discovery proceedings, assisting legal counsel in responding to requests for discovery, preparing under the oversight of legal counsel written agreements memorializing settlements of claims, and making recommendations for timely submission of claims with insurance carriers providing insurance.

I. **Construction Management Team (CMT) Oversight.**
“Construction Management Team Oversight” refers to preparing, implementing, and monitoring performance by the CMT’s. Consistent with the District’s program management, the Program Manager will assume direct responsibility for managing and supervising all aspects of the CMT’s performance and directly interfacing with the CMT’s who shall report directly to the Program Manager. In furtherance of this objective, the Program Manager will be expected to design, prepare, implement, monitor, and enforce a program-wide Construction Management Plan for all College Projects that includes procedures and forms for:

1. organizational reporting structure and responsibilities;
2. roll-up reporting of project status;
3. mobilization and issuance of notices to proceed;
4. tracking CMT performance under staffing plans;
5. review and approval of CMT invoices;
6. submittals management;
7. project controls;
8. regular, periodic project status reviews;
9. compliance with budgetary guidelines;
10. cost estimating assistance and related data base;
11. documentation management;
12. procurement and contract administration, including FF&E;
13. quality control and inspection;
14. schedule review and critical evaluation (including evaluation of options for phasing);
(15) health, safety, and environmental protection and oversight of CMT operational site planning, including safety plans, emergency response plans, movement management plans, and site logistics and circulation plans;

(16) coordination of field schedules with Bond Program milestones and campus academic schedules;

(17) monitoring of LEED Certifications; sustainability and Zero Net Energy goal

(18) monitoring of compliance with environmental requirements;

(19) maintaining a change management process for construction change orders that tracks and evaluates the causes for changes and recommends approaches to reducing changes;

(20) coordinating relocation and move-management services;

(21) regulatory compliance; DSA, CEQA, etc.

(22) commissioning;

(23) project closeout and punch-lists;

(24) warranty inspections;

(25) process improvement training;

(26) confirming close-out of all contracts, receipt of DSA certifications, and making of final payments; and

(27) confirming close-out of all contracts, receipt of all as-built drawings, warranties and guarantees, operations and maintenance manuals, and maintenance materials.

J. Outreach and Labor Compliance.

“Outreach” refers to enforcing the District’s current and/or future enacted policies and procedures for outreach to Local, Small, Emerging and Disabled Veteran Owned companies. Program Manager will track results of outreach efforts, report to the District, develop a database of small, local and emerging companies, and provide assistance to the Colleges and the CMT’s in implementing the District’s outreach policies. Program Manager will also coordinate its services relative to payments and withholding of payment by the District for construction and other services from District vendors with respect to matters relating to compliance with labor law requirements generally.

The District will also have a direct hire District employee, a “Community Outreach Coordinator” (“COC”). This individual will be fully dedicated for the bond program and paid by the bond. They will function as a representative of the Chancellor and Executive Vice Chancellor to work the local community to address their concerns regarding the local bond, encourages local vendors’ participation in the bond implementation, and bridges the communication between the local community and program manager.

Refer to the Board Policy 6610, Minority, Women, and Veteran Owned Enterprise Program.

A final scope and description of Basic Services to be incorporated by exhibit into the terms and conditions of the Program Management Agreement will be provided by the District to the Finalist Proposers (as described herein below) during the contract negotiation phase of the RFQP process, which will integrate the descriptions described above, in Attachment 10, and elsewhere in the RFQP Documents, with the consolidated elements of the detailed services and deliverables proposed by the Proposers that, in the view of the District, represent overall the most comprehensive and effective approach to delivering the desired services to the District.
4. **TENTATIVE PROCUREMENT SCHEDULE**

The following is the tentative schedule of events for the RFQP process. The District reserves the right to alter and/or cancel the procurement via Addendum issued to the RFQP.

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<th>RFQP EVENT</th>
<th>DATE / DEADLINE</th>
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<td>1/31/2019</td>
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<td>Requests for Clarification Deadline:</td>
<td>2/13/2019 at 2:00 PM</td>
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<td>Pre-Proposal RFQP Addenda Issuance Deadline:</td>
<td>2/20/2019 at 4:00 PM</td>
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<tr>
<td>Qualifications &amp; Proposals Due:</td>
<td>3/11/2019; 2:00 PM</td>
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<tr>
<td>Notice of Shortlisted Finalist Firms</td>
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<td>Presentations and Interviews</td>
<td>4/2/2019</td>
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<tr>
<td>Notice of Intent to Award/Negotiate/BAFO:</td>
<td>Week of 4/8/2019 and 4/15/2019</td>
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<tr>
<td>District’s Board of Trustees Approval of Contract Award</td>
<td>5/16/2019</td>
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</table>

5. **CONTENT AND PREPARING YOUR PROPOSAL**

This section describes how you should package your Proposal for submittal to the District. Your Proposal shall comply with the requirements of the RFQP Documents and provide a straightforward, clear, complete and concise description of the Proposer’s ability and experience to perform and provide the Scope of Basic Services sought.

**A. General Page and Format Requirements.**

Proposal’s shall be prepared on standard letter size (8 1/2” x 11”) paper, shall be typed, and shall not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged. Print shall not be a font size of less than eleven (11).

Proposers are to submit: One (1) Original, Seven (7) Hard Copies and One (1) electronic version on a permanently labeled USB flash drive of the Proposal.

(i) **Cover Page (not scored):**

Prepare a Cover Page for your Proposal that states as follows:
“(ii) **Table of Contents (not scored):**

Each Proposal must include, immediately following the Cover Page, a complete Table of Contents of all information, sections, and tabbed sections included in your Proposal, including page numbers.

(iii) **Cover Letter (not scored):**

Following the Table of Contents, insert a Cover Letter addressed to the District as follows:

San Bernardino Community College District  
Steve Sutorus, Business Manager District Support Services  
114 South Del Rosa Drive  
San Bernardino, CA 92408

Re: “Proposal for District-Wide Program Management Services, SBCCD Measure CC Bond Program”

The Cover Letter shall be limited to three (3) single-sided pages and contain the following:

a. Identification (legal name, business address and telephone number) of the Proposer. The District will not accept Proposal’s from a Joint Venture or two (2) firms acting as General Partners. If two (2) firms have paired together as partners or co-venture, clearly indicate which firm will act as the “Prime Firm” and which will act as the “consultant and/or sub-consultant”. Any contract awarded will be issued to only the “Prime Firm”;

b. Name, title, address, telephone number and email address of a contact person on behalf of the Proposer for the duration of the RFQP process;

c. Brief statement of why your Team should be chosen to be awarded the contract;

d. A statement affirming that the Proposal shall remain valid for a period of ninety (90) calendar days following the deadline for submission of Proposals set forth in the RFQP Schedule (and as may be amended);

e. A statement that the signature of the person signing the Cover Letter is authorized to bind the Proposer to the terms of the Proposal, to negotiate contract terms, and make binding
contractual commitments in respect to all matters relating to the RFQP, accompanied by evidence that such person has such authority to sign contracts on behalf of the Proposer; and
A signature of a person authorized to bind the Proposer to the terms of the Proposal.

(iv) **Required Attachments and Other Documents to be Submitted.**
Under this Section, prepare a separate Table of Contents for this Section, identifying the documents you are submitting as part of the Proposal. Each Table of Contents for this section should have at least one (1) matching labeled divider and tab.

(a) **Required Attachments.**

Attachments 1A, 1B, and 2 through 9 must be submitted with your Proposal or the District may find the Proposal “non-responsive” and reject same on that basis. They are:

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<tr>
<th>#</th>
<th>Description of Attachment</th>
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<tbody>
<tr>
<td>1 A</td>
<td>Prime Firm Proposed Personnel, Guaranteed Hourly Rates (Curriculum Vitae (“CV’s”) required) &amp; Not to Exceed Compensation</td>
</tr>
<tr>
<td>1 B</td>
<td>Team Member Firm Proposed Personnel, Guaranteed Hourly Rates (CV’s required)</td>
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<tr>
<td>2</td>
<td>Acknowledgement of Addenda</td>
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<td>3</td>
<td>Non-Collusion Declaration</td>
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<td>4</td>
<td>Non-Discrimination Declaration</td>
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<td>5</td>
<td>Conflict of Interest Certification</td>
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<td>6</td>
<td>Confidentiality Agreement</td>
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<td>7</td>
<td>Evidence of Insurance Certification</td>
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<tr>
<td>8</td>
<td>Authority to Release Information Form</td>
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<tr>
<td>9</td>
<td>Representations, Certifications &amp; Warranties</td>
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(b) **Further Instructions and Cautionary Statements regarding Required Attachments:**

Attachments 1A through 9 are issued as Mandatory Forms. Alterations, edits, qualifications or disclaimers are NOT permitted except as described below. Making any
alterations, edits, qualifications or disclaimers, except as permitted below may render your Proposal “non-responsive” and subject to rejection, in the District’s sole discretion.

**Attachment 1 A - “Prime Firm Proposed Personnel, Guaranteed Hourly Rates & Not to Exceed Compensation (CV’s required)”:**

This Attachment has three parts: Part 1 - Prime Firm Proposed Personnel, Titles; Guaranteed Hourly Rates (CV’s required); Part 2 - Additional Prime Firm Proposed Personnel, Titles; Guaranteed Hourly Rates (CV’s required); and Part 3 – Not to Exceed Compensation Amounts. Fill out and place this Attachment 1 A (and the requested CV’s as described below) immediately after your Cover Letter:

**Part 1 - Prime Firm Proposed Personnel, Titles; Guaranteed Hourly Rates (CV’s required):**

All personnel proposed under Part 1 must be Prime Firm Employees, not Contract Workers or Consultants. Such a person must be identified for each Title listed in Part 1. Insert in the appropriate column the Guaranteed Hourly Rate for all such persons. If a Proposer believes a listed Title is not needed, please so indicate in Part 1, but explain why in your Technical Proposal in response to Attachment 10 requirements. If you list a Prime Firm Employee for more than one Title in Part 1, explain why in your Technical Proposal in response to Attachment 10 requirements. If you believe that other Prime Employees should be part of your Proposal, please list them and the required information in Part 1 on Attachment 1 A.

Provide a CV for each person listed in Part 1 by attaching the CV’s immediately behind Attachment 1 A in your Proposal inserting a cover sheet labeled “CV’s for Part 1 Prime Firm Proposed Personnel” immediately after Attachment 1 A and before the required CV’s for Part 1.

**Part 2 – Additional Prime Firm Personnel, Titles; Guaranteed Hourly Rates (CV’s required):**

All personnel proposed under Part 2 must be Prime Firm Employees, not Contract Workers or Consultants. If you propose and list any Additional Personnel in Part 2, insert their Title and explain why in your Technical Proposal in response to Attachment 10’s requirements. Insert in the appropriate column the Guaranteed Hourly Rate for all such persons. If you list a Prime Firm Employee for more than one Title in Part 2, explain why in your Technical Proposal in response to Attachment 10’s requirements. Provide a CV for each person listed in Part 2 by placing such CV’s immediately behind the CV’s contained in your Proposal you submit for Part 1 and inserting a cover sheet labeled “CV’s for Part 2 Prime Firm Proposed Additional Personnel” immediately after the “CV’s for Part 1 Prime Firm Proposed Personnel” and before the required CV’s for Part 2.
**Part 3 – Not to Exceed Compensation Amounts.**

Follow the instructions set forth in Part 3 of Attachment 1 A and insert the requested “Not to Exceed” Amounts of Compensation as explained therein.

**Attachment 1 A is a Mandatory Form and must be submitted as part of your Proposal.**

**Attachment 1 B - “Team Member Firm Proposed Personnel, Guaranteed Hourly Rates (CV’s required)”:**

This Attachment is filled out and placed in your Proposal immediately following the CV’s you have attached as part of Attachment 1 A.

All personnel proposed in Attachment 1 B are to be Contract Workers or Consultants, not Prime Firm Employees. Such persons must be identified by name of the individual, company name, Title, the Guaranteed Hourly Rate for all such persons. Explain why in your Technical Proposal in response to Attachment 10’s requirements you are proposing such individuals and the scope of work that such individual(s) will perform.

Provide a CV for each person listed in Attachment 1 B by attaching the CV’s immediately behind Attachment 1 B in your Proposal inserting a cover sheet labeled “CV’s for Attachment 1 B immediately after Attachment 1 B and before the required CV’s for Attachment 1 B.

**Attachment 1 B is a Mandatory Form and must be submitted as part of your Proposal.**

**Attachment 2 - “Acknowledgement of Addenda”:**

This Attachment is filled out and placed in your Proposal immediately following the CV’s you have attached as part of Attachment 1 B.

**Attachment 2 is a Mandatory Form and must be submitted as part of your Proposal.**

**Attachment 3 - “Non-Collusion Declaration”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 2.

**Attachment 3 is a Mandatory Form and must be submitted as part of your Proposal.**

**Attachment 4 - “Non-Discrimination Declaration”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 3.
Attachment 4 is a Mandatory Form and must be submitted as part of your Proposal.

**Attachment 5 - “Conflict of Interest Certification”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 4.

Attachment 5 is a Mandatory Form and must be submitted as part of your Proposal.

**Attachment 6 - “Confidentiality Agreement”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 5.

Attachment 6 is a Mandatory Form and must be submitted as part of your Proposal.

**Attachment 7 - “Evidence of Insurance”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 6.

Attachment 7 is a Mandatory Form and must be submitted as part of your Proposal.

**Attachment 8 - “Authorization to Release Information”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 7.

Attachment 8 is a Mandatory Form and must be submitted as part of your Proposal.

**Attachment 9 - “Representations, Certifications & Warranties”:**

This Attachment is filled out and placed in your Proposal immediately following the Attachment 8.

Attachment 9 is a Mandatory Form and must be submitted as part of your Proposal.

In addition to the foregoing, your Proposal must also include a document you prepare in response to the requirements of Attachment 10 to the RFQP as described below.

(c) Further Instructions and Cautionary Statements regarding Required Submissions:

Technical Proposal, Staffing, and Approach to Program Management.
Attachment 10 is a document that explains to Proposers how to create, prepare and submit your Technical Proposal, Staffing, and Approach to Program Management Plans with your Proposal as required by Attachment 10. Attachment 10 also contains the scoring and evaluation criteria by which Attachment 10 will be evaluated. Attachment 10 also contains a further description of the Basic Services sought by the RFQP.

Create and prepare a document that you should label as “Technical Proposal, Staffing, and Approach to Program Management Plans.” Use as many single sided pages as you deem appropriate. Make sure you address therein all aspects set forth in Attachment 10, as well as adding any information and/or explanations mentioned above under the sections referring to Attachments 1 A and 1 B.

This document is placed in your Proposal immediately following the Attachment 9.

6. **Attachments to the RFQP that are NOT to be SUBMITTED with your Proposal.**

The following Attachments are provided and attached to this RFQP for the Applicant’s information and careful consideration in preparing and submitting your Proposal as they all will become part of the Contract Documents, except for the “Responsiveness Check List (Attachment 11) which is provided as a courtesy by the District.

**THEY ARE NOT TO BE SUBMITTED WITH YOUR PROPOSAL!**

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<th>#</th>
<th>Description of Attachment</th>
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<tr>
<td>10</td>
<td>Technical Proposal, Staffing, Approach to Program Management &amp; Evaluation Criteria</td>
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<td>11</td>
<td>Proposal Responsiveness Check List (Not a Contract Document)</td>
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<td>12</td>
<td>Rules of Conduct for Presentation and Interviews</td>
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<td>13</td>
<td>Rules of Conduct for Discussions and/or Negotiations</td>
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<td>14</td>
<td>Professional Service Agreement</td>
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<td></td>
<td>Exhibit 1 - Proposal (containing Attachments 1 A through 9 and other materials) (placeholder)</td>
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<td></td>
<td>Exhibit 2 - RFQP and Addenda (placeholder)</td>
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<td>15</td>
<td>Proposal Protest Procedure</td>
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</table>
7. **DEADLINES: PROPOSALS AND RFC’S**

A. **Time for Submitting Your Proposal.**
The deadline for submitting your Proposal to the required location stated above is not later than **2:00 p.m.** on the date stated for same in Section 4 above, unless changed by way of Addendum.

In the sole and absolute discretion of the District, any Proposal submitted after the stated deadline may not be accepted, deemed non-responsive, and rejected without further consideration.

B. **Manner of Submitting your Proposal.**
The District will receive Proposals **only through hardcopy submission, including the USB flash drive.**

Proposer will submit to the location stated above in Section 5. A. (iii): one (1) original (marked original), seven (7) copies (in white, 3-ring binders that can be re-used if possible), and one (1) copy on a permanently marked digital device such as USB flash drive.

C. **Requests for Clarifications of the RFQP, Deadline for RFC’s and District Responses.**
All questions and requests for clarification concerning the RFQP process or RFQP Documents must be submitted by not later than **2:00 p.m.** on the date stated for same in Section 4 above, unless changed by way of Addendum.

All RFC’s are to be submitted via Email to: ssutorus@sbccd.cc.ca.us (Steve Sutorus, Business Manager), and Cc hagah@sbccd.cc.ca.us (Hussain Agah, Director of Facilities Planning & Construction)

Subject Line on the RFC to read:

“RFC regarding District-Wide Program Management Services, SBCCD Measure CC Bond Program”

RFC’s that are responded to will be issued via Addendum via email or posted only on the District’s Website.

It is each Proposer’s sole obligation to regularly check their email/that website for any and all Addendums to the RFQP.

The District is not obligated to respond to any questions or requests for clarifications that the District judges, in the exercise of its sole and absolute discretion: (1) are received after the deadline above in Section 4 unless later extended via Addendum; (2) are submitted in a manner other than as required by the RFQP Documents; (3) are unintelligible; (4) seek information that is irrelevant to the subject matter of the RFQP; (5) seek information that is already contained in the RFQP; or (6) involve weaknesses, errors or omissions in a Proposal, whether observed or
not observed by the District, it being the intent of the District that all such weaknesses, errors or
omissions, whether observed or not observed, are the sole responsibility of the Applicant.

8. BASIC PROFESSIONAL SERVICE AGREEMENT TERMS, CONDITIONS AND PROVISIONS

The Contract that may be awarded following this RFQP process will be based upon,
without limitation, the District’s authority pursuant to: Government Code sections 4526,
53060 and Education Code sections 81644 and 81656; as well as all applicable District
policies regarding professional service procurements and other applicable law.

The term of the Contract is expected to be five (5) years with an initial two (2) year term
with three (3) one (1) year option periods, subject to the District’s sole discretion. Further
terms, conditions and provisions of the Professional Service Agreement (“sometimes
referred to in the RFQP Documents as “Contract”) are set forth in Attachment 14 to the
RFQP and elsewhere in this RFQP, all of which shall form the Contract. Hourly Rates
submitted must be guaranteed for the five (5) years of the Contract, should the term
encompass all five (5) years.

9. EVALUATION, SCORING & SELECTION CRITERIA FOR THE AWARD OF THE CONTRACT

A. Submissions Not Scored.
The Cover Page, Table of Contents and Cover Letter are not scored.
Attachments 2 through 9 are reviewed for “responsiveness only” and are not scored.
However, if Attachments 2 through 9 are not properly submitted as described above, the
District reserves the right to reject a Proposal as “non-responsive”, in its sole and
absolute discretion.

B. Scored Submissions.
Attachments 1 A, 1 B and 10 are scored. However, the “scoring” shall be used merely
to determine a “short listed” number of Proposers (“Finalist Firms”) to possibly enter
negotiations and/or participate in a “Best and Final” (“BAFO”) process with the District
as hereinafter described in the other RFQP Documents. The District intends to identify
between three (3) or more in Finalist Firms, subject to its discretion to identify less or
more firms as Finalist Firms. The ultimate award of the Contract will be to a Proposer
that the District believes to provide the “Best Value” to the District. The fact that a
Proposer’s Proposal receives the highest score does not mean that the District must
award a Contract to that Proposer. The District will apply the following weighting of the
Scoring Factors in ranking the Finalist Firms:

- Technical Questions & PMO Plan - 30%;
- Interviews and References - 30%;
- Price Proposal - 30%; and
- Board Policy 6610 - 10%.

Attachments 1 A, 1 B, and 10 will be considered together as a Proposer’s Technical
Proposal and are scored as set forth in Attachment 10 “Technical Proposal, Staffing,
and Approach to Program Management”.

Request for Qualifications and Proposals – Program Management Services District-wide
An evaluation panel consisting of District employees and outside consultants ("Evaluation Panel") will conduct the necessary reviews and analyses of the Proposals received. Submission of Proposals constitutes consent by Proposer to disclosure of all of the contents of its Proposals to all individuals assigned to serve on the Evaluation Panel and to any of those consultants assigned to provide technical or legal advice or assistance to the Evaluation Panel. Scoring will be by use of numerical or other scoring techniques, evaluation criteria, maximum point system, and relative weightings specified in Attachment No. 10. Notwithstanding such weightings, Proposers shall prepare and submit their Proposals to reflect the best in terms of scope, quality, staffing, and cost to the District that they are able and willing to offer. The District reserves the right, in the exercise of its sole discretion, to make any changes in the evaluation process, evaluation criteria, scoring methodology, and/or weighting of evaluation criteria at any point in time during the RFQP process. Any such changes that are judged by the District, in its sole and absolute discretion, to be material will be communicated to the Proposers by RFQP Addendum. The Scoring is used as an aid to the District to determine which Proposers will be shortlisted to Finalist Firm status and then Negotiations and/or requests for Best and Final Offers (“BAFO’s”) may take place.

10. AGREEMENT & EXECUTION

A copy of the proposed Program Management Agreement is attached hereto as Attachment 14. If the District accepts the Proposals submitted by a Proposer within the period of time that the Proposals are irrevocable, then such Proposer shall execute the Program Management Agreement without any exceptions, qualifications, or changes.

District reserves the right, exercised in its sole and absolute discretion, at any time before Award, to unilaterally change, by addition, modification, or deletion, any of the terms of the Program Management Agreement by issuance of an RFQP Addendum setting forth the substance of such change or as part of the conduct of Negotiations.

Proposals shall not contain, nor be conditioned upon acceptance of, any exceptions, qualifications, changes, or additions to the terms and conditions of the Program Management Agreement, other than changes that have been approved and ordered by the District by means of a duly issued RFQP Addendum or as part of the conduct of Negotiations. Statements contained in a Proposal indicating, explicitly or implicitly, that the Proposal, or any portion thereof, is based on certain “assumptions,” “qualifications,” or “exclusions” that are not part of the specific requirements of the RFQP Documents shall be deemed to constitute an impermissible exception in violation of the requirements of this paragraph.

Nothing stated herein shall be interpreted as limiting the right of the District and a Proposer, as part of the Negotiations, to agree to modifications of the terms and conditions of the Program Management Agreement.

The Proposer to whom award is made by the District shall be required to assume the defense and indemnification obligations that are set forth in the Professional Services Agreement (Attachment 14 hereto).

GO ON TO ATTACHMENTS 1A THROUGH 15 FOR MORE INFORMATION AND REQUIREMENTS FOR SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFQP.
1 A - Prime Firm Proposed Personnel - Guaranteed Hourly Rates - Not to Exceed Compensation
Prime Firm Proposed Personnel; Guaranteed Hourly Rates & Not to Exceed Compensation Amounts

(Curriculum Vitae (“CV”’s) required)

This Attachment contains three Parts: Part 1 - Prime Firm Proposed Personnel, Titles, Guaranteed Hourly Rates (CV’s “Curriculum Vitae” required); Part 2 - Additional Prime Firm Proposed Personnel, Titles, Guaranteed Hourly Rates (CV’s required); and, Part 3 – Not to Exceed Compensation Amounts.

Fill out and place this Attachment 1 A (and provide the requested CV’s as described below) immediately after your Cover Letter:

I. Part 1 - Prime Firm Proposed Personnel, Titles, Guaranteed Hourly Rates (CV’s required):

All personnel proposed under Part 1 must be Prime Firm Employees, not Contract Workers or Consultants. Such a person must be identified for each Title listed in Part 1.

Insert in the appropriate column below the Guaranteed Hourly Rate for all such persons.

If a Proposer believes a listed Title/Position is not needed, please so indicate in Part 1 below, but you must explain specifically why in your Technical Proposal you prepare in response to Attachment 10 requirements why the listed Title/Position is not needed.

A Prime Firm Employee can be listed for more than one Title/Position in Part 1 below, but if you do so, you must explain specifically why the person is qualified to handle both positions in your Technical Proposal you prepare in response to Attachment 10’s requirements.

Provide a CV for each person listed in Part 1 by attaching the CV’s immediately behind Attachment 1 A in your Proposal inserting a cover sheet labeled “CV’s for Part 1 Prime Firm Proposed Personnel” immediately after Attachment 1 A and before the required CV’s for Part 1.

Make sure that at a minimum, the required CV submitted contains the information required by Attachment 10, Part 1, Section A. 3.

<table>
<thead>
<tr>
<th>#</th>
<th>Prime Firm Employee’s Name</th>
<th>Title/Position</th>
<th>Hourly Rate</th>
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<tbody>
<tr>
<td>1.</td>
<td>Bond Program Manager</td>
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<td>2.</td>
<td>Design and Planning Manager</td>
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<td>3.</td>
<td>Financial and Contract Manager</td>
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<td>4.</td>
<td>Program Controls Analyst</td>
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<td>5.</td>
<td>Admin Assistant</td>
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</tbody>
</table>
A general job description of the expected Basic Services, to be rendered by the individuals identified above, is found in Attachment 10.

*Identify if your company and/or the individuals identified above work or live in the District by attaching hereto an additional page or pages.*

II. **Part 2 - Additional Prime Firm Proposed Personnel, Titles, Guaranteed Hourly Rates (CV’s required):**

Please list below the Additional Prime Employees that you wish to Propose.

All personnel proposed under Part 2 must be Prime Firm Employees, not Contract Workers or Consultants.

If you propose and list any Additional Personnel in Part 2, insert their Title/Position below and also explain why you are proposing them and the function(s) each will perform in your Technical Proposal you prepare in response to Attachment 10’s requirements.

Insert in the appropriate column below the Guaranteed Hourly Rate for all such persons. If you list a Prime Firm Employee for more than one Title/Position in Part 2, explain why in your Technical Proposal in response to Attachment 10’s requirements.

Provide a CV for each person listed in Part 2 by placing such CV’s immediately behind the CV’s contained in your Proposal you submit for Part 1 and inserting a cover sheet labeled “CV’s for Part 2 Prime Firm Proposed Additional Personnel” immediately after the “CV’s for Part 1 Prime Firm Proposed Personnel” and before the required CV’s for Part 2.

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<thead>
<tr>
<th>#</th>
<th>Prime Firm Employee’s Name</th>
<th>Title/Position</th>
<th>Hourly Rate</th>
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Add as many lines, personnel, titles/positions, and hourly rates, as you wish to propose above, in Part 2 of this Form.

*Identify if your company and/or the individuals identified above work or live in the District by attaching hereto an additional page or pages.*
III. Part 3 – Not to Exceed Compensation Amounts

A. Total compensation payable to Program Manager for Program Management Fees and Reimbursable Expenses for Five (5) Years

The total compensation payable to Program Manager for Program Management Fees and Reimbursable Expenses for the complete performance of the Basic Services required by the Agreement for the full Term of the Agreement shall not exceed a Maximum Basic Services Compensation of [insert total five year “Not to exceed Amount here in words] and in numerals ($_____________.00).

B. The total compensation payable to Program Manager for Program Management Fees and Reimbursable Expenses for the complete performance of the Basic Services required by the Agreement for each Year is:

(i) Year 1 of the Term shall not exceed [insert total Year 1 “Not to exceed Amount here in words] and in numerals ($_____________.00);

(ii) Year 2 of the Term shall not exceed [insert total Year 2 “Not to exceed Amount here in words] and in numerals ($_____________.00);

(iii) Year 3 of the Term shall not exceed [insert total Year 3 “Not to exceed Amount here in words] and in numerals ($_____________.00);

(iv) Year 4 of the Term shall not exceed [insert total Year 4 “Not to exceed Amount here in words] and in numerals ($_____________.00); and

(v) Year 5 of the Term shall not exceed [insert total Year 5 “Not to exceed Amount here in words] and in numerals ($_____________.00).

The “Not to Exceed Amounts” inserted in Sections B. (i) through B. (v) above must equal the total amount listed in Section A above.

See also, Article s 4.1.1 and 4.1.2.1 of Attachment 14 (“Professional Services Agreement).

Attachment 1 A is a Mandatory Form and must be submitted as part of your Proposal.
1 B - Team Member Firm Proposed Personnel and Guaranteed Hourly Rates
### Team Member Firm Proposed Personnel & Guaranteed Hourly Rates

*(Curriculum Vitae (“CV”’)s required)*

This Attachment is filled out and placed in your Proposal immediately following the CV’s you have attached as part of Attachment 1 A.

All personnel proposed in this Attachment 1 B are to be Contract Workers or Consultants, not Prime Firm Employees. Such persons must be identified by name of the individual, title/position, company name, and the Guaranteed Hourly Rate for all such persons.

Explain why in your Technical Proposal in response to Attachment 10’s requirements you are proposing such individuals and the scope of work that such individual(s) will perform.

Provide a CV for each person listed in Attachment 1 B by attaching the CV’s immediately behind Attachment 1 B in your Proposal inserting a cover sheet labeled “CV’s for Attachment 1 B immediately after Attachment 1 B and before the required CV’s for Attachment 1 B.

<table>
<thead>
<tr>
<th>#</th>
<th>Team Member’s Individual Name</th>
<th>Title/Position</th>
<th>Company Name</th>
<th>Hourly Rate</th>
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Add as many lines, personnel, titles/positions, and hourly rates, you wish to propose above, to this Attachment 1 B.

*Identify if the companies and/or the individuals identified above work or live in the District by attaching hereto an additional page or pages.*
This Attachment 1 B is a Mandatory Form and must be submitted as part of your Proposal.
02 - Acknowledgement of Addenda
ACKNOWLEDGMENT OF ADDENDA

The Applicant acknowledges the receipt and review of all Addenda issued, if any, for this Procurement by indicating below the Addendum No. and Date thereof, as well as signing this form and returning it with your Proposal:

PROJECT NAME: Program Management Services - District Wide

PROCUREMENT NUMBER: RFQP 2019-02

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<th>Addendum No.</th>
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Applicant: _________________________________________

By: _______________________________________________

Its: _______________________________________________
03 - Non-Collusion Declaration
NON-COLLUSION DECLARATION

THE UNDERSIGNED DECLARES:

I am the __________________of________________, the party or Applicant (“Applicant”) submitting the Application (“Application”) that is being submitted with this Declaration.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on ______[date], at____________________ [city], ______________________[state].

[Name of Applicant]

[Signature of Applicant (if individual) or its Officer]

[Typed Name of Person Signing]

[Office or Title]
04 - Non-Discrimination Declaration
NON-DISCRIMINATION DECLARATION

Applicant hereby certifies that in performing work or providing services for the District, there shall be no discrimination in its hiring or employment practices because of age, sex, race, color, ancestry, national origin, religious creed, physical handicap, medical condition, marital status, or sexual orientation, except as provided for in Section 12940 of the California Government Code. Applicant shall comply with applicable federal and California anti-discrimination laws, including but not limited to the California Fair Employment and Housing Act, beginning with Section 12900 of the California Government Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on______ [date], at____________________ [city], ______________________ [state]."

______________________________
[Name of Applicant]

______________________________
[Signature of Applicant (if individual) or its Officer]

______________________________
[Typed Name of Person Signing]

______________________________
[Office or Title]

Attachment 4 to the RFQP
Non-Discrimination Declaration
05 - Conflict of Interest Certification
CONFLICT OF INTEREST CERTIFICATION

The undersigned Applicant hereby certifies that:

1. No officer, director, agent, employee, or affiliate of the Applicant has, and none of the Consultants and/or Sub-consultants that Applicant contemplates retaining to perform the services covered by the RFQP have, a financial interest in any consultant or contractor currently under agreement to perform work or services for the District, or any of the District’s colleges, excepting the following firms:
   __________________________________________________________________________

2. No officer, director, agent, employee, or affiliate of the Applicant has received or given, and none of the Consultants and/or Sub-consultants that Applicant contemplates retaining to perform the services covered by the RFQP have received or given, either directly or indirectly through an intermediary, any gift or gratuity to any consultant or contractor currently under agreement to perform work or services for the District or any of the District’s colleges, except for the following:
   __________________________________________________________________________

3. No officer, director, agent, employee, or affiliate of the Applicant has, and none of the Consultants and/or Sub-consultants that Applicant contemplates retaining to perform the services covered by the RFQP have any affiliation or business relationship with any official, officer, agent, or employee of the District, or any of the District’s colleges, or of any consultant or contractor retained by the District, who makes recommendations to the District with respect to the expenditure of money, except for the following affiliation or business relationship:
   __________________________________________________________________________

4. No officer, director, agent, employee, or affiliate of the Applicant has, and none of the Consultants and/or Sub-consultants that Applicant contemplates retaining to perform the services covered by the RFQP have any affiliation or business relationship, of any kind, with any official, officer, agent, or employee of the District or any of the District’s colleges, except for the following affiliation or business relationship:
   __________________________________________________________________________

5. No portion of the services covered by the Applicant’s Proposal is anticipated to be performed by a person or entity that is already providing, or that Applicant has reason to believe may provide in the future, services, advice, or consultation to (1) the District or any of its colleges in connection with the District’s Measure CC Bond Program, (2) any consultant or contractor currently retained by the District in connection with any construction project ongoing for the District or (3) any Sub-consultant or subcontractor of any consultant or contractor currently retained by District, except for the following:
   __________________________________________________________________________

6. The Applicant does not know of any other circumstances, not described above, that create or could be reasonably interpreted as creating, a conflict of interest, except for the following:
   __________________________________________________________________________

7. The Applicant agrees to assume continuing duty to disclose to the District any circumstances that may arise in the future within the scope of the requests for disclosure of conflicts of interests stated above.

Applicant: ___________________________ Date: ___________________________

Signature: ___________________________ Name and Title: ____________________
06 - Confidentiality Agreement
CONFIDENTIALITY AGREEMENT
(The Prime Firm shall submit one form and each Consultant to the
Prime Firm must also submit its own form)

The undersigned, a duly authorized officer of [name of Applicant or Team Member Firm] with authority to execute and contractually bind the below-named Applicant (“Applicant”) to this Confidentiality Agreement, does hereby represent, warrant, and agree that: (1) any and all financial, statistical, personal, technical, student information, or other data and information that is designated confidential by the District and made available to the Applicant and the content of any or all verbal discussions or negotiations between the Applicant and the District concerning the terms or other content of a proposal, or other offer, submitted by the Applicant to the District (collectively, “Confidential Information”) shall be kept in strictest confidence and no disclosure of any part of the Confidential Information shall be made by the Applicant to anyone other than authorized employees, agents, representatives, contractors, subcontractors, consultants, or sub-consultants of the Applicant having a need to know the Confidential Information in order to assist the Applicant in preparing its proposal, or other offer; (2) Applicant shall take all necessary steps to ensure that the Confidential Information is not disclosed by any employees, agents, representatives, contractors, subcontractors, consultants, or sub-consultants of the Applicant having a need to know the Confidential Information employed or retained by the Applicant, including, without limitation, requiring each such employee, agent, representative, contractors, subcontractors, consultants, or sub-consultants to execute a written agreement, substantially similar in form to this Confidentiality Agreement, promising to protect the Confidential Information from disclosure; and (3) the Applicant shall, if requested by the District, return to the District the originals and all copies of the Confidential Information, as well as any notes, summaries or other writings reflecting the content of Confidential Information, within five (5) calendar days of request by the District.

Date: __________________________

[Name of Applicant or Sub-Consultant Firm]

[Signature of Applicant (if individual) or its Officer]

[Typed Name of Person Signing]

[Office or Title]
07 - Evidence of Insurance Certification
EVIDENCE OF INSURANCE CERTIFICATION

(The Prime Firm shall submit one form and each Consultant to the Prime Firm must also submit its own form)

I, the undersigned, certify and declare that I am an authorized agent or officer of the entity submitting these Qualifications, Proposal and responses to the San Bernardino Community College District’s (“District”) Request for Qualifications and Proposals (“RFQP”) for the District-wide Program Management Services for the District’s Measure CC Bond Program, and that I am empowered to submit the Qualifications, Proposal and responses on behalf of:

__________________________________________________________________ .

I acknowledge that there are insurance obligations required by the Professional Service Agreement for the Services sought by the RFQP that are required to be obtained and provided by the successful Proposer as a condition precedent to being able to perform any services and/or work under the said Professional Service Agreement.

In that regard, I have read all of the Contract Documents, and I affirm and certify that I am familiar with all insurance requirements called for by the Contract Documents, and that we have, and/or shall have, all said insurance requirements required by the Contract Documents.

I also acknowledge that should our firm be selected but fail to timely provide the required insurance that the District will sustain costs, expenses and/or damages from having to procure another professional service vendor for the Services sought and that our firm will be responsible for reimbursing the District for such costs, expenses and/or damages.

The matters stated herein above are true and correct based on my own personal knowledge. I certify that the foregoing is true and correct.

BY: Signature: ________________________________

Printed Name: ___________________________________

Proposer’s Name: ________________________________

Position/Title: ________________________________

Date of Execution: ________________________________
08 - Authorization to Release Information
AUTHORIZATION TO RELEASE INFORMATION

The undersigned Applicant, for itself and for its consultants, contractors, sub-consultants and/or subcontractors, hereby authorizes and consents to the District to obtain information from third parties, including, but not limited to any individual(s) or individual representative(s) of any firm(s), entity(ies) or organization(s) listed in the Application/Proposal, for the purpose of verifying the information provided by the Applicant or for any other purpose related to the evaluation of Applicant’s Proposal, qualifications and/or the qualifications of its consultants, contractors, sub-consultants and/or subcontractors. Applicant recognizes that to ensure the effectiveness of the RFQP process, such individuals must be able to speak frankly and openly. Accordingly, Applicant, for itself and for its consultants, contractors, sub-consultants and/or subcontractors, hereby fully and unconditionally provides authority to such third parties and hereby also releases and discharges such third parties, and the firms, entities and organizations they represent, from any claim or liability relating to information provided by it/him/her/them to the District in connection with the processing, investigation and evaluation by District of the Applicant’s Application/Proposal.

Applicant hereby certifies that all of its consultants, contractors, sub-consultants and/or subcontractors have read this Authorization to Release Information and Applicant’s signature below represents its and its consultants, contractors, sub-consultants and/or subcontractors full agreement to the same.

________________________________________________________________________
Name of Applicant

________________________________________________________________________
Signature

________________________________________________________________________
Title

________________________________________________________________________
Date
09 - Representations-Certifications-Warranties
PROPOSER’S & TEAM MEMBERS’

REPRESENTATIONS, CERTIFICATIONS & WARRANTIES

(The Prime Firm shall submit one form and each Team Member must also submit its own form)

Without limitation on any other statements or representations made by the Applicant/Proposer or Team Member as part of its/their participation in the RFQP, each Applicant/Proposer and Team Member is deemed to have made the following representations, warranties and certifications to the District. Each represents, warrants and certifies that:

1. the Application/Proposal fully complies with the requirements of the RFQP;

2. all of the statements and representations made, or incorporated by reference, in the Application/Proposal, and in the attachments or exhibits submitted therewith, are true, correct and materially complete;

3. the matters stated in the Application/Proposal are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true;

4. each person who signed a document that is included in the Application/Proposal was at the time of signing, and for the duration of participation in the RFQP process provided for in the RFQP, shall remain authorized to so sign on behalf of and to bind the Applicant/Proposer/Team Member;

5. if the Applicant/Proposer/Team Member is a corporation, limited liability company, or limited partnership, that for the duration of participation in the RFQP process, it shall remain, registered with the Office of the Secretary of State for the State of California and authorized under Applicable Laws to do business in the State of California with a legal status determined by said Office of the Secretary of State of “active and in good standing”;

6. it possesses at the time of submission of its Application/Proposal, and shall possess for the duration of Applicant’s participation in the RFQP process, all licenses that it is required to hold under the provisions of the RFQP and/or that it is required to hold under applicable laws in order to perform the services and work contemplated by the RFQP;

7. it is, and at all times during its participation in the RFQP process shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well any similar provisions of applicable laws setting forth proscriptions or penalties relating to the employment or hiring of undocumented aliens;

8. being familiar with California Government Code §§1090 et. seq. and §§ 87100 et seq., that it does not know of any facts occurring in connection with the Applicant/Proposer/Team Member’s preparation for, or participation in, the herein described RFQP process that
constitute a violation thereof and has disclosed to District in “Attachment 5 - Conflict of Interest Certification” any possible interests, direct or indirect, which Applicant/Proposer/Team Member believes any official, officer, agent, or employee of the District or any of its Colleges, or any department thereof, has that might cause such official, officer, agent, or employee to be “financially interested” (as that term is defined the aforesaid statutes) in any decision made by District in connection with the RFQP process;

9. for projects over $1 Million, in accordance with Public Contract Code section 2204 (a), that at the time its Application/Proposal are submitted, the Applicant/Proposer/Team Member is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Applicants are cautioned that making a false certification and representation may subject the Applicant/Proposer/Team Member to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Applicant/Proposer/Team Member agrees that submission of the Application/Proposal shall constitute Applicant/Proposer/Team Member’s certification and representation as aforesaid; and

The undersigned Applicant/Proposer hereby certifies:

1. The Applicant/Proposer knows of facts that would materially impair its financial ability to perform the Scope of Services sought by the RFQP.
   ☐ Yes ☐ No

2. The Applicant/Proposer lacks sufficient liquid assets to pay its debts as and when they fall due.
   ☐ Yes ☐ No

APPLICANT/PROPOSER IS ADVISED THAT LEAVING A QUESTION UNANSWERED OR PROVIDING A “YES” ANSWER, TO ANY OF THE FOREGOING QUESTIONS CONSTITUTES GROUNDS FOR THE DISTRICT TO DISQUALIFY THE APPLICANT/PROPOSER.

Date:__________________________

Name of Applicant

________________________________________

Signature of Applicant (if individual) or its Officer

________________________________________

Typed Name of Person Signing

________________________________________

Office or Title
10 - Technical Proposal Staffing and Program Management Plan
Technical Proposal, Staffing Plan, Approach to Program Management, Evaluation Criteria & Further Scope of Basic Services

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PART 1 – TECHNICAL PROPOSAL REQUIREMENTS

In response to this Attachment 10 to the RFQP, you are to prepare a “Technical Proposal, Staffing, and Approach to Program Management Plans” as set forth herein below. You create a document responsive to this Attachment 10 and submit it as part of your Proposal as described below and in Section 5. A. (iv) (c) of the RFQP. The document you create, should have its own Table of Contents and be organized to respond to the categories set forth below for this Part 1.

The Proposers are encouraged to refer to the following links in response to the RFQP:

- Districtwide Facilities Master Plan Project List (Board Approved 5/11/2017)
- San Bernardino Community College District 2017-22 Districtwide Support Services Strategic Plan
- San Bernardino Valley College 2017 Comprehensive Master Plan
- San Bernardino Valley College 2017 Comprehensive Master Plan Appendix
- Crafton Hills College 2017 Comprehensive Master Plan
- Crafton Hills College 2017 Comprehensive Master Plan Appendix
- Board Policy 6610, Minority, Women, and Veteran Owned Enterprise Program.
A. History, Organization, and Key Personnel

1. Each Proposal shall provide, in no more than two (2) pages, a brief history of the Proposer’s firm that includes:

   a. the legal form (i.e., corporation, LLC, LLP, etc.) under which the Proposer conducts its business;

   b. the jurisdiction (i.e., state) in which the Proposer was originally formed, the date of such formation, and the status of the Proposer’s current filings with the Office of the Secretary of State for the State of California authorizing the Proposer to conduct business in the State of California;

   c. the names of the Proposer’s current directors and senior officers within the Proposer’s organization who would be directly involved in the chain of responsibility and reporting related to the Proposer’s performance of the Program Management Agreement;

   d. the number of years in business, the types of business conducted, the percentage of the Proposer’s business devoted to program management, and the percentage of Proposer’s business devoted to program management of school and community college facilities development;

   e. any mergers or acquisitions occurring within the past three (3) years and any mergers or acquisitions currently planned to occur in the next twelve (12) months;

   f. any professional and construction contracting licenses currently issued in the name of Proposer as the licensee;

   g. the location of the Proposer’s parent office(s);

   h. the location of the office that will be principally responsible for performance of the Program Management Agreement and for such office the total number of staff working in such office, the total gross revenues attributed to such office for each of the past
three (3) years, approximate allocation of those annual gross revenues to program management services, and the portion of such annual program management services gross revenues allocable to program management services for school and community college districts;

i. if the Proposer intends to utilize resources from more than one office, which office locations will be utilized and how the services will be allocated and coordinated among offices; and

j. the following information concerning the general contractor license (classification B-1) currently held by the Proposer:

   i. name of license holder;
   ii. license number;
   iii. name of qualifier (RMO or RME);
   iv. date issued;
   v. expiration date;
   vi. whether the license has been suspended or revoked in the past five (5) years (if so, explain); and
   vii. other contracting licenses held by the same qualifier in the past five (5) years.

2. Each Proposal shall describe the organizational structure of the team, including Prime Firm Members (sometimes also referred to herein as “Key Personnel”) and any Consultants and/or Sub-consultants (“Team Members”) devoted to performance of the Program Management Agreement (this requirement is in addition to the information required by Attachments 1 A and 1 B, but must be consistent and coordinated by the Proposer therewith), in the following format:

   a. an organization chart showing the job descriptions reporting responsibilities and organization of all Key Personnel and Team Members;

   b. Key Personnel job descriptions and reporting responsibilities, and identification of all individuals performing functions of Key Personnel who have preferred qualifications, consistent with the following:
i. **Bond Program Manager**: The Bond Program Manager shall be the Program Manager’s functional lead, responsible for directing and managing all aspects of the Bond Program on a day-to-day basis. This includes quality checks for all written communications between the Program Management Office and the District Staff, including scheduling of briefings and reports, submittal of studies, responses to requests for information, and maintaining a historical database of all communications and meeting minutes. The Program Manager shall act as a ‘Subject Matter Expert’ to the District Staff with respect to district bond regulations and requirements, attends all Bond Program meetings called by the District and or advisory committees and participates as an advisor on policy and procedure determinations, coordinates and interfaces with program auditors and the District’s Director, Internal Audit and Advisory Services, and prepares bi-annual reports on bond compliance and makes recommendations for adjustments and improvements, as well, oversees contract competitive bid, competitive negotiation, and award processes, prepares, organizes training, and implements standardized common construction management practices, monitors the activities of the CMTs and Program Professional Consultants, construction progress, and contractor performance, coordinates construction management with program controls, risk, quality, health, and safety field inspection functions, and oversees change management, reporting, commissioning, and closeout processes; plans and implements a program-wide Risk Management Plan; administers claims made against the District, including investigations into claims and evaluation and settlement of claims within the guidelines set by the District, establishes a procedure for collecting, evaluating, and filing documentation to support rejection or payment of claims. The Program Manager reports to the District’s Director, Facilities Planning & Construction and Executive Vice Chancellor, (“Vice Chancellor”).
Qualifications: 10+ years’ experience in managing multi-million dollar, multi-year, and multi-project building programs for educational institutions’ capital improvement programs; BA in Business Administration or Construction Management or related field such as engineering, architecture, or planning, familiar with application of metrics and project controls software applications; MS in Business Administration or Construction Management or related fields as above as well as AIA or PE license, PMP or CCM certification are preferred.

ii. **Design and Planning Manager**: The Design and Planning Manager establishes guidelines, standards, design tools, processes, and procedures for the preparation, coordination, review, and approval of all District Projects. These services include enforcement of District-wide design standards, DSA integration process, and coordination of interfaces between College Administration Committees and those performing various review efforts, including, constructability, value engineering, LEED certifications, energy incentives strategies, basis for design, zero net energy “ZNE” and sustainability implementation, and DSA reviews. The Design and Planning Manager oversees application of BIM modeling, oversees and interfaces with construction estimating consultants, oversees the project design consultant solicitation process, oversees the project competitive bidding, competitive negotiation, and award processes, and negotiates contracts. The Design and Planning Manager creates quality standards to be incorporated into comprehensive procedures governing the Bond Program and establishes an organized quality audit system that tracks compliance with Bond Program processes and procedures, develops performance metrics to be met by CMT’s and Program Manager’s staff overseeing CMT’s, monitors compliance by CMT’s and Program Manager’s staff with such metrics, organizes training programs for dissemination of information on
Bond Program processes and procedures, reports on status of quality assurance procedures, such as on-going continuous improvement training and tracking areas of concern that need improvement, provides recommendations for adjustment to processes and procedures, and develops lessons-learned library. Qualifications: BS in Architecture or Engineering, architecture or professional engineering/architectural license. LEED accreditation, CCM, DBIA and/or PMP certifications are preferred. Ten years’ experience in school design in the State of California, 5 years’ experience working on large school bond programs, familiarity with DSA standards and quality process development, quality control and assurance, and continuous process improvement.

### iii. Financial and Contract Manager*

The Financial and Contract Manager oversees and administers all bond program budget activities, financial transactions, cash flow analysis, program forecasts and projections, reports, financial statements, contracts and purchase orders, tracking, performance evaluation, encumbered purchase orders (contracts), approval, and processing of all invoices, account payables activities and transactions, approval and processing of cash disbursements, disbursements of funds, coordinates bond drawdown, coordinates with external auditors, maintains vendor files, B/L chart of accounts and project/financial ID numbers, performs other financial reconciliations and other functions related to capitalization of assets and asset management. The Financial and Contract Manager oversees the administration of all Bond Program procurement activities, monitors adherence to State of California and SBCCD procurement practices for construction contracts, professional services and FF&E, monitors procurements for conduct in a manner that is fair, ethical, and complies with laws and regulatory requirements, serves as liaison with the CMT’s to implement the goals of the Bond Program while maintaining compliance with all applicable policy,
regulatory, and legal requirements, and oversees the inventorying, photographing, tagging, and posting to a database of all FF&E items. Qualifications: BS in Financial Management BA in Business Administration, CPA or CMA certification with 5+ years’ experience working in a school bond program environment, procurement in procurement of large bond program management, experience with different Financial Management software, ability to establish and implement financial policy and procedures, and have a passion for accuracy and details.

iv. Program Controls Analyst: The Program Controls Analyst assists the Financial and Contract Manager with all finance and contract management aspects including but not limited to encumbered purchase orders (contracts), processes and tracks all invoices, account payable activities, payments, contracts and purchase orders; obtains approval and processing of cash disbursements, issues purchase requests for approved contracts, disburses purchase orders to various vendors, processes and receipts invoices and payments utilizing the District ERP system (Oracle Cloud), maintains records on contract and purchase order change, responses to internal and external auditors, complies bids and contracts and submits them to business services with cover sheets, works collaboratively with district fiscal services, business services and facilities planning department, adheres district internal business and fiscal policies, follows with vendors on expired insurance certificates, contracts and payments, and maintains comprehensive digital copies of all program related documents.

v. Program Admin Assistant: The Program Admin Assistant supports the program management team on all administrative and clerical activities and tasks and as deemed necessary
The Program Management Team supports Campus Projects by proactively implementing processes and methodologies related to planning, scheduling, cost analysis, estimating, risk assessment, cost, and schedule performance, resource requirements, capacity, and productivity analyses, implements integrated planning, cost, and scheduling control concepts and techniques, including assessment of critical paths, change order process tracking, and earned-value analysis, evaluates changes in contracts, schedules, finances, and resources to determine their impacts on the program and reports potential problems and recommends solutions to the program management team, routinely reviews project risk/issue logs, assesses risk impact and takes immediate action in the form of routine corrective or short-term workarounds, reports on significant residual impacts after actions are taken with respect to cost, schedule, quality, technical, and programmatic risks, employs analytical skills and the use of software to transform and summarize project data into tailored information to facilitate communication within various levels of the Bond Program organization, and teams with management to plan manpower requirements, workload distribution, proposal development cost factors, and organization budgets.

* Must be employees of Proposer and not Team Members.*

3. For each person identified above to perform a Key Personnel function, the Proposer shall include, at a minimum, in their respective CV required by Attachment 1 A, Part 1, to the RFQP, the following:

a. full name;

b. a resume that includes, at a minimum, educational history, professional and industry associations and certifications, current licenses, and work history;
c. a brief summary of his/her experience in performing services comparable to the services that he/she is being proposed to provide for the Bond Program; and

d. references for at least three (3) building programs on which he/she has performed services within the past ten (10) years comparable to the services that he/she is being proposed to provide for the Bond Program.

4. Each Technical Proposal in response to this Part 1 shall identify all Team Members, including the following:

   a. firm name and location of office(s) where services will be performed for the Bond Program;

   b. In the CV’s a brief summary of the experience and qualifications of each person who will be performing services on behalf of the Team Member for the Bond Program and references for at least three (3) building programs on which he/she has performed services within the past ten (10) years comparable to the services that he/she is being proposed to provide for the Bond Program; and

   c. a brief description of working relationships or arrangements entered into between the Proposer and the Team Member within the past five (5) years involving the performance of program management services.

C. Proposer’s Experience

1. Each Proposal shall describe the Proposer’s experience in performing program management services on large, multi-year public works capital improvement programs involving multiple contracts, multiple projects, and geographically dispersed project sites. Experience shall be of the Proposer, as a firm or company, and not experience of individuals that occurred before becoming employed by the Proposer.

2. Descriptions shall include, at a minimum, for each building program managed by the Proposer, the following information:
a. the public agency, department, district, or political subdivision having authority to conduct the building program;

b. the types of buildings or facilities design and constructed under the building program;

c. the size of the building program as measured by total value of construction contracts managed by the Proposer;

d. the period of time (dates and durations) that Proposer managed the building program;

e. the funding sources for the building program;

f. the approximate amount of total compensation paid to the Proposer for its performance as program manager;

g. the names of any persons working on the building program who are among those included in the list of Key Personnel included in the Proposal;

h. any significant achievements accomplished by the Proposer;

i. the content of any evaluations or audits of the Proposer’s performance, including both positive and negative evaluations; and

j. any other significant factors that the Proposer would like the District to consider, focusing in particular on lessons learned that enable the Proposer to anticipate and proactively address the types of challenges that are likely to be faced in performing for the District’s Bond Program.

3. Each Proposal shall include a narrative summarizing the depth and extent of Proposer’s experience working with the Divisions of State Architect (“DSA”) and Title 24 of the California Code of Regulations.

D. Proposer’s Financial Strength
1. Each Proposer’s financial strength will be evaluated with reference to the following factors:

<table>
<thead>
<tr>
<th>Ratio</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liquidity</strong></td>
<td></td>
</tr>
<tr>
<td>Current Ratio</td>
<td>Current Ratio = (Current Assets)/(Current Liabilities)</td>
</tr>
<tr>
<td>Acid Test/Quick Ratio</td>
<td>Acid Test Ratio = (Cash + Marketable Securities + Accounts Receivable + Short Term Notes Receivable)/(Current Liabilities)</td>
</tr>
<tr>
<td><strong>Solvency</strong></td>
<td></td>
</tr>
<tr>
<td>Debt-to-Worth Ratio</td>
<td>Debt-to-Worth Ratio = Total liabilities/Tangible Net Worth</td>
</tr>
<tr>
<td>Interest Coverage Ratio/Times Interest Earned Ratio</td>
<td>Interest Coverage Ratio = Earnings Before Interest and Taxes / Interest Expense</td>
</tr>
<tr>
<td><strong>Profitability</strong></td>
<td></td>
</tr>
<tr>
<td>Return on Net Worth</td>
<td>Return on Net Worth = Profit Before Taxes / Tangible Net Worth</td>
</tr>
</tbody>
</table>

2. Each Proposer shall submit a summary of assets and liabilities on the basis of available financial statements (audited, unaudited, or self-prepared, as the case may be, as stated and required hereafter) as of the close of its 2017 fiscal year. The summary shall be in the following format:

**YEAR: 2017**

(Thousands)

Current Assets    US$___________________
Current Liabilities US$___________________
Working Capital   US$___________________
Total Assets      US$___________________
3. Each Proposer shall demonstrate the financial capability to perform by providing documentation from one of the following categories:

   a. If audited financial statements are available, they shall be provided, which include
      
      i. Income Statement;
      
      ii. Balance Sheet;
      
      iii. Statement of Changes in Financial Position; or

   b. If audited financial statements are not available, and if unaudited financial statements compiled, reviewed, or attested by a CPA firm are available, then such unaudited financial statements shall be provided, which include:
      
      i. Income Statement;
      
      ii. Balance Sheet.

   c. If there is no audited or such unaudited financial statement available, then the following shall be provided:
      
      i. if no audited or unaudited financial statement is available, a self-prepared unaudited financial statement;
      
      ii. two (2) current references from a bank or other institutional lender;
      
      iii. a current statement from a bank confirming the Proposer’s open credit line available and the available amount of credit line; and
      
      iv. a current Dunn and Bradstreet report or report from a recognized commercial credit rating service, such as Experien, for the last two (2) full calendar years.

   
   
   Total Liabilities    US$____________________
   Net Worth           US$____________________

   
   
   Attachment 10 to the RFQP
   Technical Proposal, Staffing Plan, Approach to Program
   Management, Evaluation Criteria & Further Scope of Basic Services
4. All financial information requested, whether in the form of a financial statement or other permitted form, shall conform to “generally accepted accounting principles” (GAAP). If audited financial statements are not available, the Proposer shall nonetheless include and disclose all of the same information that would be required to be disclosed in a fully audited financial statement prepared in accordance with GAAP. In addition to the financial information specifically listed above, Proposers shall provide any and all financial and other information necessary for the District to calculate the financial ratios used to evaluate a Proposer’s financial strength that are indicated in preceding Paragraph 1 of this Part D, such as, but not limited to, information on all long and short term debt obligations. The District is under no obligation to inform Proposers if information is missing from a Proposal and shall not be responsible for a Proposer’s failure to provide the financial information requested.

5. Each Proposal shall include a statement of whether the Proposer has filed or had filed against it a petition in bankruptcy or taken any actions with respect to the insolvency, reorganization, receivership, or assignment for the benefit of creditors, or otherwise sought relief from creditors, at any time in the past ten (10) years, and if so, the circumstances and final disposition thereof.

E. Claims History

1. Each Proposer shall submit a summary of whether of not any of the following events have occurred within the past (5) years and, if so, a brief description of the circumstances involved (including, without limitation, the names of parties involved, current status and final disposition of the matter of dispute):

   a. failure by Proposer or any Team Member to enter into a contract to which it has received an award by a public entity;

   b. forfeiture of a bid or proposal bond by Proposer or any Team Member;

   c. termination for default under a contract awarded by a public entity to Proposer or any Team Member;
d. debarment of Proposer or any Team Member by any municipal, county, state, federal, or local agency (note: debarment is grounds for automatic disqualification);

e. determination of Proposer or any Team Member as a non-responsible bidder by any municipal, county, state, federal, or local agency (note: such a determination is grounds for automatic disqualification);

f. the filing of a lawsuit or arbitration in which the Proposer or a Team Member was a defendant or cross-defendant at any time within the past five (5) years that involved the performance of project, program, or construction management services and that involved an amount in controversy sought to be recovered from Proposer or the Team Member of more than $100,000.00;

g. conviction of Proposer, a Team Member, or any of their principals or officers for violation of a state or federal antitrust law involving bid rigging, collusion, or restriction on competition between bidders, or conviction of violating any other federal or state law relating to bidding or contract performance (note: such conviction is grounds for automatic disqualification);

h. any suspension, revocation, or other disciplinary proceeding relating to a contracting or professional license issued to Proposer or a Team Member;

i. any fines or citations issued by any regulatory agency, such as, without limitation, OSHA, EPA, etc., during the past five (5) years; or

j. any felony convictions within the past ten (10) years of any person who is a director, officer, or managing employee or Proposer or any Team Member or who is a person who is proposed by the Proposer to occupy a Key Personnel position (note: such conviction is grounds for automatic disqualification).
2. Failure to disclose any circumstances requested in the preceding paragraphs is grounds for disqualification.

F. Technical Approach

1. Each Proposer shall include an Executive Summary, not more than five (5) pages in length, highlighting and providing the District with a broad understanding of the Proposer’s Technical Approach.

2. Each Proposer shall describe its proposed Technical Approach in a format that is organized with specific reference to the following categories of Basic Services:

   a. Comprehensive Decision Management;
   b. Integration Process Management;
   c. Contract Management and Administration;
   d. Planning and Design Management;
   e. Quality Assurance/Quality Control;
   f. Program Controls and Reporting;
   g. Risk Management;
   h. Dispute Resolution Support;
   i. CMT Oversight; and
   j. Outreach and Labor Compliance.

4. As part of the description of its Technical Approach, for each of the categories of Basic Services described above the Proposer shall delineate the following:

   a. **Technical Narrative**: A narrative, not more than three (3) pages, describing the Proposer’s approach to performance of the service category.

   b. **Detailed Services**: A list and descriptions of proposed category services that is concise and thorough;

   **NOTE**: PROPOSERS ARE ADVISED THAT THEIR DETAILED DESCRIPTIONS OF PROPOSED SERVICES SHOULD BE DETAILED, CLEAR, COMPREHENSIVE, AND ARTICULATED IN MANNER THAT COMMITS THE
PROPOSER TO ASSUMING A HIGH DEGREE OF RESPONSIBILITY IN PERFORMING THE TASKS AND SERVICES DESCRIBED. USAGE BY PROPOSERS IN THEIR DESCRIPTIONS OF WORDING THAT QUALIFIES THE LEVEL OF THE PROGRAM MANAGER’S LEVEL OF COMMITMENT AND PERFORMANCE TO “ENDEAVORING,” “USING BEST EFFORTS,” “ASSISTING,” “PROVIDING ADVICE,” OR SIMILAR PHRASEOLOGY, SHOULD BE AVOIDED WHEREVER REASONABLY POSSIBLE.

c. **Deliverables:** A list and descriptions of proposed deliverables for the category services;

d. **Technology Usage:** A description of how the Proposer will utilize its technology, and what technology it proposes to use, to support its execution of the category services and deliverables; and

e. **Communications/Reporting:** The methodology that the Proposer will use to gather source information (including, without limitation, information provided by CMTs) and communicate and report to the District on the category services.

3. Each Proposer shall separately describe in no more than three (3) pages its approach to addressing the following issues of special interest to the District:

a. Based upon Proposer’s experience, identify three (3) to five (5) critical areas that the Proposer believes are the most critical areas for a successful bond program and describe how the Proposer would go about addressing those areas in its performance as Program Manager.

G. **References**

1. Each Proposer shall list three (3) References of a public agency, department, district, or other political subdivision for which Proposer has performed program management services on large, multi-year
public works capital improvement programs involving multiple contracts, multiple projects, and geographically dispersed project sites. References provided may be the same or different from references given for Key Personnel; but if Reference Interviews are conducted for the purpose of evaluating past performance (as distinguished from communications with third parties for the purpose of investigating and confirming information provided in a Proposal), such Reference Interviews will be of only those References given in response to this Part G.

2. For each Reference given in response to the preceding request for References, Proposer shall state:

   a. name;
   b. title;
   c. organization;
   d. name of project;
   e. contact Information, including address, telephone number, fax number, and email address;
   f. dates that services were provided;
   g. amount of total compensation under contract performed for Reference;
   h. Proposer’s position or role;
   i. total value of facilities projects managed by Proposer for the Reference; and
   j. if Proposer has performed more than one contract for the Reference, a brief overview of the history of the business relationship between the Proposer and the Reference.

[Go on to next page]
PART 2 – TECHNICAL PROPOSAL EVALUATION CRITERIA

In the First Phase of the RFQP process, the District will evaluate the qualifications, experience and capabilities set forth in each Technical Proposal and score each Technical Proposal according to the following Evaluation Criteria:

<table>
<thead>
<tr>
<th>First Phase Evaluation Criteria</th>
<th>Weight (% of First Phase)</th>
<th>Max. Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Proposer's History/Organization</td>
<td>10%</td>
<td>100</td>
</tr>
<tr>
<td>2. Key Personnel Qualifications</td>
<td>22.5%</td>
<td>225</td>
</tr>
<tr>
<td>3. Proposer's Experience</td>
<td>22.5%</td>
<td>225</td>
</tr>
<tr>
<td>4. Proposer's Financial Strength</td>
<td>12.5%</td>
<td>125</td>
</tr>
<tr>
<td>5. Claims History</td>
<td>5%</td>
<td>50</td>
</tr>
<tr>
<td>7. Proposed Technical Approach</td>
<td>22.5%</td>
<td>225</td>
</tr>
<tr>
<td>8. Overall</td>
<td>5%</td>
<td>50</td>
</tr>
</tbody>
</table>

First Phase - Total Maximum Possible Points: 1,000

PART 3 – INTERVIEW REQUIREMENTS

In the Second Phase of the RFQP process, the District will conduct Technical Interviews of the Short-Listed Finalist and, at the District’s option, possibly conduct Reference Interviews.

A. Technical Interviews.

1. The Short-Listed Finalists will be invited to continue to participate in the RFP process by participating in Technical Interviews.
2. Topics covered at Technical Interviews are at the discretion of the District evaluators conducting the interviews; however, the Short-Listed Finalists should be prepared to address the following topics:
   a. scope of services required to achieve the District's objectives;
   b. assessment of currently contemplated Bond Program projects as listed in the Measure CC Projects List and
facilities master plans together with any potential issues and potential risks perceived by the Short-Listed Finalist;

c. approach to managing and mitigating perceived Bond Program issues and risks;

d. the Short-Listed Finalist’s commitment and ability to respond to the District’s needs;

e. the Short-Listed Finalist’s record and experience delivering quality services on similar Programs;

f. the Short-Listed Finalist’s record of meeting cost and schedule commitments on similar Programs;

3. The following Key Personnel shall, at a minimum (others are permitted), be present at the Short-Listed Finalist’s Technical Interview:

a. Program Manager;

b. Design & Planning Manager;

c. Financial and Contract Manger; and

The total number of persons attending for the Short-Listed Finalist shall not exceed seven (7). Presentations shall be conducted by Key Personnel and not by sales persons.

4. The schedule and timing of Technical Interviews has been set for the date of 4/2/2019 unless it is changed by RFQP Addendum.

5. Technical Interviews will begin with an opening presentation by the Short-Listed Finalist. The duration of this presentation is limited to a maximum forty-five (45) minutes. The Short-Listed Finalist may at its discretion use PowerPoint or other visual aids during the presentation; provided that each member of the Evaluation Panel is given one printed copy and one electronic copy of any visual aids used during the presentation. The Short-Listed Finalist will be responsible for providing all software, hardware, screens, projectors, easels, and any and all other necessary tools or appliances necessary to present the visual aids.
6. The Short-Listed Finalists will be informed, in advance of the Technical Interviews and by means of RFQP Addendum, of the exact number of persons who will be present on behalf of the District at the Technical Interviews.

7. Following the period of questions and answers of approximately forty (40) minutes (or such longer period as the District deems appropriate, in the exercise of its sole discretion) there will be a five (5) minute closing statement by the Short-Listed Finalist.

8. At the option of District, the District may elect to engage in Discussions at any time during the conduct of the Technical Interviews.

B. Reference Interviews

1. Any person or firm listed in a Proposal may be contacted by the District for the purpose of investigating and confirming information provided by the Proposer in its Proposal. Such contacts, if they occur, do not constitute “Reference Interviews” that are subject to the requirements of this Part 3 – B. Such communications need not be conducted for every Proposer, are not scored, and do not follow a prescribed set of questions.

2. The conducting of Reference Interviews is optional at the sole discretion of the District.

3. Reference Interviews, if conducted, will be by a District-assigned representative. No action is necessary by the Proposer.

4. Reference Interviews, if conducted, will be conducted by telephone. Proposers will be notified by RFQP Addendum of the range of dates and times during the day within which References may be contacted.
5. Proposers are solely responsible to ensure that the individuals listed as contacts for References are available to respond to questions by the District. Failure to provide requested information about a contact, when such information is found by District to have been reasonably available to the Proposer, constitutes a ground for disqualification.

6. One attempt will be made by telephone to reach a contact. If a contact does not respond within two (2) business days after a telephonic attempt, the contact will be deemed unavailable. If insufficient contacts are available to complete the Reference Interviews, the Proposer may be disqualified.

7. The following shall apply to the conduct of Reference Interviews:
   a. The District may select any number of References from those listed by a Proposer. Selection may not necessarily be in the order that References have been listed by Proposer.
   b. The same number of References will be contacted for each Proposer.
   c. Identical questions from a standardized list of questions shall be asked of each Reference. Reference will be asked general questions relating to the quality of Proposer’s past performance. Individuals identified by a Proposer as a contact person for a Reference must be familiar with and capable of evaluating all general aspects of the Proposer’s performance, including overall quality, attention to detail, timeliness, creativity, major challenges, organizational capabilities and capacities, overall work product quality, key personnel assignments and performance. If the person interviewed states that he/she is unable to answer the
interview question, then the Proposer will be given zero points as its score for that question.

d. Total scores received for each Reference are averaged on a straight, non-weighted basis.

PART 4 – INTERVIEW EVALUATION CRITERIA AND SCORING

The Technical Interviews and Reference Interviews (if any) will be evaluated and scored based on the following Evaluation Criteria. The first table shown below sets forth the Evaluation Criteria and scoring system that will be used if the District elects to conduct References Interviews. The second table shown below sets forth the Evaluation Criteria and scoring system that will be used if the District does not elect to conduct References Interviews:

A. With Reference Interviews:

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Weight (% of Second Phase)</th>
<th>Max. Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Proposer Interview: Opening Presentation</td>
<td>5%</td>
<td>50</td>
</tr>
<tr>
<td>2. Proposer Interview: Responsiveness to Questions</td>
<td>25%</td>
<td>250</td>
</tr>
<tr>
<td>3. Proposer Interview: Communication/Interpersonal Skills</td>
<td>25%</td>
<td>250</td>
</tr>
<tr>
<td>4. Proposer Interview: Demonstrated Knowledge</td>
<td>25%</td>
<td>250</td>
</tr>
<tr>
<td>5. Proposer Interview: Overall Performance</td>
<td>10%</td>
<td>100</td>
</tr>
<tr>
<td>6. Reference Interviews (scored by interviewees)</td>
<td>10%</td>
<td>100</td>
</tr>
</tbody>
</table>

Second Phase - Total Maximum Possible Points: 1,000

B. Without Reference Interviews:

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Weight (% of Second Phase)</th>
<th>Max. Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Proposer Interview: Opening Presentation</td>
<td>10%</td>
<td>100</td>
</tr>
<tr>
<td>2. Proposer Interview: Responsiveness to Questions</td>
<td>25%</td>
<td>250</td>
</tr>
<tr>
<td>3. Proposer Interview: Communication/Interpersonal Skills</td>
<td>25%</td>
<td>250</td>
</tr>
</tbody>
</table>
PART 5 - CALCULATING TOTAL FIRST PHASE AND SECOND PHASE SCORES

Each Short-Listed Finalist’s total score for the First Phase and Second Phase shall be combined and then weighted, as between the First and Second Phases, based on 60% weight being given to the First Phase score and 40% weight being given to the Second Phase score (after normalization, if any). The resultant weighted scores will then be totaled to arrive at the Short-Listed Finalist’s overall, final score that will be used for purposes of ranking the Short-Listed Finalists. Scoring is used by the District to assess the relative strength of a Short-Listed Finalist’s Proposal. However, in as much as this is a best value – qualitative based selection, receiving the “highest score” or “highest point total” does not mean that such a Short-Listed Finalist will receive the contract. Pricing will be taken into consideration by the District as a factor in that regard.

Once the Phase Scoring is determine, the points identified will be further weighted as follows:

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Weight (% of Overall Phase)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Technical Qualifications and PMO Plan</td>
<td>30%</td>
</tr>
<tr>
<td>2. Interviews and References</td>
<td>30%</td>
</tr>
<tr>
<td>3. Price Proposal</td>
<td>30%</td>
</tr>
<tr>
<td>4. Board Policy 6610</td>
<td>0%.</td>
</tr>
</tbody>
</table>

PART 6 – STAFFING PLANS REQUIRED

Each Proposer shall submit proposed Staffing Plans separately packaged from its Technical Proposal, which includes the following documents in addition to the other forms and documents required by the RFQP Instructions. The proposed Staffing Plans
should reference, tie back to, and identify, by name, the personnel to be employed under each Plan as listed in Attachments 1 A and 1 B:

A. **Proposer’s Staffing Plans.**

1. **Proposed Initial Staffing Plan.** Each Proposal shall include a Proposed Initial Staffing Plan and Organization Chart that details (in isolation from the Proposed Full Staffing Plan) the first six (6) months of performance of the Term. In addition, the Proposed Initial Staffing Plan shall be accompanied by a narrative of not more than four (4) pages, that includes the following:

   a. Proposer’s strategy for the proposed Program Manager Organization and its intended approach to assess and help the District structure the Measure CC Bond Program;

   b. a description of the organization policies and procedures to be employed to accomplish same;

   c. a schedule for implementing same, including definition of the phases of the structuring, schedule milestones, activity time frames, activity sequencing, activity relationships, and responsibility for execution of the various activities;

   d. a description of the roles and responsibilities during this initial period;

   e. a description of how historical and current data and information will be preserved and incorporated into new proposed reporting systems; and

   f. a description of the training and orientation that will take place during this initial period;

2. **Proposed Full Staffing Plan.** Each Proposal shall include a Proposed Full Staffing Plan that covers the entire 5-years of the Term.

3. **Other Proposed Staffing Plan Requirements.**
a. Each Proposed Staffing Plan shall be in an Excel or 
equivalent spreadsheet format and show the following:

i. for each person projected to perform Basic Services 
in the capacity as Key Personnel:

(1) job title;
(2) Fixed Hourly Rates;
(3) hours assigned by time increments of four-weeks;
(4) total hours for Key Personnel for (a) the full 
period of time covered by the Proposed 
Staffing Plan and (b) each twelve (12) months 
of the Proposed Full Staffing Plan;
(5) conversion to FTE units (as defined below);
(6) total FTE units for each Key Personnel job title 
totaled annually and over the full period of time 
covered by the Proposed Staffing Plan;
(7) total FTE units for Key Personnel for (a) the full 
period of time covered by the Proposed 
Staffing Plan and (b) each twelve (12) months 
of the Proposed Full Staffing Plan;
(8) total Program Management Fees for all Key 
Personnel job titled totaled for the full period of 
time covered by the Proposed Staffing Plan.

ii. all persons performing services who are not Key 
Personnel and who perform lower-level support 
services for Key Personnel shall be listed by category 
or job description and for each such category or job 
description, state:

(1) proposed fixed hourly rates (in the form of an “all 
in” rate including base salary, benefits, and mark 
ups of every kind) for persons within such 
category or job description;
(2) hours assigned by time increments of four-weeks;
(3) total hours for (a) the full period of time covered by the Staffing Plan and (b) annually in the Proposed Full Staffing Plan;
(4) conversion to FTE units;
(5) total FTE units for each category or job description for (a) the full period of time covered by the Proposed Staffing Plan and (b) each twelve (12) months of the Proposed Full Staffing Plan;
(6) total FTE units for each category or job description for (a) the full period of time covered by the Proposed Staffing Plan and (b) each twelve (12) months of the Proposed Full Staffing Plan; and
(7) total Program Management Fees for each category or job description for the full period of time covered by the Proposed Staffing Plan.

iii. Reimbursable Expenses by categories stated in the Program Management Agreement, totaled for (a) the full period of time of the Proposed Staffing Plan and (b) for each twelve (12) months of the Proposed Full Staffing Plan; and

iv. total Program Management Fees and Reimbursable Expenses over the full period of time of the Proposed Staffing Plan.

b. With respect to all Personnel, Proposers shall only use the Fixed Hourly Rates set forth in Attachments 1 A and 1 B as submitted.

c. “FTE units,” or “FTE’s,” as used herein are a Full Time Equivalent unit measurement of workload that is computed by dividing the total hours projected to be performed over a specific time period by the number of hours that is assumed to comprise a full-time workload for one worker. For purposes of preparing Proposed Staffing Plans, the assumed full-time workload for one worker shall be 2080 working hours per year.
PART 7 – FURTHER DESCRIPTION OF THE SCOPE OF BASIC SERVICES

In addition to the description of Basic Services set forth in the RFQP, Article 2 of Attachment 14, all other RFQP Documents, and as may be agreed to in Negotiations, Basic Services, also include, without limitation, the following, as well as all related services necessitated thereby whether expressly set forth or not:

A. KEY PERSONNEL POSITIONS:

Without limitation to the scope of Basic Services set forth elsewhere in the RFQP Documents, the Program Manager’s Key Personnel shall perform the following functions and services:

1. Bond Program Manager
2. Design and Planning Manager
3. Financial and Contract Manager
4. Program Controls Analyst
5. Admin Assistant

B. DELIVERABLES:

Without limitation to the scope of the deliverables required as part of Basic Services set forth elsewhere in the RFQP Documents, deliverables also include:

1. Comprehensive Decision Management. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:
i. Procedures and Policies Manual, a one-time manual that is updated annually or more frequently if circumstances reasonably require;

ii. Program Management Information System, a Program-wide information system that is updated annually or more frequently if circumstances reasonably require;

iii. Stakeholder Management Plan, a one-time plan that is updated annually or more frequently if circumstances reasonably require;

iv. Communications Plan, a one-time plan that is updated annually or more frequently if circumstances reasonably require. The Communications Plan should include, but is not limited to: a description of the records that will be maintained (e.g., correspondence, QA/QC reports, meeting minutes, etc.; and the filing organization system to be used; and the distribution matrix for documents, whether hard copy or electronic);

v. Safety, Health, and Environment and Community Meeting Minutes and Status Report (Monthly);

vi. CMT Performance Report (Monthly);

vii. Overall Program Financial Status Summary (Monthly);

viii. Schedule (projected/planned vs. actual), Earned to date (% complete) v. Paid to Date; Claims; Change Order; Withholds; Pending/Open Change Order Requests/Change Order Proposal Summary Report per project and per College (Monthly);

ix. Staffing and Resources Report (Program Manager and CMPT firms (Monthly);

x. Program Top Priority Decision Report (Weekly);
xi. Comprehensive minutes of all meetings chaired by the Program Manager, including, but not limited to, action items, what actions are to be taken, who will take the action, and by what date the action is to be taken;

xii. Weekly follow-up on the status of all action items and recommendations for corrective actions as needed; and

xiii. Other Reports as agreed to before execution of the Program Manager Contract.

.2 Integrated Process Management. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:

i. A validated Financial Baseline Report at the Project, College, and Bond Program levels, created and established for the Bond Program at inception that is thereafter updated monthly;

ii. Create a one-time plan for uniform collecting, reporting, and entering cost data into an electronic report that is updated annually or more frequently if circumstances reasonably require; and

iii. Implement a Training Plan that is updated annually or more frequently if circumstances reasonably require for training users on new processes and procedures, utilizing workshops and web-based training tools;

.3 Contract Management and Administration. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:

i. Automated Workflow Strategy Plan, a one-time plan updated
annually or more frequently if circumstances reasonably require;

ii. CMT Change/Claim Documentation Guidelines, a one-time report updated annually or more frequently if circumstances reasonably require;

iii. Change Management Procedures Assessment, a one-time report, updated quarterly or more frequently if circumstances reasonably require;

iv. Document Control Systems Assessment, a one-time report, updated annually or more frequently if circumstances reasonably require;

v. Contracts Training Plan, a one-time plan to train District, CMT and Program Manager staff on work flow processes, use of support technologies, and performance metrics that will be used to evaluate compliance, updated annually;

vi. Contract Audit Procedures, a one-time plan to provide guidance on the procedures and frequency of audits of individual contracts issued under the Bond Program, updated annually; and

vii. Plan for monitoring status of all contracts, including, but not limited to:

   a. date contract is needed per master plan;

   b. date executed;

   c. original completion date;

   d. modified completion date;

   e. actual completion date;

   f. expiration date (if applicable);

   g. estimated cost before execution;
h. original cost at execution;

i. current cost;

j. estimate at completion; and

k. actual cost at completion.

These services shall integrate the program management staff in the district support services (business services, fiscal services, and facilities planning & construction) for managing financial and contract administration activities for the bond program. This will include the account payable and transaction activities within the District ERP system (Oracle Cloud) for the bond program’s financial activities.

.4 Planning and Design Management. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:

i. Project Validation Assessment, a one-time report that is updated quarterly or more frequently if circumstances reasonably require;

ii. Existing Facilities and Building System Assessment, including LEED assessments and ADA Compliance, a one-time report that is updated quarterly or more frequently if circumstances reasonably require; and

iii. Design Standards Assessment, a one-time report, updated annually or more frequently if circumstances reasonably require;

iv. Plan for monitoring status of design and design changes, including but not limited to:

a. Need dates for designs and design changes; and

b. Actual dates designs and design changes issued.
v. Provide the following reports as well: ADA Report (Biannual); Architect and Design Eng. Evaluations. (Bi-annual); BIM Tracking Report (Monthly); Design Schedule Tracking Report (Monthly); LEED and Sustainability Report (Quarterly); College Climate Action Plan (Annual); DSA Certification Report (Quarterly); ADA Compliance Assessment; DSA Certification Assessment; College Carbon Annual Inventory; Lessons Learned Database, a semi-annual report; Costs and Schedule Milestone Alert Report, a quarterly report; and Monthly Design Management Reports, including but not limited to a narrative of design issues that require District action or decisions.

.5 Quality Assurance/Quality Control.

i. Quality Control/Quality Assurance Plan, a one-time plan that is updated annually or more frequently as circumstances reasonably require;

ii. QA/QC Training Plan, a one-time plan to train District, CMT and Program Manager staff on QA/QC processes and procedures, updated annually;

iii. A Plan for reporting on status of non-conforming items; and

iv. Provide the following reports as well: Independent Quality Audits, a semi-annual audit; QA/QC Database Tracking Reports, issued quarterly; Consultant-Sub-consultant Rating and Evaluation Report, issued quarterly; Monthly QA/QC Performance Reports, issued monthly; Corrective Action Reports, issued monthly; and Audit Nonconformity Reports, issued monthly.

6. Program Controls & Reporting. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District's existing program systems and documentation:
i. Plan for the parameters and reporting formats for the Earned Value (EV) reporting system to be used by each CMT;

ii. A plan for the full complement of deliverables provided for in IT System, including the creation of earned value reports, for individual contracts and for the Program as a whole, including but not limited to:

   a. Cost Performance Index (CPI);
   b. Schedule Performance Index (SPI);
   c. Estimate at Completion (EAC);
   d. Estimate to Complete (ETC);
   e. Variance at Completion (VAC);
   f. Schedule Variance (SV);
   g. Additional Earned Value parameters as requested by the District; and

iii. A plan for the parameters and reporting formats for the logs set to be maintained by each CMT, including but not limited to:

   a. Correspondence log;
   b. Request for Information (RFI) log;
   c. Submittal log
   d. Pending and Actual Change Order log;
   e. Potential Change Order log;

iv. Bond Program Website Plan, a one-time plan updated annually or more frequently if circumstances reasonably require;
v. Master Program Scheduling Plan showing each College and College project on a milestone basis, to be updated annually or more frequently if circumstances reasonably require;

vi. Individual contract and Program-wide Close-out plan;

vii. Earned Value Management Data Report, prepared monthly;

viii. Performance Reports, prepared monthly including reports on:
   a. Status of potential, pending, and executed change orders;
   b. Status of requests for information (RFIs);
   c. Status of submittals, including schedule submittals;
   d. Status of pending design changes; and
   e. Status of pending or actual claims.

ix. Technical Reports, prepared as needed, including reports on significant issues affecting or that may affect the quality, cost, or schedule of individual Program Contracts or the Program as a whole; and

x. Provide the following reports as well: Program Management Status Report (Monthly); Independent Taxpayer’s Oversight Committee Report (Quarterly); Project Close Out Status Report (Monthly); Risk Register Summary Report (Monthly); Estimate to Complete (Anticipated Cost Report) Report (Monthly); Contract Report with Invoicing Report (Monthly); Change Order Report by Type and Cause Report (Monthly); Budget Report including Transfers Report (Monthly); Variance Report (Budget to EAC) Report (Monthly); Bond Fund Status Report (Monthly); Reserve / Contingency Report (Monthly); Cash-flow Report (Monthly); General Ledger Detail
xi. A plan for Total Cost of Ownership (TCO) and Program Life-Cycle Cost Analysis (LCCA).

7. Risk Management Reporting. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:

i. Risk Management Plan, a one-time plan updated annually or more frequently if circumstances reasonably require;

ii. Common Risk Web Based Site (“WBS”) Training Plan, a one-time plan to train District, CMT and Program Manager staff on a Common Risk WBS that corresponds to the District’s existing system, if applicable;

iii. Plan for Identification of risks to individual contracts as well as to the Program as a whole; and

iv. Plan for reporting on steps taken or to be taken to mitigate risks to quality, cost and schedule.

v. Provide the following reports and audit as well: Program Risk Register Tracking Report (Monthly); Campus Risk Register Tracking Report (Monthly); Risk Review Board Meeting Report (Quarterly); Program/Project Insurance Report (Quarterly); and an Annual Independent Risk Management Assessment.
8. **Dispute Resolution Reporting.** Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:

i. Claims and Mandatory Dispute Resolution Support Plan, a one-time plan updated annually or more frequently if circumstances reasonably require;

ii. Claims Register Report (Monthly);

iii. Claims Review Panel Report (Monthly);

iv. Dispute Tracking Report (Monthly);

v. Program Claims Summary Report (Annual);

vi. Provide the following reports and audit as well: “Privileged and Confidential” Reports to District and Counsel on claims and pending claims or disputes and recommended courses of action; “Privileged and Confidential” Presentations to District and Counsel on claims and pending claims or disputes and recommended courses of action; Issue files containing all project documents relevant to a particular issue in dispute and an annual Independent Audit of the Mandatory Dispute Resolution Program.

9. **Construction Management Team Oversight.** Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation and reports that incorporate and utilize, as reasonably practicable, the District’s existing program systems and documentation:

i. Organizational reporting structure and responsibilities;

ii. Roll-up reporting of project status;

iii. Mobilization and issuance of notices to proceed (“NTP’s”);
iv. Tracking CMT performance under staffing plans;

v. Review and approval of CMT invoices;

vi. Submittals management;

vii. Project controls;

viii. Regular, periodic project status reviews;

ix. Compliance with budgetary guidelines;

x. Cost estimating assistance and related data base;

xi. Documentation management;

xii. Procurement and contract administration;

xiii. Quality control and inspection;

xiv. Schedule review and critical evaluation (including evaluation of options for phasing);

xv. Health, safety, and environmental protection and oversight of CMT operational site planning, including safety plans, emergency response plans, movement management plans, and site logistics and circulation plans;

xvi. Coordination of field schedules with Bond Program milestones;

xvii. Monitoring of LEED Certifications;

xviii. Monitoring of compliance with environmental requirements;

xix. Maintaining a change management process for construction change orders that tracks and evaluates the causes for changes and recommends approaches to reducing changes;
xx. Coordinating relocation, FF&E, and move-management services;

xxi. Regulatory compliance;

xxii. Commissioning;

xxiii. Project close-out and punch-lists;

xxiv. Warranty inspections;

xxv. Process improvement training;

xxvi. Confirming close-out of all contracts, receipt of DSA certifications, recording notices of completion, and making of final payments;

xxvii. Confirming close-out of all contracts, receipt of all as-built drawings, warranties;

xxviii. Guarantees, operations and maintenance manuals, maintenance materials, spare parts, additional equipment, materials and/or shelf stock items.

xxix. Provide the following reports and audit as well: Document Control Plan; Safety Management Plan; Project Roll Up Plan; Project Roll Up Report (Monthly); Document Control Report (Biannual); Warranty Management Report (Biannual); CMT Staffing Plan Evaluation (Biannual); CMT Performance Report (Biannual); Health Safety and Environmental Status Report (Monthly); Document Control Audit; and an Environmental Health and Safety Audit.

10. Outreach and Labor Reporting. Deliverables hereunder consist of, creating and/or improving, without limitation, the following written documentation
and reports that incorporate and utilize, as reasonably practicable, the District's existing program systems and documentation:

i. Comprehensive Workforce-Outreach, Construction Management Apprenticeship/Workforce Development Plan;

ii. Workforce Development Compliance Report (Quarterly);

iii. Career Development Performance Report (Quarterly);

iv. Contractor Local Hire Attainment Report (Monthly); and

v. Meet monthly with District to report on and review the labor outreach and performance on each contract.

Refer to the District Board Policy 6610. Click on this link to download SBCCD/BP6610/LocalPolicy.
11 - Proposal Responsiveness Checklist
# PROPOSAL RESPONSIVENESS CHECK LIST

The following Check List is provided to Proposers as a courtesy by the District. It is not to be turned in as part of, or with, your Proposal. Rather, once your Proposal is prepared, you may want to review your Proposal against this Check List to make sure your Proposal contains all required components of a Responsive Proposal.

**WARNING:** Proposer is responsible for including in its Proposal all information and content required by the RFQP whether listed in this Check List or not.

<table>
<thead>
<tr>
<th>RFQP Attach</th>
<th>Document/Form Required to be Submitted</th>
<th>Applicable RFQP Section Reference(s)</th>
<th>In my Proposal?</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Original Proposal, 7 Hard Copies, 1 USB Flash Drive</td>
<td>5. A.</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Cover Page</td>
<td>You create; 5.A.(i)</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Table of Contents</td>
<td>You create; 5.A.(ii)</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Cover Letter</td>
<td>You create; 5.A.(iii)</td>
<td></td>
</tr>
<tr>
<td>1 A</td>
<td>Prime Firm Proposed Personnel, Guaranteed Hourly Rates (CV’s required) &amp; Not to Exceed Compensation</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>1 B</td>
<td>Team Member Firm Proposed Personnel, Guaranteed Hourly Rates (CV’s required)</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Acknowledgement of Addenda</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Non-Collusion Declaration</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Non-Discrimination Declaration</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Conflict of Interest Certification</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
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<tr>
<td>6</td>
<td>Confidentiality Agreement</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Evidence of Insurance</td>
<td>5.A.(iv)(a) &amp; (b)</td>
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</tr>
<tr>
<td>8</td>
<td>Authority to Release Information Form</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Representations, Certifications &amp; Warranties</td>
<td>5.A.(iv)(a) &amp; (b)</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Technical Proposal, Staffing, and Approach to Program Management</td>
<td>You create: 5.A.(iv)(c); Attachment 10; and other section of the RFQP documents</td>
<td></td>
</tr>
</tbody>
</table>

All original documents (copies, etc.) above, fully executed, signed, and/or notarized where required, must be submitted by the specified Proposal deadline.

See the RFQP documents as a whole for all required contents of your Proposal.
12 - Rules For Presentations and Interviews
RULES OF CONDUCT FOR PRESENTATIONS AND INTERVIEWS

Generally, Presentations and Interviews will be conducted on the same day, in two parts, as described below. Presentations and Interviews will be conducted by the Selection Committee and are closed to the public.

**Agenda:**
- Welcome and Introduction of District Team – Ground Rules – 5 minutes
- Proposer’s Team Introductions and Presentation – 45 minutes
- Break for District to Develop Immediate Questions – Approximately 15 minutes
- Interview / Q&A – 40 minutes
- Proposer’s Closing Statement – 5 minutes

Proposers will be allotted 5 minutes to set up prior to the Presentation and 5 minutes to break down after the Interview. Proposers shall provide all equipment necessary for their presentation, including screen, projector, computer, cables etc.

1. **PRESENTATIONS**

   a) **Topics - Proposers shall prepare a presentation to the District that addresses the following:**

      i. Proposer’s organization chart (including any changes in personnel or assignment from that represented by Proposer in its Proposal); and
      ii. During the Presentation allow the persons that will comprise its "integrated team" that are anticipated by the Proposer to provide the Services from award through completion of Services an opportunity to demonstrate that he/she possesses the necessary skills to provide the Services requested, including, the ability to communicate and collaborate effectively within Proposer's team and with the Program Management Office, District Senior Staff, District outside counsel and the Board of Trustees.
      iii. Other items as required by the RFQP Presentation Time

The amount of time allowed for the Presentation will be forty-five minutes. The Project Executive should make introductory remarks but not dominate the Presentation. All Attendee’s should participate in the Presentation.

2. **Interviews – Questions and Answers**

   a) Generally, Interviews will be conducted by means of a question and answer session immediately following the Presentation; and
   b) The amount of time allowed for the Interview will be confirmed before the Presentation date.

3. **Score/Rating of Presentations and Interviews**

After the conclusion of the presentation and Q&A session, Proposer’s team will be scored on the following questions:

   a) Rate the Proposer’s response to the questions asked in the Interview;
   b) Rate the Proposer’s personnel’s demonstrated ability to effectively provide the Services requested, including the ability to communicate and collaborate effectively within Proposer’s team; and
   c) Rate the Proposer’s personnel’s demonstrated: (i) ability to remain involved in the performance of the requested Services from award of the contract through contract completion; and (ii) the possession of the necessary skills to effectively provide the Services requested, including, the ability to communicate and collaborate effectively with the Program Management Office, Lead Construction Counsel, District Senior Staff, and the Board of Trustees.
13 - Rules of Conduct for Discussions - Negotiations
RULES OF CONDUCT FOR DISCUSSIONS AND NEGOTIATIONS

1. Rules of Conduct for Discussions

1.1 If Discussions are had, at the Discussions, the Proposer shall be represented by person(s) familiar with all aspects of the Proposer's Proposal, Qualifications, and/or Best and Final Offer(s). At least one person acting on behalf of the Proposer shall have the power to speak with authority on behalf of the Proposer in regard to its Proposal, Qualifications, and/or Best and Final Offer(s) without requiring further consultation with or authorization by any person not present in the Discussions. No person shall be present in the Discussions who is not directly interested and involved in the outcome of the Request for Proposal process; observers will not be permitted.

1.2 The date, time and place for Discussions shall be scheduled by the District and notice thereof given to the Proposer who is being invited to engage in Discussions.

1.3 Discussions may be held before or after receipt of Best and Final Offers and before or after scoring of Proposals or Best and Final Offers.

1.4 The length of Discussions shall be dictated by the subject matters discussed. Such time shall be devoted as the RFQP Selection Committee determines is appropriate and necessary. Discussions may be held, in the discretion of the District, in one or multiple rounds.

1.5 There shall be no disclosure to competing Proposers during Discussions of prices or pricing information or of technical information that is, and is appropriately marked as constituting “Confidential & Proprietary Information”.

1.6 District shall have the right to disclose and discuss with any or all Proposers technical information contained in a Proposal that does not constitute “Proprietary Information” as defined in the Instructions to Proposers.

1.7 Proposers shall be accorded fair and equal treatment; provided, however, that this requirement shall not be interpreted as requiring that the District to conduct Discussions with all Proposers, or that the communications during Discussions be limited to identical subject matters for all Proposers with whom Discussions are conducted.

1.8 Communications during Discussions will not include exchanges in the nature of "bargaining" but may include informing the Proposer that its price is considered too high, or too low, or that its approach to providing the requested Services is viewed as too elaborate, inefficient or otherwise disadvantageous, and may include revealing the results of any analysis used to support these conclusions.

1.9 Nothing stated in these Rules for Conduct of Discussions shall be interpreted as limiting or precluding the District’s right to conduct Negotiations or to request Best and Final Offers from any or all Proposers.

2. Rules of Conduct for Negotiations

2.1 If Negotiations are had, at the Negotiations, the Proposer shall be represented by one or more persons familiar with all aspects of the Proposer’s Proposal, Qualifications, and/or Best and Final Offer(s). At least one person acting on behalf of the Proposer shall have the power to speak with authority on behalf of the Proposer in regard to its Proposal, Qualifications, and/or Best and Final Offer(s) and to contractually bind the Proposer, without requiring further authorization of any person not present. No person shall be present that is not directly interested and involved in the outcome of the Request for Qualifications and Proposals process; observers will not be permitted.
2.2 The date, time and place for Negotiations shall be scheduled by the District. Notice thereof shall be given separately to the Proposer or Proposers selected to engage in Negotiations.

2.3 Negotiations may be held before or after receipt of Best and Final Offers and before or after scoring of the Proposals or Best and Final Offers; provided, however, that if Negotiations are conducted, they must be followed by a request by the District for submission of Best and Final Offers from all Proposers who have not been disqualified.

2.4 The length of Negotiations shall be dictated by the subject matters discussed. Such time may be devoted as the RFQP Selection Committee determines is appropriate and necessary. Negotiations may be held, in the discretion of District, in one or multiple rounds and with any number of, or all, Proposers.

2.5 There shall be no disclosure to competing Proposers during Negotiations of prices or pricing information contained in competing Proposals or Best and Final Offer(s) or of technical information that is, and that is appropriately marked as “Confidential & Proprietary Information”.

2.6 District shall have the right to disclose and discuss with any or all Proposers technical information contained in a Proposal that is not marked “Confidential & Proprietary Information”.

2.7 Negotiations may include “bargaining”, which includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, technical requirements, and contract terms.
14 - Professional Services Agreement – Program Manager - Measure CC
PROGRAM MANAGEMENT AGREEMENT

This PROGRAM MANAGEMENT AGREEMENT ("Agreement") is entered into as of the Effective Date (as defined below) by and between THE SAN BERNARDINO COMMUNITY COLLEGE DISTRICT ("District"), a community college district organized under the laws of the State of California, located at 114 South Del Rosa Drive San Bernardino, California 92408, and [insert selected Program Manager’s Name], a California corporation, ("Program Manager") for program management services for the District’s Measure CC Bond Program ("Bond Program"). District and Program Manager are hereinafter referred to in the singular as “Party” and/or collectively as the “Parties.”

RECITALS

A. District is a community college district duly organized and validly existing under the laws of the State of California.

B. Program Manager is a corporation duly organized under the laws of the State of California. The Program Manager represents it has the background, knowledge, experience and expertise necessary to provide the services set forth in this Agreement.

C. It is the intention of the parties that Program Manager will provide pursuant to this Agreement comprehensive program management services for the District’s development, building and construction program, including, but not limited to its Measure CC Bond Program, for all current and future College Projects at each of the District’s colleges and off-campus sites.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the promises and covenants contained herein and other valuable consideration the sufficiency and receipt of which is hereby acknowledged by the parties, it is mutually agreed by and between the undersigned as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 Acceptance means the point that the Work of a College Project, or a portion thereof designated by District for separate delivery, is accepted by the Board of Trustees and a Notice of Completion is recorded by District.
1.1.2 Activated, Activation mean the process by which Basic Services set forth in a Staffing Plans are approved by District for performance by Program Manager pursuant to Paragraph 4.1.3, below.

1.1.3 Activation Period means a period of time, based on the division of the Term into successive ninety (90) Day periods, during which performance of Basic Services described in a Staffing Plans are Activated.

1.1.4 Act of God means earthquake, natural flood, tornado or other unusually severe natural or weather phenomenon.

1.1.5 Additional Services (Acceleration) means those Additional Services described in Subparagraph 4.3.3.3, below.

1.1.6 Additional Services (Extraordinary) means those Additional Services described in Subparagraph 4.3.3.1, below.

1.1.7 Additional Services (Unforeseen) means those Additional Services described in Subparagraph 4.3.3.2, below.

1.1.8 Additional Services means all or any of the following: Additional Services (Acceleration), Additional Services (Extraordinary), and Additional Services (Unforeseen).

1.1.9 Additional Services Fees means fees payable to Program Manager for time expended in the performance of authorized Additional Services.

1.1.10 Agreed Hourly Rate means the hourly rate for an Employee or Contract Worker that Program Manager may charge as the basis for its Program Management Fees and Additional Services Fees.

1.1.11 Agreement means this Program Management Agreement by and between District and Program Manager, inclusive of all exhibits attached hereto or referenced herein, all of which are by this reference incorporated as part of this Agreement.

1.1.12 Applicable Laws means all statutes, ordinances, rules, regulations, policies, and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities, common law, including, but not limited to, principles of equity applied by the courts of the State of California, and all ordinances, rules, and regulations enacted by the District, which are in effect at the time the services provided for by this Agreement are performed. In the event of a conflict between or among Applicable Laws governing performance of Program Manager, the more stringent shall apply.

1.1.13 Assigned Consultant Contract (not used).

1.1.14 Basic Services means those services required to be provided by Program Manager pursuant to Article 2, below and any and all Exhibits hereto.

1.1.15 Basic Services Compensation means the compensation payable to Program Manager for Basic Services as stated in Section 4.1, below.

1.1.16 Board of Trustees the governing board of the San Bernardino Community College District.

1.1.17 Bond Program means the San Bernardino Community College District Measure CC Bond Program (also referred to herein as “Program”).
1.1.18 **Bond Project** means a District Project that is funded wholly by the Bond Program.

1.1.19 **Chancellor and Executive Vice Chancellor.** The Chancellor means the Chancellor of the San Bernardino Community College District. The Executive Vice Chancellor means the Executive Vice Chancellor and/or Executive Vice Chancellor of Business & Fiscal Services for the San Bernardino Community College District.

1.1.20 **Claim** means a written demand or assertion by District or Program Manager seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop notice claims; or (3) the right of District to specific performance or injunctive relief to compel performance.

1.1.21 **Claims Dispute Resolution Process** means the process of resolution of Claims as set forth in Article 10, below.

1.1.22 **College** means a community college or satellite campus of District.

1.1.23 **College/District Committees** means those committees or boards comprised of representatives of the District, College, or Board of Trustees that review the management or execution of the Bond Program or College Projects on behalf of the District, including, without limitation, the following: Board of Trustees, Independent Taxpayer's Oversight Committee, and any Chancellor committees involved in exercising shared governance over College Projects.

1.1.24 **College President** means the President of a San Bernardino Community College.

1.1.25 **College Project** means a work of improvement (or portion thereof) that is a Bond Project, Multi-Funded Project, or Non-Bond Project or a combination thereof.

1.1.26 **Construction Manager** means a firm under contract to District to provide project and construction management services for College Projects located on the campus of a College and also referred to as College Project Management Teams (“CPMT’s”).

1.1.27 **Community Economic Development Program** means any existing or future District program for implementation of a Board Rule pertaining to Community Economic Outreach and any administrative regulations and guidelines enacted for the implementation thereof, whether enacted before or after the Effective Date of this Agreement.

1.1.28 **Contract Worker** means an individual retained by Program Manager as an independent contractor, and not an employee, of Program Manager, who performs his/her services principally at the permanent or temporary offices of Program Manager utilizing overhead furnished by Program Manager.

1.1.29 **Contractor** means an individual or firm under contract with District to serve as the general contractor, design-builder, or a separate trade contractor for construction of a College Project.

1.1.30 **Day** whether capitalized or not, and unless otherwise specifically provided, means calendar day, including weekends and legal holidays.

1.1.31 **Delay** means any circumstances affecting design or construction involving delay, disruption, hindrance, or interference.

1.1.32 **Design Consultant** means an individual or firm under contract to the District having primarily responsibility for the providing or coordinating the architectural and engineering services for a College Project.
1.1.33 **District** means the San Bernardino Community College District, a community college district organized under the laws of the State of California, acting through its Chancellor, Executive Vice Chancellor and/or their designees designated by him/her to act on his/her behalf.

1.1.34 **District Website** means the website maintained by District at: http://www.sbccd.org/.

1.1.35 **DSA** means the Division of State Architect in the Department of General Services for the State of California.

1.1.36 **Effective Date** means the date that this Agreement is approved by the Board of Trustees.


1.1.38 **Excusable Circumstances** means circumstances that are: (1) not caused in whole, or in part, by the negligence or willful misconduct of, or the violation of an Applicable Law by, Program Manager, a Contract Worker, or a Sub-consultant or the failure by Program Manager to comply with an obligation under this Agreement; and (2) unforeseeable, unavoidable, and beyond the control of Program Manager, its Contract Workers, and its Sub-consultants. Notwithstanding the foregoing, Excusable Circumstances do not include the bankruptcy, insolvency, or financial inability to perform of Program Manager, a Contract Worker, or a Sub-consultant.

1.1.39 **Director, Facilities Planning & Construction** means District’s Director Facilities Planning & Construction and his/her designee designated in writing by Director to act on his/her behalf.

1.1.40 **Existing Program Documents** means the Program Management Plan and all other written plans, procedures, processes, forms, and protocols of a similar nature developed by the District or its consultants, for the purpose of establishing the procedures and forms that are to be used for the management of the Bond Program and that are made available to Program Manager for its review and use.

1.1.41 **Force Majeure Event** means any Excusable Circumstance that is beyond the control of the District, including, without limitation, the following: (1) Acts of God; (2) terrorism or other acts of public enemy; (3) acts or omissions of Governmental Authorities (other than District), including, without
limitation, Inspectors of Record; (4) epidemics or quarantine restrictions; (5) strikes; or (6) industry-wide shortages in materials.

1.1.42 Full Term Staffing Plan means the Staffing Plan attached as part of Exhibit 1 ("Proposal") hereto showing the Program Manager's intended staffing required for complete performance by Program Manager over the full Term of this Agreement.

1.1.43 Governmental Authority means the United States, the State of California, the County of San Bernardino and its geographically constituent cities, DSA, California Department of Education (CDE); Office of Public School Construction (OPSC) and any other local, regional, state, or federal political subdivision, agency, department, commission, board, bureau, court, judicial, or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over a College Project, Site, Program Manager, or District.

1.1.44 Hazardous Substance means either of the following: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination," or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration, or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

1.1.45 Indemnitees means those persons or entities designated as "Indemnitees" in Section 9.1, below.

1.1.46 Initial Staffing Plan means the Staffing Plan attached as part of Exhibit 1 ("Proposal") hereto showing the Program Manager’s intended staffing required for the first six (6) months of the Term of this Agreement.

1.1.47 Inspector of Record means a certified inspector and specialty inspectors, approved by the Office of Regulations Services of the Division of State Architect for the Department of General Services of the State of California, retained by District under separate contract to inspect a College Project pursuant to the Field Act (California Education Code, Section 81130.3 et seq.) and applicable provisions of the California Code of Regulations.

1.1.48 Intellectual Property Rights means all intellectual property rights, including, without limitation, patent, trademark, trade dress, copyright, industrial design rights, priority rights and trade secrets.

1.1.49 Interest Rate means the lesser of: (1) the "prime rate" as reported by the Wall Street Journal bank survey from time to time; or (2) the maximum rate permitted under California law for prejudgment interest.

1.1.50 Invoice for Payment means an itemized invoice for payment by Program Manager, which is prepared, submitted and accompanied by supporting documentation in accordance with the requirements of this Agreement.

1.1.51 Key Person, Key Personnel means an individual or those individuals listed in Exhibit 1 to this Agreement, and any additions or replacements thereto approved by District, whose personal performance of services is considered of the essence to this Agreement.
1.1.52 Labor Compliance Program means a Labor Compliance Program, if any, that is established by the District pursuant to California Labor Code Section 1771.7.

1.1.53 Loss, Losses mean any and all economic and non-economic injuries, losses, costs, liabilities, claims, cost escalations, damages, actions, judgments, settlements, expenses, fines, and penalties. "Losses" do not include attorney's fees or court costs, whether arising as an expense or cost of legal proceedings to which Program Manager is a party or as a consequential damage claimed against Program Manager by any third person or entity.

1.1.54 Maximum Basic Services Compensation means the maximum compensation payable by District to Program Manager under the terms of this Agreement for the performance of Basic Services.

1.1.55 Multi-Funded Project means a project for construction of improvements on the campus of a College that is funded in part, but not wholly, from the Bond Program.

1.1.56 Non-Bond Project means a project for construction of improvements on a College campus that is funded wholly with funds other than funds from the Bond Program.

1.1.57 Personnel Action Request means a written request by Program Manager, in a form approved by District, for an adjustment in a Staffing Plan.

1.1.58 Program Documents means all of the writings (both paper and electronic media) in Program Manager’s possession related to the Bond Program, including, without limitation, the Existing Program Documents, whether prepared by Program Manager, Contract Workers, or Sub-consultants.

1.1.59 Program Management Fees means the fees for Basic Services that are payable to Program Manager pursuant to Section 4.1, below.

1.1.60 Program Management Plan means the written draft plans and procedures prepared by the District and/or its other consultants for management, administration, and oversight of the Bond Program, including, without limitation, any modifications thereto requested by Program Manager and approved by District.

1.1.61 Program Manager means [insert name of awardee].

1.1.62 Program Manager’s Own Expense, when used with regard to a stated circumstance, means that Program Manager agrees to pay for any Loss associated with such circumstance without reimbursement by District and without adjustment to its compensation under this Agreement.

1.1.63 Program Team means the District, Colleges, College/District Committees, Program Manager, College Project Management Teams (“CMPT’s”), Specialty Consultants, Design Consultants, Contractors, Subcontractors, Sub-consultants, Contract Workers, Inspectors of Record, and other firms or individuals retained by District, or retained by others with District approval, participating in the planning, programming, design, or construction of a College Project.

1.1.64 Project Labor Agreement means the Project Labor Agreement, if any, authorized by the Board of Trustees whether in place before or after the Effective Date).

1.1.65 Reimbursable Expense means those expenses that are reimbursable to Program Manager pursuant to Section 4.2, below.

1.1.66 Site means: (1) the parcel(s) of land owned by the District used or reserved for use by the College and such additional parcels as may be purchased by District; (2) all areas adjacent to such parcels that may be used by Contractor or its Subcontractors for staging, storage, parking or temporary
offices; and (3) all land areas, both private and public, adjacent to such parcels on which work is required to be performed for a College Project.

1.1.67 **Specialty Consultant** means a professional, of any Tier, other than the Program Manager or CPMT’s, retained by a Design Consultant or District to provide professional services for a College Project, including, without limitation, master planners, appraisers, surveyors, planners, acquisition, relocation and other real estate consultants, title companies, civil engineers, programming consultants, soils and geotechnical engineers, environmental consultants, Hazardous Substances consultants, infrastructure consultants, landscape designers, design peer reviewers, value engineering consultants, construction managers, asset assessment consultants, move management consultants, move and storage service providers, furniture, fixtures and equipment consultants, or constructability consultants.

1.1.68 **Staffing Plan** means the agreed plans attached hereto as part of Exhibit 1, consisting of an Initial Staffing Plan and a Full Term Staffing Plan, showing the numbers of working hours that Program Manager is authorized upon Activation to expend in performance of its obligations under this Agreement and which serves as the basis for payments to Program Manager for Basic Services. References to a Staffing Plan include the Staffing Plan as modified for adjustments permitted by this Agreement and approved by District.

1.1.69 **Statement of Dispute** means a written description of a disputed Claim required to be submitted as part of the Claims Dispute Resolution Process provided for in Article 10, below.

1.1.70 **Sub-consultant** means a person or firm (other than a Contract Worker) that has a contract to perform a portion of the services covered by this Agreement, including without limitation, sub-consultants and sub-sub-consultants, of every Tier. A Sub-consultant differs from a Contract Worker in that the persons performing services as a Sub-consultant do not performed those services principally at the offices of the Program Manager and the overhead expenses of such persons are incurred and paid by the individual (or by an entity other than Program Manager) who directly employs such individual.

1.1.71 **Subcontractor** means a person or firm that has a contract to perform a portion of the Work to be performed by a Contractor, including without limitation, subcontractors, sub-subcontractors, suppliers and vendors, of every Tier.

1.1.72 **Term** means the period of time that commences upon the Effective Date and expires upon the earlier of either: (1) five (5) years thereafter; or (2) termination of this Agreement pursuant to Article 8, below. The "Initial Term" of this Agreement will be three (3) years with two (2) one (1) year Option Periods, subject to exercising the Option Periods in the District’s sole discretion, unless termination of this Agreement takes place earlier pursuant to Article 8, below.

1.1.73 **Tier** means the contractual level of a Sub-consultant with respect to Program Manager, a sub-consultant with respect to the Design Consultant retaining such sub-consultant or a Subcontractor with respect to a Contractor. For example, a "first-tier" Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on.

1.1.74 **Work** means labor, materials, equipment, services (including, without limitation, design services provided under a design-build contract), permits, licenses, and taxes and all other things necessary for a Contractor to perform its obligations for the construction of a College Project, including, without limitation, any changes, additions, or deletions requested by District.

1.2 **APPLICATION OF DEFINITIONS**

Capitalized terms used in this Agreement shall have the meanings assigned to them in Section 1.1, above. If not so assigned, they shall have the meanings assigned to them in the Existing Program.
Documents, or if none is assigned in this Agreement or the Existing Program Documents as reasonably understood to apply to them by the context in which they are used. In the event of a conflict between the definition assigned to a capitalized term in this Agreement and the definition to that same term assigned in another Existing Program Document, the former shall control.

1.3 PERFORMANCE STANDARD

1.3.1 Standard of Care. All services performed, and all deliverables provided by, the Program Manager or its Contract Workers or Sub-consultants in connection with this Agreement shall be performed to the specific requirements of this Agreement. If no specific deliverable or standard of care is specified herein, then the Program Manager or its Contract Workers or Sub-consultants shall perform the services with the highest quality and care and manner consistent with the standard of care under California law applicable to those who specialize in providing such services for public building programs of the type, scope, and complexity of the Bond Program; provided, however, that the latter standard of care is intended to be a minimum standard of performance applicable to Program Manager and wherever in this Agreement the Program Manager is required to perform an obligation that is higher than what might be required or expected under said standard of care, the Program Manager shall perform, in all respects and in every particular, perform in accordance with the terms and conditions of this Agreement and such higher requirements and expectations of performance shall be deemed incorporated into and part of the standard of care required of Program Manager for non-negligent performance of this Agreement.

1.3.2 Working Knowledge. Program Manager is responsible to assign individuals to perform under this Agreement who have a working knowledge of the provisions of Applicable Laws (including, without limitation, the California Public Contract Code, California Education Code, California Code of Regulations, and California Government Code) pertaining to procurement, bidding, design, and construction of public works generally and community colleges specifically.

1.3.3 Fiduciary Relationship. Program Manager acknowledges the relationship of trust and confidence between it and District and agrees to provide, in its capacity as a fiduciary to District, professional services in a manner consistent with the District’s economic, educational, and governmental best interests.

1.3.4 Leadership Role. Program Manager understands and accepts that, within the scope of the services to be provided by Program Manager under this Agreement, the District and Colleges are relying on Program Manager to demonstrate and practice, at all times, leadership in facilitating the prompt, efficient and economical performance of its services under this Agreement, including, without limitation: (1) anticipating the needs of the Colleges and District; (2) proactively identifying and expediting resolution of matters in question among Program Team members; (3) keeping all Program Team members fully informed, to the extent appropriate to their roles and responsibilities, of current information, recent developments and upcoming deadlines and milestones; (4) working to create and build a team approach that reflects an optimum degree of consensus among the Program Team members; and (5) being fully responsive to the expressed objectives of the District, College, and College/District Committees.

1.3.5 Transition Period. Notwithstanding the foregoing, it is understood that during the first sixty (60) Days of the Term, or such other shorter period of time for transition as District and Program Manager may mutually agree, it is the District’s desire that the Program Manager focus its primary attention and efforts on familiarizing itself with the Bond Program and putting in place all of the procedures, protocols, and plans needed to efficiently administer the Bond Program without being unduly distracted by the day-to-day details of managing the Bond Program. During this transition period, and consistent with the foregoing, it is agreed that the Program Manager’s duties stated in this Section 1.3 and elsewhere in this Agreement, shall be deemed appropriately and reasonably circumscribed so as to conform to its limited role during the transition period. Specifically, and without limitation to the generality of the foregoing, Program Manager’s obligation, including its associated fiduciary obligation, for
management or issuance of cash payments and for management of financial accounts on behalf of the District shall not commence unless and until the transition period has expired, either by passage of the agreed time for transition or as otherwise mutually agreed in writing between District and Program Manager.

1.4 AUTHORITY OF THE PROGRAM MANAGER

Program Manager's authority to act on behalf of District is limited to its scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or any Existing Program Documents to the contrary, Program Manager does not have the express or implied authority to contractually bind District to any third party, including, without limitation, the authority to obligate District to any adjustment to the price or time of performance of any contract between District and any other Program Team member.

1.5 KEY PERSONNEL

1.5.1 Of Essence. The services to be provided by Program Manager under this Agreement shall be performed by the Key Persons listed in Exhibit 1 attached hereto. The furnishing of services by these individuals, and any individuals approved by District to replace them, is of the essence to this Agreement.

1.5.2 Commitment, Cooperation. Program Manager’s principals and employees (including, but not limited to, the Key Persons and Contract Workers) shall perform in a thorough and diligent manner consistent with the highest standards of Program Manager’s profession, provide their knowledge, ideas, experience and abilities relating to the efficient management of the planning, programming, design and construction of the College Projects and cooperate fully with all members of the Program Team.

1.5.3 Additions, Removals, Replacements.

1 Additions. It is contemplated that from time to time individuals will need to be added to perform the functions of the Key Persons listed in Exhibit 1 attached hereto. Such additions may be initiated by the Program Manager or the District. If initiated by the Program Manager, the Program Manager shall submit to District, no later than thirty (30) Days before the need for such an additional Key Person, a proposed amendment to the list of Key Persons attached hereto setting forth Program Manager's proposed addition and the reasons therefor. District shall promptly review the proposed amendment and either approve or disapprove thereof in writing. Approval by District of a proposed addition to the list of Key Persons attached hereto may be granted or withheld, for any reason or for no reason, in the sole and absolute discretion of District. If initiated by the District, the District shall submit to the Program Manager its proposed addition in writing. Program Manager shall respond, either approving (such approval not to be unreasonably withheld, delayed, or conditioned) or objecting (with explanation of the reasons for such objection) to such proposed addition within thirty (30) Days. Failure by Program Manager to so respond shall be deemed approval of such addition. The addition of a Key Person pursuant to a request by District made in accordance with this Subparagraph 1.5.3.1 shall not be construed as an assumption by District of any responsibility or liability for the acts or omissions of such person or excuse Program Manager from full performance of any of its obligations under this Agreement.

2 Removals. Unless requested by District, Program Manager shall not, for so long as any person serving as a Key Person is employed by Program Manager, remove, substitute, or reduce the level of effort of such person without District's prior written approval, which may be granted or withheld, for any reason or for no reason, in the sole and absolute discretion of District. If District is dissatisfied with the services rendered by any Key Person or otherwise concludes, in the exercise of its sole discretion, that the District's best interests would be best served by employing a different individual as a Key Person, Program Manager shall promptly remove such Key Person and either District or Program Manager may recommend a replacement pursuant to Subparagraph 1.5.3.3, below. If pursuant to Paragraph 8.1.2, below, services performed by a Key Person are deleted by District from the scope of
Basic Services to be provided under this Agreement, Program Manager shall promptly remove such Key Person.

.3 Replacements. If any Key Person ceases employment with Program Manager or is requested to be removed by District pursuant to Subparagraph 1.5.3.2, above, then Program Manager shall promptly notify District of a proposed replacement of at least equal qualifications or District may propose a replacement in the manner and subject to the conditions applicable to additional Key Persons as provided for in Subparagraph 1.5.3.1, above. Any replacement proposed by Program Manager must be approved by District, which approval may be granted or withheld, for any reason or for no reason, in the sole and absolute discretion of District. All additional costs and expenses that are incurred as a consequence of Program Manager being required to provide a replacement Key Person, including, without limitation, costs of relocation, transfer, and so-called “signing” bonuses, shall be at Program Manager’s Own Expense.

1.5.4 Engagement by District. In the event Program Manager ceases its business operations altogether or in the San Bernardino area or this Agreement is terminated, District shall have the right, but not the obligation, without liability or obligation to Program Manager or any other person or entity, to directly engage the services of any Key Person. District shall have the right at any time to enter into discussions and negotiations with any Key Person for the purpose of the District’s directly employing such person and Program Manager hereby consents thereto. In the event that, at any time during performance of this Agreement, any Key Person leaves the employ of Program Manager, whether or not such person is leaving for the purpose of entering into employment by the District, Program Manager shall promptly notify District and District shall then have the rights described in this Paragraph 1.5.4 to engage directly the services of such person. In such event, the Staffing Plans and Maximum Basic Services Compensation shall be equitably reduced to reflect the elimination from the scope of services to be performed by Program Manager those services that such Key Person will thereafter be performing directly or for the District and that are no longer to be performed by Program Manager.

1.5.5 Responsibility. Persons employed or retained by Program Manager (including, without limitation, Contract Workers) or its Sub-consultants shall not be considered employees of District. Program Manager shall, as between Program Manager and District, be solely responsible for the acts and omissions of all employees, Contract Workers, Sub-consultants, and others employed or retained by Program Manager or its Sub-consultants and for all workers’ compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to such persons. Under no circumstances shall employees, Contract Workers, or others employed or retained by Program Manager or its Sub-consultants be entitled to any “bumping” rights with respect to any employment position with District. If such person was previously employed by District, he/she shall not hold any rights of return to any position of employment with the District.

1.6 SUB-CONSULTANTS, CONTRACT WORKERS

1.6.1 Approval. Program Manager may, with prior written approval by District, enter into written contracts with Sub-consultants and Contract Workers to perform portions of the services provided for in this Agreement. Program Manager's request for hiring of a Sub-consultant or Contract Worker shall be submitted in a writing that describes the scope of services to be subcontracted, the name and qualifications of the proposed Sub-consultant or Contract Worker and the proposed terms for total compensation, hourly rates, cost reimbursement, and associated markups or multipliers, if permitted under the terms of this Agreement. District’s approval of a Sub-consultant or Contract Worker may be granted or withheld, for any reason or for no reason, in the sole and absolute discretion of District; provided, however, that Sub-consultants and Contract Workers identified by name in the Staffing Plans attached to this Agreement as part of Exhibit 1 shall be deemed approved by District.

1.6.2 Responsibility. Program Manager shall, notwithstanding District’s approval of a Sub-consultant or Contract Worker or District’s review or approval of the qualifications, scope of services, or contractual terms of retention of a Sub-consultant or Contract Worker, be fully responsible to District for
all of the acts and omissions of its Sub-consultants and Contract Workers, the quality and performance of its Sub-consultants’ and Contract Worker’s services, and the contractual terms of its Sub-consultants’ and Contract Workers’ retention, including, without limitation, the enforceability and enforcement of such terms and conformance of such terms with the terms of this Agreement.

1.6.3 Termination. Program Manager may, upon advance written notice to District terminate the services of any Sub-consultant or Contract Worker. Such termination shall be subject to the prior written approval of District, which approval shall not be unreasonably withheld. In addition, District may request that the services of a Sub-consultant or Contract Worker be terminated. In such instances, the procedures for removing or replacing said Sub-consultant or Contract Work shall be the same as set forth in Section 1.5, above, for removal or replacement of a Key Person.

1.6.4 Assumption of Obligations. Every contract entered into between Program Manager and a Sub-consultant or Contract Worker shall contain language whereby the Sub-consultant or Contract Worker, without creating any direct or third party contractual obligation on the part of the District to the Sub-consultant or Contract Worker, accepts and agrees to be bound by all of the obligations of this Agreement, including, without limitation, those obligations pertaining to indemnification, insurance, accounting records, audit, ownership of documents and the Dispute Resolution Procedures set forth in Article 10 hereof. Program Manager shall further include in such contracts provisions obligating each Sub-consultant to similarly bind its sub-sub-consultants.

1.6.5 Contingent Assignment. Program Manager shall include in its contracts with its Sub-consultants and Contract Workers a contingent assignment of those contracts to District, or its designee, effective only upon written acceptance of such assignment by District or its designee.

1.6.6 Community Economic Development Program. Program Manager shall comply with the requirements of any existing and/or later enacted Community Economic Development Program in the retaining of its Sub-consultants and Contract Workers.

1.6.7 Contract Workers. Program Manager shall not retain the services of any Contract Worker without the prior written approval of District, which approval may be granted or withheld in the sole and absolute discretion of the District.

1.7 OWNERSHIP OF PROGRAM DOCUMENTS

1.7.1 Ownership. All Program Documents, including any designs, building designs or other depictions underlying or shown in them, and all Intellectual Property Rights thereto, shall be deemed from their inception, and shall remain in perpetuity, the sole and exclusive property of District and ownership thereof is irrevocably vested in District.

1.7.2 Assignment. Without limitation to the foregoing, District shall hold, and Program Manager and its Sub-consultants and Contract Workers of every Tier, shall be deemed to have assigned, unconditionally, irrevocably, in perpetuity, and with no reserved or retained rights in any other persons or entities to District all Intellectual Property Rights in and to any Program Documents prepared by Program Manager or its Contract Workers or Sub-consultants, of any Tier. Such transfer and assignment will be effective for the entire duration of any copyrights and include, but are not be limited to, all rights in related plans, specifications, documentation, derivative works and moral rights.

1.7.3 Reuse, Modification. Reuse of the Program Documents by the District on any program or project other than that for which they were prepared shall be at the sole risk of the District.

1.7.4 Modification. District shall have the right to modify the Program Documents, or any components thereof, without permission from Program Manager and without any additional compensation to Program Manager; provided, however, that Program Manager shall be released from any liability resulting solely from any such modification if it is made (1) during the Term of this Agreement without the
prior knowledge of, or disclosure to, Program Manager or (2) after expiration of the Term of this Agreement.

1.7.5 License. The District hereby grants to Program Manager and its Contract Workers and Sub-consultants, of every Tier, a license, revocable at will of District, to use and copy the Program Documents during the Term of this Agreement for the sole purpose of performing the services required by this Agreement.

1.7.6 Delivery. All Program Documents shall be available for review and copying at any time by District. Without limitation to District’s rights under Article 7, below, Program Manager and its Contract Workers and Sub-consultants, of every Tier, shall, if requested by District, deliver the originals (including, without limitation, electronic media) of any or all Program Documents to District. With the exception of Program Documents that are judged by District, in the exercise of its sole and absolute discretion, to be confidential or privileged, Program Manager may retain a copy of the Program Documents for its files.

1.7.7 Sub-consultants. Program Manager shall take all necessary steps to ensure that a provision is included in all contracts with Contract Workers and Sub-consultants, of every Tier, protecting and preserving District’s rights as set forth in this Section 1.7.

1.8 COMPLIANCE WITH APPLICABLE LAWS

Program Manager shall, at all times in its performance of its obligations under this Agreement, comply with all Applicable Laws, including, without limitation, those rules or regulations enacted or issued by the District.

1.9 COMMUNITY ECONOMIC DEVELOPMENT, LOCAL, SMALL AND EMERGING BUSINESSES PROGRAM

Program Manager will, at all times in its performance of its obligations under this Agreement, strictly adhere to the requirements of any Community Economic Development Program, including, without limitation, compliance with the requirements of any District Policy for Local, Small and Emerging Businesses which is either currently in place or adopted after the Effective Date. Program Manager shall, upon request of District from time to time, provide evidence of such compliance.

1.10 LABOR COMPLIANCE

1.10.1 Project Labor Agreement. Program Manager shall, if and to the extent applicable, comply with any applicable terms of any Project Labor Agreement which is either currently in place or adopted after the Effective Date.

1.10.2 Labor Compliance Program. (not used).

1.10.3 Labor Code Compliance. Program Manager shall, if and to the extent applicable, comply with California Labor Code (including, without limitation, California Labor Code Sections 1720, 1735, 1775, 1777.5 and 1776.6) applicable to persons performing services or work for “construction” (including, without limitation, inspection and land surveying work, as defined in California Labor Code Section 1720) relating to prevailing wage, hours of work, apprentices, and maintenance and submission of certified payroll reports, and shall pay appropriate penalties to the District for failure to comply pursuant to the California Labor Code, including, but not limited to, Sections 1775, 1777.7 and 1813. Pursuant to California Labor Code Section 1773, the Director of the Department of Industrial Relations has determined the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which this Agreement is to be performed, for persons performing such work or services and said rates are on file with the District at its principal office and available to any interested party upon request. If it becomes necessary for the Program Manager or any Sub-consultant to employ any person in a capacity for which no minimum wage rate is specified, the Program Manager shall notify the District.
which shall promptly seek determination of the applicable prevailing wage rate. Without limitation to any other remedies or penalties provided for by Applicable Laws, failure to comply with the requirements of this Paragraph 1.10.3 shall result in the Program Manager being assessed penalties of up to fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the required prevailing wage. To the extent required by Applicable Laws, the Program Manager shall maintain and make available for inspection accurate, certified payroll records in accordance with California Labor Code Section 1776.

1.11 TIME OF ESSENCE

All time limits set forth in this Agreement pertaining to Program Manager’s performance of its obligations are of the essence to this Agreement.

1.12 TERM

This Agreement shall be deemed effective as of the Effective Date. The duration of the Term is not to exceed five (5) years. The Initial Term is three (3) years, with two (2) one (1) year Option Periods, each subject to being exercised in the District’s sole discretion.

1.13 CONFLICTS OF INTEREST

At no time during performance of this Agreement shall Program Manager, or any firm related to or affiliated with Program Manager, or any Sub-consultant to Program Manager, of any Tier, or any firm related or affiliated with any such Sub-consultant, enter into or perform services under a contract pursuant to which it acts as a Construction Manager or as a sub-consultant, of any Tier, to a CMT for the District or any of the District’s Colleges. Violation of this provision shall constitute immediate grounds for termination of this Agreement for default, without the requirement that the District offer any opportunity to cure such default as a condition of such termination.

ARTICLE 2
BASIC SERVICES

2.1 GENERAL PROVISIONS

2.1.1 Basic Services. Basic Services are those services described in: Section 3 of the RFQP; Attachment 10 to the RFQP; Exhibit 1 hereto; and as set forth elsewhere in the RFQP and this Agreement; provided, however, that the listing of Basic Services therein is solely a matter of convenience and shall not be interpreted as limiting the Program Manager’s obligation to perform, as part of its Basic Services, any service not listed that is reasonably inferable as being necessary and that would be customarily furnished by other providers of professional program management services of the type and nature provided for in this Agreement, to accomplish the Basic Services.

2.1.2 Consensus Building. Program Manager shall work to build consensus among the District, Colleges, College/District Committees and other Program Team members on the optimum approach to development, planning, procuring, performing, and delivering the completed Campus Projects in a condition and within a time frame that is suitable to the District’s and College’s requirements for use and occupancy.

2.1.3 College/District Committees. Program Manager shall be fully responsive to the needs of the College/District Committees and provide necessary follow-up to determine that recommendations or directions of College/District Committees are timely addressed.

2.1.4 Sustainability. Program Manager shall give highest priority to compliance of all Program Team members with any Board of Trustees’ approved guidelines governing “Sustainability” and/or Attachment 14 to the RFQP.

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“Energy Policy” (including, without limitation, any amendments thereto and any rule, administrative regulations and guidelines issued by the District for the implementation thereof), outlining principles, standards, and processes of sustainable construction for all College Projects, except those identified by District as “non-sustainable design” projects.

2.1.5 Program Team. Program Manager is responsible to provide complete project-level management, and not direct supervision, of the performance by other Program Team members, including the review of Deliverables developed by other Program Team members, and to administer on behalf of District the contracts between the District and other Program Team members. The obligations assumed by Program Manager under this Paragraph 2.1.5 are in addition to, and shall not be interpreted as relieving any other Program Team member from, the responsibility and liability assumed by a Program Team member under its contract with District or another Program Team member.

2.1.6 Site Safety. Program Manager shall, without assuming responsibility to directly supervise on a day-to-day basis matters relating to safety at the Sites and College campuses, provide administrative oversight of safety programs created and implemented by other Program Team members under contract to District, including checking safety programs for compliance with the requirements of the Program Documents. District places, and requires the Program Manager to place, the highest importance and priority on health, safety, and protection of the environment. If the Program Manager learns of a hazardous, unsafe, unhealthful, or environmentally unsound condition or activity at College campus, it shall immediately and in writing inform the District, as well as the College Project Manager for the College, of the circumstances. Unless otherwise directed in writing by District, Program Manager shall issue directions to appropriate Program Team member(s) to discontinue activities to the extent necessary to protect persons and property from injury or damage due to the hazardous, unsafe, unhealthful, or environmentally unsound condition or activity and shall take steps to see to it that such activity is not resumed unless and until the condition is corrected. The obligations assumed by Program Manager under this Paragraph 2.1.6 are in addition to, and shall not be interpreted as relieving any other Program Team member from, the responsibility and liability assumed by a Program Team member under its contract with District or another Program Team member.

2.1.7 Communications. Program Manager shall direct other Program Team members as to the procedures for communications established by the Program Documents and recommend action by District to implement enforcement action against any Program Team member who fails to comply with Program Manager’s direction.

2.1.8 Computer Aided Design. Program Manager represents that it has and will maintain throughout performance of this Agreement the necessary software, and shall at all time have persons on its staff with expertise, required to receive, review, evaluate, and transmit Program Documents that are prepared using AutoCAD electronic media and Building Information Modeling.

2.1.9 DSA Compliance. Program Manager shall perform its services under this Agreement with all necessary and due consideration to the requirements of DSA as they pertain to the College Projects. In that regard, the Program Manager represents that it shall be thoroughly knowledgeable in the requirements of DSA that apply to the College Projects and without assuming the obligations of other Program Team members in respect thereto, provide such direction, management, and guidance as may be needed to facilitate and monitor compliance by the Program Team members with the requirements of DSA.

2.1.10 Review of Program Documents. Program Manager shall, as a matter of priority immediately following execution of this Agreement, become thoroughly knowledgeable in the particulars of the Existing Program Documents. Within sixty (60) Days after execution of this Agreement, Program Manager shall submit a written report to District recommending any changes and additions that Program Manager considers necessary to the Existing Program Documents. Upon approval by District, Program Manager shall then implement those recommendations approved by District and take such other steps as may be necessary to modify, supplement and make additions to the Existing Program Documents and to
educate and train the Program Team as to the particulars of those modifications, supplements and additions. Upon incorporation of such modifications, supplements, and additions, Program Manager shall be deemed fully responsible, to the same extent as if wholly prepared by Program Manager, for the completeness, accuracy, and sufficiency of the Existing Program Documents to the same extent as if they were prepared originally by Program Manager. In addition and without limitation to the foregoing obligation, the Program Manager shall promptly rectify any error, conflict, or omission in the Program Documents of which it becomes aware at any time during the course of its performance of this Agreement.

2.1.11 Quality Assurance. Program Manager acknowledges that it is of utmost concern to District that the written work product developed by Program Manager reflect a high standard of quality, be prepared in a manner that is efficient and economical, and require a reasonably minimal amount of correction. Program Manager covenants and commits to perform to that standard, and shall review the quality of work product thoroughly for compliance with that standard. Should the District determine, in its discretion reasonably exercised, that Program Manager has not met the requirements of this Paragraph 2.1.11, District shall notify the Program Manager in writing of the deficiency. Program Manager shall have a maximum of ten (10) Days from such notice to correct such deficiency and to produce a quality work product acceptable to the District. If the Program Manager fails to correct such deficiencies identified by District, then the District shall have the option, without limitation to its other rights or remedies, to reduce the Program Manager’s compensation by such amount as District determines appropriate, in the exercise of its reasonable discretion, to compensate District for any Loss associated with the deficient work product.

2.1.12 Quarterly Reports. Program Manager shall submit to District within twenty-one (21) Days of the close of each calendar quarter a written report, containing such detail as specified by District, summarizing the progress of Program Manager, status of College Projects, status of the Staffing Plans and Basic Services Compensation and such other matters as requested by District relating to any current or projected College Projects.

2.1.13 Reporting. Under this Agreement the CPMT’s will report to both the College President and the Program Manager, but the CPMT’s will take direction from and be accountable only to the Program Manager for the quality of the CPMT’s performance. The College Presidents will maintain the responsibility for making certain the College Projects satisfy the requirements of their educational and master plans, and in all matters of accreditation.

ARTICLE 3
DISTRICT RIGHTS AND RESPONSIBILITIES

3.1 PROGRAMS, BUDGETS, SCHEDULES

District reserves the right, exercised in its sole and absolute discretion, to modify the programs, schedules, budgets, and performance criteria pertaining to any College Project.

3.2 PROJECT INFORMATION

District shall furnish to Program Manager, upon written request, information available to District concerning the Bond Program or any College Project. Program Manager is entitled to rely thereupon; however, District does not warrant, expressly or impliedly, the accuracy, suitability, or completeness of such information or of any statements, data, opinions, or recommendations contained therein and shall not be considered in breach of this Agreement or otherwise liable to Program Manager for any Loss that caused if such information provided by District is in any way inaccurate, unsuitable, or incomplete.
3.3 REQUESTS FOR DECISIONS

District shall promptly render, upon written request by Program Manager, decisions, or approvals necessary for Program Manager’s performance of this Agreement; provided, however, that no failure by District or College to render any decision or approval shall constitute grounds for excusing Program Manager’s complete and timely performance under this Agreement unless Program Manager has notified District in writing, no later than ten (10) Days in advance of its requiring such decision or approval, stating: (1) a description of the decision or approval required; (2) a date by which such decision or approval is required so as to not delay the Program Manager’s performance, which date is no fewer than ten (10) Days after the date of transmission or mailing of such notice; and (3) a specific statement that one or more College Projects will or may be delayed if the decision or approval is not received by the stated date.

ARTICLE 4
COMPENSATION

4.1 BASIC SERVICES

4.1.1 Basic Services Compensation. Subject to the terms and conditions of this Section 4.1, Program Manager shall be compensated, as its sole and complete compensation for Basic Services performed and properly invoiced in accordance with this Agreement, the following Basic Services Compensation: (1) Program Management Fees based upon the product of the number of hours of Basic Services of Program Manager’s employees and Contract Workers that have been Activated and performed in accordance with the District-approved Staffing Plans, multiplied times the Agreed Hourly Rates, plus (2) Reimbursable Expenses incurred and paid in the performance of Basic Services; provided, however, that the total Basic Services Compensation inclusive of Program Management Fees and Reimbursable Expenses shall not exceed the Maximum Basic Services Compensation set forth in Paragraph 4.1.2, below.

4.1.2 Limitations on Basic Services Compensation.

.1 Maximum. The total compensation payable to Program Manager for Program Management Fees and Reimbursable Expenses for the complete performance of the Basic Services required by this Agreement for the full Term of this Agreement shall not exceed a Maximum Basic Services Compensation of [insert total five year “Not to exceed Amount here] ($_____________.00). Further, the total compensation payable to Program Manager for Program Management Fees and Reimbursable Expenses for the complete performance of the Basic Services required by this Agreement for: (i) Year 1 of the Term shall not exceed [insert total Year 1 “Not to exceed Amount here] ($_____________.00); (ii) Year 2 of the Term shall not exceed [insert total Year 2 “Not to exceed Amount here] ($_____________.00); (iii) Year 3 of the Term shall not exceed [insert total Year 3 “Not to exceed Amount here] ($_____________.00); (iv) Year 4 of the Term shall not exceed [insert total Year 4 “Not to exceed Amount here] ($_____________.00); and (v) Year 5 of the Term shall not exceed [insert total Year 5 “Not to exceed Amount here] ($_____________.00). The District may move any unexpended funds from any given year to another year, if needed, in the District’s sole and absolute discretion, but is not obligated to do so. Subject to Program Manager’s rights to additional compensation for Additional Services, any time expended or costs incurred by Program Manager that would result in the total of the Program Management Fees and Reimbursable Expenses exceeding the Maximum Basic Services Compensation shall be performed and paid for by Program Manager at Program Manager’s Own Expense.

.2 Termination. Nothing stated in this Paragraph 4.1.2 or elsewhere in this Agreement shall be interpreted as obligating District to compensate Program Manager, in the event of a termination of this Agreement pursuant to Article 8, below, any amounts that exceed those permitted by Article 8.
.3 No Adjustments. The Program Manager’s sole and exclusive right to compensation, of any kind, in excess of the Maximum Basic Services Compensation, regardless of the reason, cause or circumstance therefor, shall be its right to payment for Additional Services as permitted by Section 4.3, below.

.4 Program Manager’s Expense. Without limitation to District’s other rights or remedies, Basic Services that are negligently performed by Program Manager, a Contract Worker or a Subconsultant or that do not conform to the requirements of this Agreement (including, without limitation, the requirements of Paragraphs 4.1.3 through 4.1.5, below) shall be remedied at Program Manager’s Own Expense. If Program Manager is unable to remedy such Basic Services, they shall be deemed performed at Program Manager’s Own Expense if and to the extent that they are reasonably determined by District to be without substantial value to District.

4.1.3 Staffing Plans.

.1 Staffing Plans. Attached hereto as Exhibit “1” are Staffing Plans prepared by Program Manager that set forth the Program Manager’s plans for staffing its complete performance of the Basic Services and anticipated Reimbursable Expenses associated with performance of Basic Services. Program Manager represents that the Staffing Plans are a realistic, fair, and balanced projection of the time and costs for completing performance the Basic Services for a total of Program Management Fees and Reimbursable Expenses that does not exceed the Maximum Basic Services Compensation.

.2 Adjustments. Adjustments to the Staffing Plans shall only be permitted as follows:

(1) Basic Services. District and Program Manager recognize that from time to time it may be necessary or appropriate in the interests of the District to make changes in a Staffing Plan that involve a reallocation of existing staffing resources. Such changes may be initiated by written request of District or written notice by the Program Manager to the District. If such changes in the Staffing Plan are initiated by Program Manager, they shall be described in a writing submitted to District prior to performance of the Basic Services affected thereby, pursuant to submission of a Personnel Action Request stating that the change in the Staffing Plan is at no additional cost to the District.

(2) Additional Services. The Staffing Plans shall be modified to reflect the performance of Additional Services that have been authorized by District in accordance with this Agreement. Such adjustments shall be made in a manner that clearly differentiates between the hours and staff projected or committed to performance of Basic Services and those projected or committed to performance of Additional Services, along with an identifying cross-reference to the document(s) issued by the District authorizing the performance of such Additional Services.

.3 District Approval. District has reviewed the Staffing Plans attached hereto as Exhibit “C” and hereby approves thereof. Program Manager shall, notwithstanding District’s review or approval of the Staffing Plans or adjustments thereto, be solely and exclusively responsible for the accuracy, sufficiency, and completeness of the Staffing Plans and any adjustments thereto.

4.1.4 Activation.

.1 Condition of Performance. Program Manager shall not perform any Basic Services included in a Staffing Plan until those Basic Services have been Activated pursuant to this Paragraph 4.1.4. Basic Services performed that have not been so Activated shall be deemed performed at Program Manager’s Own Expense.

.2 Initial Activation. Basic Services for the first ninety (90) Days of the Initial Staffing Plan shall be hereby deemed Activated. Basic Services for each successive Activation Period thereafter occurring shall be Activated as provided in Subparagraph 4.1.4.3, below.
.3 Subsequent Activation. No fewer than thirty (30) Days prior to the end of each successive Activation Period (after the initial Activation Period set forth in Subparagraph 4.1.4.2, above) occurring throughout the Term of this Agreement, Program Manager shall submit to District a written request stating its forecast of those portions of the Staffing Plans that it believes will need to be Activated for performance of Basic Services during next successive 90-Day Activation Period. Program Manager and District shall within ten (10) Days after District’s receipt of such written request endeavor to mutually agree upon the portions of a Staffing Plan to be Activated. If the parties fail to so agree, then District shall direct the portion of a Staffing Plan to be Activated. If Program Manager disagrees with such direction, for any reason, it shall notify District in writing within ten (10) Days of receipt of District’s direction of its disagreement, along with an explanation of the reasons therefor. Failure to provide such notice shall result in the District’s direction being deemed accepted and approved by Program Manager.

.4 District Modifications. District shall have the right in its sole and absolute discretion and without incurring any additional liability to Program Manager, upon thirty (30) Days’ advance written notice to Program Manager (or, upon three (3) Days’ written notice in the case of a request for change in staffing due to an individual’s unsatisfactory performance), to rescind or modify the staffing provided for in any prior approval or direction to Activate. Such rescission or modification of a prior approval or direction by District to Activate shall be effective as to any services covered by such prior approval or direction that have not been yet performed at the time such notice is received by Program Manager.

4.1.5 Compensation Limitations. Unless otherwise approved in writing by District, Program Manager shall not be entitled to seek or receive payment for any Basic Services or related Reimbursable Expenses that are not performed strictly in accordance with the Staffing Plans or for services that have not been Activated in the manner required by this Agreement. For example and without limitation to the foregoing, Basic Services performed by individuals (1) not listed in the Staffing Plans, (2) performing services in furtherance of tasks or functions other than those assigned to such individual in the Staffing Plans, or (3) whose performance or services have not been Activated, shall be deemed performed at Program Manager’s Own Expense.

4.1.6 No Service Level Guarantee. Neither District’s approval of the Staffing Plan, nor any adjustment thereto, nor anything stated elsewhere in this Agreement shall be interpreted as creating or implying the existence of any promise, guarantee, or warranty on the part of the District that District will request or require performance of Basic Services to the levels proposed, estimated, or contemplated in the Staffing Plans.

4.2 REIMBURSABLE EXPENSES

4.2.1 Reimbursement by District. Except as otherwise provided in this Agreement, District shall reimburse Program Manager its reasonable, out-of-pocket expenses listed in this Paragraph 4.2.1 that are incurred and paid by Program Manager in furtherance of performance of its obligations under this Agreement, but only to the extent that such expenses are (1) generated in direct performance of Basic Services or Additional Services authorized by this Agreement, (2) are not incurred as a result of the negligence or willful misconduct of Program Manager or a Sub-consultant or Contract Worker or the failure of Program Manager to comply with the terms of this Agreement, and (3) are permitted under the terms of the District’s Measure MM Cost Principles and applicable law regarding local bond funds:

.1 outside printing of documents that are required to be delivered and delivered to the District, College, or another Program Team member pursuant to this Agreement (costs of outside printing of documents for internal uses by Program Manager or its Sub-consultants or Contract Workers shall not be reimbursable) at rates that do not exceed per page or sheet rates that have been approved by District in advance;

.2 reproduction or reprographics costs for copies of documents that Program Manager is required in order to perform this Agreement to deliver to the District, College, or another
Program Team member (costs of reproduction or reprographics of documents for internal uses by Program Manager, its Sub-consultants or Contract Workers shall not be reimbursable) at rates that do not exceed per page or sheet rates that have been approved by District in advance and costs of plotter paper and ink cartridges used exclusively for the performance of this Agreement;

.3 postage, shipping, overnight mail, messenger, courier and/or delivery services of documents that Program Manager is required in order to perform this Agreement to deliver to the District, College or another Program Team member;

.4 mileage for business travel (excluding travel from residences the Program Manager’s home or branch offices, between the Program Manager’s home and branch offices) at the then-current rate established by the Internal Revenue Service and related parking charges and tolls;

.5 out-of-town travel if approved in advance in writing by District;

.6 charges for cellular phone use to the extent such charges are involved in the Program Manager’s performance of this Agreement, including any reasonable, necessary and unavoidable termination charges;

.7 safety supplies used exclusively for visitations to College Projects (such as, but not limited to, hard hats, vests and ear plugs);

.8 other reimbursable expenses if and only to the extent approved in writing by District in advance of such costs being incurred, which approval may be granted or withheld in the sole and absolute discretion of District; and

.9 fees and out-of-pocket costs of District-approved Sub-consultants (limited to those Reimbursable Expenses listed in Subparagraphs 4.2.1.1 through 4.2.1.8, above) pursuant to contracts approved by the District pursuant to Section 1.6, above.

4.2.2 Exclusive List. The list of Reimbursable Expenses set forth in this Paragraph 4.2.1 is the sole and exclusive list of costs and expenses for which Program Manager is entitled to reimbursement, whether associated with the performance of Basic Services or Additional Services. Any costs or expense of performance of this Agreement for which Program Manager is not entitled to reimbursement under this Section 4.2 shall be paid at Program Manager’s Own Expense.

4.2.3 Property of District. All equipment purchased that is not fully consumed in the performance of this Agreement and that is reimbursed by District as a Reimbursable Expense shall become property of the District, be labeled as property of District and at the election of District shall either be delivered to District upon termination of this Agreement or a credit issued to District against payments due under this Agreement for the reasonable, depreciated value thereof.

4.2.4 Approval Limitations. Notwithstanding the terms of the District-approved Staffing Plan, any Reimbursable Expenses wherein a single item exceeds $500 in value, whether leased or purchased, must be approved in writing in advance by the District. Costs incurred without such approval shall be deemed incurred at Program Manager’s Own Expense.

4.2.5 Mark Ups. Neither Program Manager nor its Sub-consultants or Contract Workers shall be entitled to an administrative charge, multiplier or other markup except as follows: (1) Program Manager shall have the right to an administrative mark up of five percent (5%) of the actual cost to Program Manager for professional fees charged by Consultant performing services under a Consultant Contract.

4.2.6 Records. Accurate and detailed records of Reimbursable Expenses pertaining to the Program shall be maintained in an orderly manner on the basis of generally accepted accounting practices and shall be available at Program Manager’s office (or at District’s request, shall be brought by

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4.3 ADDITIONAL SERVICES

4.3.1 Definition. Additional Services are defined as, and restricted to, those services listed in Paragraph 4.3.3, below, that are: (1) authorized in advance, in writing, by District; (2) do not arise, in whole or in part, from either the negligence or willful misconduct of the Program Manager or its Sub-consultants or Contract Workers or a failure by Program Manager to comply with its obligations under this Agreement; and (3) could not have been reasonably avoided by the reassignment, resequencing, or reordering by Program Manager of its staff or resources.

4.3.2 Written Authorization. Except as otherwise permitted by Paragraph 4.3.5, below, Program Manager shall not perform any Additional Services without the prior, written approval of District. Any Additional Services for which Program Manager has failed to obtain such advance written authorization as required by this Paragraph 4.3.2 shall be deemed performed at Program Manager's Own Expense and not be paid for by the District.

4.3.3 Types of Additional Services.

.1 Additional Services (Extraordinary). Extraordinary Additional Services consist of services that by their nature differ materially and categorically from the scope of Basic Services required by Article 2 of this Agreement.

.2 Additional Services (Unforeseen). Additional Unforeseen Services consist of additional, unavoidable, and unforeseeable services that are required to be performed due to Excusable Circumstances, other than those arising from or related to the occurrence of a Force Majeure Event; provided, however, that changes in or additions to the College Projects set forth in the Master College Schedule shall not constitute a grounds for Additional Services unless Program Manager demonstrates that such change results in a substantial and material increase in Program Manager’s time and effort relative to the overall amount of effort and time that would have been required of Program Manager for management of such College Projects had such additions or changes in College Projects not been made by District.

.3 Additional Services (Acceleration). Additional Acceleration Services consist of additional Services that are directed by District to be performed by Program Manager in accordance with Section 5.2, below.

4.3.4 Additional Services Compensation

.1 Types of Compensation. Program Manager's compensation for Additional Services authorized and performed in accordance with this Agreement shall be agreed to by the District and Program Manager at the time that the Additional Services are authorized by District, based upon one or a combination of the following options:

(1) a fixed, lump sum price that includes all Additional Services Fees and Reimbursable Expenses;

(2) a fixed, lump sum price for Additional Services Fees plus separate reimbursement of authorized Reimbursable Expenses directly and exclusively related to the performance of the Additional Services;

(3) an amount for Additional Services Fees calculated by multiplying the number of hours of authorized Additional Services performed by the personnel performing the Additional Services times the Agreed Hourly Rate, plus authorized Reimbursable Expenses, if any, directly and
exclusively related to the performance of the Additional Services, the total of which Additional Services Fees and Reimbursable Expenses shall be subject to and not exceed an agreed not-to-exceed amount for such Additional Services;

.2 Reimbursables Presumptively Included. In the case of a written authorization to perform Additional Services for a fixed, lump sum price or an hourly/not-to-exceed amount, any and all Reimbursable Expenses related to the performance of such Additional Services shall be presumptively and conclusively deemed to be included in, as applicable, the fixed, lump sum price or a not-to-exceed amount, unless the written authorization for such Additional Services expressly states that Reimbursable Expenses are not included and are separately reimbursable.

4.3.5 Disputed Additional Services. If a dispute arises between District and Program Manager as to the proper classification of a service as Basic Services or Additional Services, Program Manager shall nevertheless proceed with performance of the disputed services if and after being directed to do so in writing by District. In such case, Program Manager may, by written notice to District within thirty (30) Days after such direction, reserve to itself the right to submit a Claim for additional compensation for such disputed services. Failure to provide such written notice shall result in Program Manager waiving the right to assert such Claim. The burden of proving the right to receive compensation for Additional Services and the amount thereof rests with the Program Manager. Neither (1) the District's written direction to perform, nor (2) the Program Manager's performance of such disputed services in compliance with a written direction by District following notice by Program Manager as required by this Paragraph 4.3.5, shall be interpreted as a waiver by either District or Program Manager of their respective rights with respect to the appropriate classification of the disputed services rendered.

4.3.6 Board Approval. Advance approval by the Board of Trustees shall be required for any single authorization for Additional Services Fees and related Reimbursable Expenses that exceeds Fifty Thousand Dollars ($50,000).

ARTICLE 5
TIME OF PERFORMANCE

5.1 SCHEDULE

The Program Manager shall perform its obligations under this Agreement promptly and without delay, allowing a reasonable time for actions required by other Project Team members to respond to Program Manager's requests for direction, approval or information. Program Manager shall be entitled to an extension of time excusing its performance to the extent that its performance is delayed by an Excusable Circumstance.

5.2 ACCELERATION

5.2.1 District Direction. District shall have the right but not the obligation, exercised in its sole discretion, to direct in writing that Program Manager accelerate its performance by adding staff and/or working additional hours to overcome, in whole or in part, any Delay. Any additional services performed or costs incurred due to an acceleration by Program Manager that has not been authorized in writing by District shall be deemed performed at Program Manager’s Own Expense.

5.2.2 Right to Compensation. Program Manager’s right to compensation for an acceleration that is directed by District pursuant to Paragraph 5.2.1, above, shall be limited to a reasonable amount of compensation, as determined in accordance with this Section 5.2 that is required to overcome and recapture time lost due to Delay arising from Excusable Circumstances.

5.2.3 Amount of Compensation. Upon receipt by Program Manager of a request by District to accelerate to overcome a Delay due to Excusable Circumstances, District and Program Manager shall agree upon the number of additional staff or personnel to be added and the duration of their services that
are necessary to overcome the Delay. Upon such agreement, an adjustment shall be made to the Staffing Plans for the additional staff and/or working hours needed to accomplish the acceleration. Such additional staffing and/or working hours shall be segregated in the Staffing Plans as Additional Services. Program Manager shall thereafter be entitled to be paid additional compensation as Additional Services (Acceleration) for only that portion of such agreed additional staff and/or working hours that Program Manager demonstrates were actually, reasonably and necessarily expended to recapture the time lost by such Delay, plus any additional Reimbursable Expenses directly resulting from such acceleration that would not have incurred had the acceleration not been required. The compensation permitted by this Paragraph 5.2.3 is Program Manager’s sole and exclusive right and remedy for an acceleration of performance to overcome Delay and all rights of Program Manager for recovery of any other Losses associated with its compliance with a direction by District to accelerate performance are hereby waived.

5.3 NO ADDITIONAL DELAY COMPENSATION

The Additional Services compensation permitted by Section 5.2, above, for Additional Services (Acceleration) constitutes the Program Manager’s sole and exclusive remedy and compensation for Losses related to Delay, of any kind. All other rights and claims by the Program Manager for Losses relating to Delay, from any cause whatsoever, are hereby waived.

ARTICLE 6
PAYMENTS

6.1 INVOICES FOR PAYMENT

6.1.1 Monthly Invoices. Program Manager shall submit in triplicate a monthly Invoice for Payment to District on or before the fifteenth (15th) Day of each month beginning with the month following the Effective Date, setting forth in detail the:

.1 Project Management Fees earned in accordance with Section 4.1, above, and that are payable pursuant to Subparagraph 6.1.2.1, below, for Basic Services that are Activated and performed in accordance with the District-approved Staffing Plans;

.2 Reimbursable Expenses for Basic Services that are incurred and paid by Program Manager in accordance with Section 4.2, above, and that are payable pursuant to Subparagraph 6.2.1.2, below;

.3 Additional Services Fees earned pursuant to Section 4.3, above, and that are payable pursuant to Subparagraph 6.1.2.3, below; and,

.4 Reimbursable Expenses that are incurred and paid by Program Manager in connection with the performance of Additional Services in accordance with Paragraph 4.3.4, above, and that are payable pursuant to Subparagraph 6.1.2.4, below.

6.1.2 Payment Amount. The amounts included by Program Manager in its Invoices for Payment submitted pursuant to Paragraph 6.1.1, above, shall be computed as follows:

.1 Project Management Fees (Basic Services). Amounts invoiced for Project Management Fees shall be based on the actual hours of Basic Services performed in accordance with, and that are compensable under, this Agreement multiplied times the Agreed Hourly Rates.

.2 Reimbursable Expenses (Basic Services). Amounts invoiced for Reimbursable Expenses incurred and paid in connection with the performance of Basic Services shall be based on the amount of Reimbursable Expenses actually incurred and paid by Program Manager in accordance with, and that are compensable under, this Agreement.
.3 Additional Services Fees. Amounts invoiced for Additional Services Fees shall be established by the parties by mutual agreement prior to performance thereof. If the agreed compensation is based on an agreed fixed, lump sum price, then the payment amount shall be computed based on the Program Manager’s determination of the percentage of Additional Services performed multiplied times the agreed fixed, lump sum price. If Additional Services are agreed to be performed on the basis of an hourly compensation for Additional Services Fees, then the payment amount shall be computed based on the number of hours of authorized Additional Services performed by the personnel performing the Additional Services multiplied times the Agreed Hourly Rates; provided, however, that if the District and Program Manager have agreed to a not-to-exceed price for such Additional Services, then the amount payable by District for Additional Services Fees (plus related Reimbursable Expenses, if Reimbursable Expenses are included in and subject to the not-to-exceed amount) shall at no time exceed a pro rata portion of the agreed not-to-exceed amount as determined by multiplying: (1) the Program Manager’s good faith estimate of the overall percentage of Additional Services performed in accordance with this Agreement; times (2) the agreed not-to-exceed amount.

.4 Reimbursable Expenses (Additional Services). Subject to the terms of any not-to-exceed amount that may be applicable, amounts invoiced for Reimbursable Expenses incurred and paid by Program Manager in connection with the performance of Additional Services and that are reimbursable under this Agreement shall be based on the amount of Reimbursable Expenses actually incurred and paid by Program Manager in accordance with this Agreement in the direct performance of such Additional Services; provided, however, that if such Additional Services are subject to a not-to-exceed amount that includes both Additional Services Fees and Reimbursable Expenses, then the amount payable by District for Additional Services Fees and Reimbursable Expenses shall at no time exceed a pro rata portion of such not-to-exceed amount as determined by multiplying: (1) the Program Manager’s good faith estimate of the overall percentage of such Additional Services performed in accordance with this Agreement; times (2) the not-to-exceed amount.

6.1.3 Accompanying Verification. Invoices for Payment shall be accompanied by:
(1) detailed time summaries for Project Management Fees and Additional Services performed on an hourly basis (segregated according to hours expended on Basic Services and Additional Services (Extraordinary), Additional Services (Unforeseen) and Additional Services (Acceleration)) that are broken down by time keeper, task and time expended (block billings are not permitted) and copies of time sheets;
(2) statutory conditional waivers and releases of stop payment notice rights, in the form required by California Civil Code Sections 8132 - 8138, executed by Program Manager and its Contract Workers and Sub-consultants, of every Tier, releasing all stop notice rights with respect to services for which payment is sought in the Invoice for Payment; and
(3) invoices, receipts and other documentation reasonably requested verifying the amounts of Reimbursable Expenses for which reimbursement is sought in the Invoice for Payment.

6.2 PAYMENT BY DISTRICT

Payments of undisputed sums due shall be made by District monthly within forty-five (45) Days after receipt by District of a properly prepared and timely submitted Invoice for Payment.

6.3 WITHHOLDING

In addition to District’s rights under Paragraph 2.1.11, above, the District shall have the right to withhold all or a portion of any payment to the Program Manager on any grounds authorized by this Agreement or Applicable Law. Without limitation to the foregoing, the District shall have the right, in the event that Program Manager has failed, in the reasonable opinion of District, to perform any of its obligations under this Agreement, to withhold as reasonably necessary to protect against current or future Loss all or a portion of any further payment to Program Manager under this Agreement until Program Manager has: (1) rectified such failure; (2) presented to District reasonable evidence that steps have been taken to prevent the failure from recurring; and (3) reimbursed to District amounts incurred or paid by District, or reasonably likely to be incurred by District, for any Loss resulting, in whole or in part, from such failure.
6.4 PAYMENT DISPUTES

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by District to Program Manager under this Agreement, District shall have the right to do either of the following: (1) make all or part of such disputed payment to Program Manager without prejudice to District's right to contest the amount so paid; or (2) withhold all or a portion of such disputed payment. Should District withhold all or a portion of any payment invoiced by Program Manager, District shall so notify Program Manager in writing of the reasons therefor. From and after Program Manager's receipt of such notice, District and Program Manager shall use their good faith efforts to resolve their dispute as quickly as practicable under the circumstances. If District has given such notice, Program Manager shall not be entitled to terminate this Agreement or suspend its services hereunder on account of such nonpayment, provided District makes payment for all undisputed sums. If District chooses to withhold payments under Clause (2) of this Section 6.4 and if it is subsequently determined that District owes an additional payment to Program Manager, District shall pay such amount to Program Manager plus accrued interest computed at the Interest Rate from the date such payment was due until paid. If District chooses to proceed under Clause (1) of this Section 6.4 and it is subsequently determined that District overpaid Program Manager, Program Manager shall refund to District the amount of such payment plus accrued interest computed at the Interest Rate from the date of such overpayment until refunded.

ARTICLE 7
RECORDS AND FILES

7.1 RECORDS

7.1.1 Books and Records. Program Manager shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by the District to verify the performance of and charges for any services provided under or expenses incurred in connection with this Agreement. Program Manager shall maintain such records in sufficient detail to permit the College, District, District’s independent auditors, or their designee, to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Program for a period of four (4) years after the later of termination of this Agreement or final payment to Program Manager.

7.1.2 Time Records. Program Manager shall cause its employees, Contract Workers, and Sub-consultants’ employees to maintain daily records of time spent in performing Basic Services and Additional Services that are compensated on an hourly basis. Such time records shall contain sufficient detail so as to permit the District to determine on a daily basis and for each individual time keeper the time spent, the specific task performed and (if the service involves a particular College Project) the College Project involved. Program Manager acknowledges that maintenance of detailed time records is essential to the District’s ability to fully and properly conduct an audit and evaluation of the Program Manager’s performance of services that are performed and compensated on an hourly basis. Accordingly, it is agreed that District shall have no obligation to compensate Program Manager for time expended for which it has not complied with the foregoing reporting requirement.

7.1.3 Audit. The College, District, District’s independent auditors, or their designees, shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Program Manager’s performance of this Agreement, including the time spent by personnel in the performance of services on the Program. Such right to audit shall include inspection at all reasonable times at the Program Manager’s offices or facilities. In addition, Program Manager shall, at no cost or expense to the District, furnish facilities and cooperate fully with the audit. Upon request, Program Manager shall provide reproducible copies of books, records and other documents that are applicable to this Agreement for reproduction by the Campus, District, or
their designees. In the event that an audit by the District discloses that District has overpaid Program Manager for services or costs incurred by Program Manager or a Sub-consultant, such excess shall be immediately returned to District and if not so returned may be withheld by District from future amounts claimed due.

7.1.4 Audit Reimbursement. To the extent that an audit by the College, District, District’s independent auditors, or their designees disclose excess charges inaccurately or improperly attributed to this Project by the Program Manager, Program Manager agrees to remit the amount of the overpayment to the District upon demand. If such audit discloses an overcharge of five percent (5%) or more of the total amount invoiced to District for any year audited, Program Manager shall pay the actual cost of such audit, which cost, in the case of audits conducted by College or District using in house staff, shall be computed on the basis of two (2) times the direct payroll of the audit staff completing the audit and audit report. Should such audit disclose an underpayment to Program Manager, District shall promptly remit the amount of the underpayment to Program Manager upon receipt of a corrected Invoice for Payment from Program Manager.

7.1.5 Privileged Communications. Program Manager acknowledges that in the course of its services under this Agreement it may be necessary for Program Manager to communicate with the District’s attorneys, including Office of the General Counsel and/or special legal counsel, or receive from or perform work at the request of District’s counsel, and that such work product and communications shall be protected by the attorney-client and attorney work product privileges and shall be maintained in confidence by Program Manager except as authorized in writing by District’s general counsel, or designee. Nothing herein shall be interpreted as creating any attorney/client relationship between Program Manager and any of District’s legal counsel.

ARTICLE 8
TERMINATION OF AGREEMENT

8.1 TERMINATION BY DISTRICT

8.1.1 For Cause. If District determines that Program Manager has failed to perform in accordance with the terms and conditions of this Agreement, District may terminate all or any portion of this Agreement for cause. This termination shall be effective if: (1) Program Manager does not cure its failure to perform within five (5) Days after receipt of a notice of intent to terminate from District specifying the failure in performance; or, (2) if the failure to perform cannot, by its nature, be cured within five (5) Days, Program Manager does not commence a cure within five (5) Days after receipt of the notice provided for in Clause (1); or (3) Program Manager commences cure within such time but thereafter fails, in the sole judgment of District, to diligently prosecute such cure to completion. Nothing herein shall be interpreted as limiting District’s right to terminate for default without opportunity to cure if such default is by its nature not curable or if cure would be impractical. If a termination for cause does occur, the amount payable to Program Manager shall be calculated in the manner provided for and subject to the limitations set forth in Paragraph 8.1.2, below; provided, however, that District will have the right to withhold all monies otherwise payable to Program Manager (or, in the case of a partial termination, those monies due in respect to performance of the terminated portion of the Agreement) until all Losses to District have been fully ascertained. Without limitation to District’s other rights under this Agreement, if District incurs Losses associated with a termination of this Agreement pursuant to this Paragraph, these Losses shall be deducted from the amounts withheld. If the Losses incurred by District exceed the amounts withheld, Program Manager shall pay to District the difference. The provisions of this Paragraph 8.1.1 are in addition to, and not a limitation upon, any other rights and remedies of District under Applicable Laws.

8.1.2 For Convenience. District may terminate or suspend performance of this Agreement, or any portion of this Agreement, for convenience and without cause at any time upon thirty (30) Days’ written notice to Program Manager, in which case District will pay Program Manager all compensation (or, in the case of a partial termination, for that portion of compensation allocable to the services theretofore provided by the Program Manager for the terminated portion of this Agreement) then due, as determined
in accordance with the calculations set forth in Section 6.1, above, up to and including the date of termination. Such payment shall be Program Manager’s sole and exclusive compensation and District shall have no liability to Program Manager for any other compensation or Losses, including without limitation, anticipated profit, prospective losses or Consequential Damages, of any kind. District’s right of termination shall include, without limitation, the right at any time and its sole discretion to delete any Basic Service or category of Basic Services (whether or not a portion of such Basic Services has been commenced or partially performed at the time of such termination) from the scope of Basic Services to be performed by Program Manager. In such event, the Program Manager’s Staffing Plans and the Maximum Basic Services Compensation shall be equitably reduced to reflect the elimination of such deleted Basic Services from the scope of services to be performed by Program Manager.

8.2 TERMINATION BY PROGRAM MANAGER

8.2.1 Termination of the Agreement. Program Manager may terminate this Agreement on the following grounds only:

.1 If District fails to make any undisputed payment to Program Manager when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after receipt by District of written notice to District of such default and of Program Manager's intent to terminate; or

.2 If there is a period during which District has directed that no services are to be performed under this Agreement of more than one hundred and eighty (180) consecutive Days, Program Manager may terminate this Agreement upon thirty (30) Days’ notice to District, provided District does not reactivate performance by Program Manager within such thirty (30) Day period. If the Program Manager's performance is reactivated and this Agreement is still in full force and effect, Program Manager's compensation shall be equitably adjusted to provide for reasonable out-of-pocket expenses incurred by Program Manager which are directly attributable to the interruption and resumption of services.

8.2.2 Payment for Services. In the event of a termination of this Agreement by Program Manager that is adjudged to have been in accordance with this Section 8.2, District shall pay Program Manager an amount for its Basic Services, Additional Services and Reimbursable Expenses earned and due as of the date of termination according to the calculations and limitations set forth in Section 6.1, above. Such payment shall be Program Manager’s sole and exclusive compensation and District shall have no further liability or obligation to Program Manager for any other compensation or Losses, including, without limitation, anticipated profit, prospective losses or Consequential Damages, of any kind.

ARTICLE 9
INDEMNIFICATION AND INSURANCE

9.1 INDEMNIFICATION

9.1.1 General Indemnity. To the fullest extent permitted by Applicable Law, Program Manager agrees to defend, indemnify and hold harmless, the Colleges, District, the Board of Trustees, and each of their respective members, officers, employees, agents and volunteers (“Indemnitee(s)”), through legal counsel reasonably acceptable to the District, from any and all Losses (other than a loss of allocation of State Funds based on enrollment) to the extent that such Losses arise out of or relate to any act or omission constituting ordinary and not professional negligence, breach of the terms or conditions of this Agreement or intentional misconduct, on the part of the Program Manager or its Sub-consultants, or their respective employees, agents, representatives or independent contractors; or (2) a breach by the Program Manager of the terms and conditions of its agreements with its Sub-consultants, except to the extent such breach is the result of the District’s breach of this Agreement. The Indemnitees shall be entitled to the defense and indemnification provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating the Program Manager
to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below.

9.1.2 Indemnity for Professional Negligence. To the fullest extent permitted by Applicable Law, Program Manager agrees to indemnify and hold harmless the Colleges, District, the Board of Trustees, and each of their respective members, officers, employees, agents and volunteers (“Indemnitee(s)”) against any and all Losses (other than a loss of allocation of State Funds based on enrollment), and reimburse any Indemnitee for any attorney’s fees or court costs incurred in defense of any action brought against such Indemnitee, to the extent arising out of or relating to any act or omission constituting professional negligence on the part of the Program Manager or its Sub-consultants, or their respective employees, agents, representatives or independent contractors. The Indemnitees shall be entitled to the indemnification and reimbursement provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating the Program Manager to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below.

9.1.3 Limitations on Indemnity Obligation. Without affecting the rights of the District under any other provision of this Agreement, Program Manager shall not be required to indemnify or hold harmless an Indemnitee for a Loss due to that Indemnitee’s negligence or willful misconduct, provided that such negligence or willful misconduct has been determined by agreement of the Program Manager and the Indemnitee or has been adjudged by the findings of a court of competent jurisdiction or arbitrator pursuant to a final and binding arbitration award. In instances where an Indemnitee’s negligence accounts for only a percentage of the Loss involved, the obligation of the Program Manager will be for that portion of the Loss not due to the negligence of that Indemnitee.

9.1.4 Sub-consultant Indemnity Agreements. The Program Manager agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section 9.1 from each and every Contract Worker and Sub-consultant, of every Tier. In the event the Program Manager fails to do so, the Program Manager agrees to be fully responsible to provide such defense and indemnification according to the terms of this Section 9.1. Program Manager will submit copies of said contracts to the District within five (5) days of the District’s written request for same.

9.1.5 No Limitation by Insurance or Employee Benefits. In claims against any Indemnitee under Paragraphs 9.1.1 or 9.1.2, above, by an employee of Program Manager, a Contract Worker or any Sub-consultant, of any Tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under said Paragraphs shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Program Manager, Contract Worker or a Sub-consultant under any policy of insurance, workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE

9.2.1 Basic Insurance Requirements. Program Manager and each of its Contract Workers, Sub-consultants shall procure and maintain insurance at Program Manager’s Own Expense for the duration of Program Manager’s performance of this Agreement, or any portion hereof, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Program Manager, Contract Workers, the Sub-consultants or the agents, representatives, or employees of any of them.

.1 Without in any way affecting the indemnity provided in or by Section 9.1, above, Program Manager shall secure before commencement of Basic Services and throughout the time of performance of this Agreement the types and amounts of insurance specified in this Section 9.2.
.2 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI unless otherwise approved by District.

.3 Each insurance required by this Section 9.2 shall be endorsed to state that coverage shall not be canceled except after thirty (30) Days’ prior written notice by certified mail, return receipt requested, has been given to District in accordance with the notice provisions of this Agreement.

9.2.2 Minimum Limits of Insurance. Program Manager and each of its Contract Workers and Sub-consultants shall obtain insurance of the types and in the amounts described below:

.1 Commercial General Liability Insurance (CGL) with a limit of not less than $5,000,000 each occurrence/$5,000,000 in the annual aggregate.

.2 Business Automobile Liability Insurance with a limit of not less than $2,000,000 each accident.

.3 Professional Liability (Errors and Omissions) Insurance with a limit not less than $5,000,000 per claim and annual aggregate.

.4 Workers' Compensation Insurance as required by the State of California with a limit of not less than $1,000,000.

.5 Employer's Liability Insurance for bodily injury or disease in the amount of $1,000,000 each injury, disease and policy total.

.6 Commercial Crime for fiduciary losses in the amount of $3,500,000, to be provided by Program Manager and not a required coverage to be provided by Sub-consultants.

9.2.3 Minimum Scope of Insurance.

.1 CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing coverage at least as broad) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.

.2 Business Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 00 01, or a substitute form providing coverage at least as broad.

.3 If the Professional Liability Insurance policy is written on a claims-made basis, it shall be maintained continuously for a period of no less than four (4) years after the later of: (1) the termination of this Agreement, or (2) the completion by Program Manager of all services required be performed under this Agreement. The "retro date" must be shown and must be no later than the Effective Date.

9.2.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of $100,000.00 must be declared to and approved by District. At the option of District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officers, officials, employees or volunteers; or (2) Program Manager shall provide a financial guarantee satisfactory to District guaranteeing payment of Losses and related investigation, claim administration and defense expenses.
9.2.5 Other Insurance Provisions. The Commercial General Liability and Business Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

.1 District, its officers, officials, employees, and volunteers and all Indemnitees are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured, and with respect to liability arising out of services or operations performed by or on behalf of Program Manager, including, without limitation, under the commercial crime coverage (if additional insured coverage is commercially available). Such additional insureds shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.

.2 For any claims related to this Program, insurance coverage shall be primary as respects the additional insureds listed in Subparagraph 9.2.5.1, above. Any insurance or self-insurance maintained by such additional insureds shall be in excess of insurance required by this Agreement and shall not contribute with it.

.3 Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

9.2.6 Waiver of Subrogation. For Commercial General Liability, Workers' Compensation, and Employer's Liability insurance, the Program Manager shall obtain a waiver of all rights of subrogation against the additional insureds listed in Subparagraph 9.2.5.1, above, arising from activities and operations of insured in the performance of services under this Agreement.

9.2.7 Lapse in Coverage. If Program Manager or any Contract Worker or Sub-consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. District, at its sole option, may terminate this Agreement and obtain Losses from Program Manager resulting from said breach. Alternatively, District may purchase such coverage (but has no obligation to do so), and without further notice to Program Manager, District may deduct from sums due to Program Manager under this Agreement any premium costs advanced by District for such insurance.

9.2.8 Verification of Insurance. Program Manager shall furnish District with original certificates and amendatory endorsements effecting coverage required by this Section 9.2. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on the District's forms or other forms satisfactory to District. All certificates and endorsements are to be received and approved by District before any services under this Agreement are commenced. District reserves the right to review complete, original or certified copies of all required insurance policies at any time, including endorsements affecting the coverage required by this Agreement. District shall have the right to retain a copy of such policy provided that, if requested by Program Manager in writing, reasonable steps will be taken by District to restrict review of such policies to representatives of District and Colleges. In addition, if such policy has been conspicuously marked by Program Manager with the statement “CONFIDENTIAL CORPORATE PROPRIETARY INFORMATION PROTECTED BY GOVERNMENT CODE SECTION 6254.15” then District shall not disclose such policy pursuant to any request for inspection made under the applicable provision of any Applicable Law requiring disclosure of public records without first notifying Program Manager of such request and affording Program Manager the opportunity to seek court intervention to enjoin such disclosure and further in the event legal action is brought against District relating to the nondisclosure of such policy Program Manager shall immediately defend, indemnify and hold harmless District against such action and any Loss related thereto, including, without limitation, any attorney's fees and court costs either incurred by the District or for which the District may be liable to any third party.
9.2.9 Requirements Not Limiting. None of the policies required to be provided by Program Manager shall be considered to be in compliance with this Section 9.2 if they include any limiting endorsement that has not been first submitted to the District and approved by District in writing. Requirements of specific coverage features or limits required by this Section 9.2 are not intended as limitations or as waivers of the right of District to require any coverage normally provided by insurance. All insurance coverage and limits available or applicable to this Agreement are intended to apply to the full extent of the policies.

9.2.10 Sub-consultants. Program Manager shall include all Contract Workers and Sub-consultants as insureds under its policies or shall obtain separate certificates and endorsements for each Contract Worker and Sub-consultant. All coverages for Contract Workers and Sub-consultants shall be subject to all of the requirements stated herein; provided, however, that coverage amounts required herein for Sub-consultants or Contract Workers, where the Sub-consultant or Contract Worker is solely owned and operated by a single individual or where the Sub-consultant or Contract Worker is a small firm, shall be subject to reduction where appropriate and agreed to between the District and Program Manager, such agreement not to be unreasonable withheld by either District or Program Manager.

ARTICLE 10
DISPUTE RESOLUTION

10.1 RESOLUTION OF CLAIMS

Claims shall be resolved by the Parties in accordance with the provisions of this Article 10, in lieu of any and all rights under Applicable Law that either Party may have to have its rights adjudged by a trial court or jury. All Claims shall be subject to the Claims Dispute Resolution Process set forth in this Article 10, which shall be the exclusive recourse of the Program Manager and the District for determination and resolution of Claims.

10.2 RESOLUTION OF OTHER DISPUTES

Disputes between the District and the Program Manager that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Los Angeles and shall not be subject to the Claims Dispute Resolution Process.

10.3 INITIATION OF CLAIMS DISPUTE RESOLUTION PROCESS

10.3.1 Claims By Program Manager. The Program Manager's right to commence the Claims Dispute Resolution Process as set forth in Section 10.4, below, shall arise upon the District's written response denying all or part of a Claim by the Program Manager. The Program Manager shall initiate the Claims Dispute Resolution Process by submitting a written Statement of Dispute to the District within thirty (30) Days after receipt of the decision by the District denying all or a part of the Claim. Failure by the Program Manager to timely submit its Statement of Dispute shall result in the decision by the District on the Claim becoming final and binding. The Program Manager’s Statement of Dispute shall be signed by a responsible managing officer and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of the Program Manager under this Agreement. Such Statement of Dispute shall include adequate supporting data. Adequate supporting data for a Claim relating to an adjustment of the Program Manager's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each Delay on the Program Manager’s time for performance. Adequate supporting data to a Statement of Dispute submitted by the Program Manager involving the Program Manager’s compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.
10.3.2 Claims By District. Subject to any statutes of limitations that may exist under Applicable Laws, the District's right to commence the Claims Dispute Resolution Process shall arise at any time following the District's actual discovery of the circumstances giving rise to a Claim by the District. Nothing contained herein shall preclude the District from asserting Claims in response to a Claim asserted by the Program Manager. A Statement of Claim submitted by the District shall state the events or circumstances giving rise to the Claim, the dates of their occurrence, the damages or other relief claimed by the District as a result of such events, and reasonable substantiating evidence.

10.3.3 Failure to Submit Evidence. The failure by either Program Manager or District to submit evidence in support or defense of a Claim at the time the Claim is first submitted or responded to during the Claims Dispute Resolution Process shall not serve as a bar or a waiver of the right to submit such evidence at any later time in the Claims Dispute Resolution Process.

10.4 CLAIMS DISPUTE RESOLUTION PROCESS

The Parties shall utilize each of the following steps in the Claims Dispute Resolution Process in the sequence they appear in Subparagraphs 10.4.1 through 10.4.3, below. Each Party shall participate fully and in good faith in each step and level in the Claims Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each Party to proceed to the next step and level in the Claims Dispute Resolution Process. The mandatory dispute resolution provisions of this Article 10 are adopted and implemented by the District pursuant to the authority afforded it under, without limitation Government Code sections 930.2, 930.4, 930.6, and Applicable Laws. This Article 10 applies equally to the both Parties and the other third persons identified herein. The Parties agree that this Article 10, in its entirety, must be followed as a condition precedent to arbitration as set forth herein below. This Article 10 establishes the exclusive procedures for “Claims” between the Parties regarding this Agreement, except as may be expressly exempted elsewhere in this Agreement. Claims shall be resolved by the Parties in accordance with the provisions of this Article 10, in lieu of any and all rights under the law that either Party may have to have its rights adjudged by a trial court or jury. It is also the intent of this mandatory and exclusive resolution procedure to resolve a “Claim” as close as possible to the conclusion of the event(s) and/or circumstance(s) giving rise to the “Claim”. In this way, individual’s memories, and the information and documentation available to both Parties, will be as fresh as possible and permit the best informed resolution to occur. Both Parties acknowledge that their failure and/or refusal to follow this mandatory and exclusive process will irreparably prejudice the other Party and as such, should a Party to this Agreement fail or refuse to comply with this process, any “Claim” they may have shall be waived and forfeited.

10.4.1 First Step: Stepped Negotiations.

.1 Program Level Negotiations. Program-level representatives of the District and Program Manager shall meet as soon as possible (but not later than seven (7) Days after receipt by the responding party of a Statement of Claim) in a good faith effort to negotiate a resolution to the Claim. If the Claim involves the assertion of a right or claim by a Contract Worker or Sub-consultant, of any Tier, that is in turn being asserted by the Program Manager against the District (“Pass-Through Claim”), then such Contract Worker or Sub-consultant shall also have a Program representative present of comparable seniority to the Program Manager’s negotiating representative. Upon completion of the meeting, if the Claim is not resolved, the District and Program Manager may either continue the Program Level Negotiations or either may declare in writing the Program Level Negotiations ended. All discussions that occur during the Program Level Negotiations and all documents prepared solely for the purpose of Project Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120 and 1152.

.2 Mid-Management Level Negotiations. If the Program Level Negotiations fail to resolve the Claim, then management representatives of the District and the Program Manager (consisting of a representative at the level of vice-president or general operations manager) shall meet as soon as possible (no later than seven (7) Days after the end of the Program Level Negotiations) in a good faith
effort to negotiate a resolution to the Claim. If the Claim involves a Pass-Through Claim by a Sub-
consultant or Contract Worker, then such Sub-consultant or Contract Worker shall also have a Program
representative present of comparable seniority to the Program Manager’s negotiating representative.
Upon completion of the meeting, if the Claim is not resolved, the District and Program Manager may
either continue the Mid-Management Level Negotiations or either party may declare in writing the Mid-
Management Level Negotiations ended. All discussions that occur during the Mid-Management Level
Negotiations and all documents prepared solely for the purpose of the Mid-Management Level
Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119,
1120 and 1152.

.3 Senior Management Level Negotiations. If the Mid-Management Level
Negotiations fail to resolve the Claim, then the Executive Vice Chancellor and a representativ e of the
Program Manager (consisting of a representative at the level of owner, president or chief executive
officer) shall meet as soon as possible (no later than seven (7) Days after the end of the Mid-
Management Level Negotiations) in a good faith effort to negotiate a resolution to the Claim. If the Claim
involves a Pass-Through Claim by a Sub-consultant or Contract Worker, then such Sub-consultant or
Contract Worker shall also have a Project representative present of comparable seniority to the Progra m
Manager’s negotiating representative. Upon completion of the meeting, if the Claim is not resolved, the
District and Program Manager may either continue the Senior Management Level Negotiations or either
party may declare in writing the Senior Management Level Negotiations ended. All discussions that occur
during the Senior Management Level Negotiations and all documents prepared solely for the purpose of
the Senior Management Level Negotiations shall be confidential and privileged pursuant to Californi a
Evidence Code Sections 1119, 1120 and 1152.

10.4.2 Second Step: Mediation. If the Claim remains unresolved after completion of stepped
negotiations pursuant to Paragraph 10.4.1, above, the Parties agree to submit the Claim to non-binding
mediation before a third party mediator in accordance with the following provisions:

.1 Qualifications of Mediator. The Parties shall endeavor to select a mediator
who is an attorney with at least five (5) years of experience in public works construction contract law and
in mediating public works construction disputes or a retired judge.

.2 Submission and Selection. The Party initiating mediation of a Claim shall
provide written notice to the other Party of its decision to mediate. In the event the Parties are unable to
agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the Parties
shall submit the matter to a recognized dispute resolution firm such as the American Arbitration
Association (AAA), JAMS, ADR, etc. at its San Bernardino Regional Office for selection of a mediator in
accordance with their Construction Industry Mediation Rules.

.3 Location. The location of the mediation shall be at the offices of District.

.4 Costs. The Mediation fees and Mediator’s fees and costs shall be shared
equally by the parties to the mediation. If the Claim involves a Pass-Through Claim by a Sub-consultant
or Contract Worker, then such Sub-consultant or Contract Worker shall be considered a party to such
mediation for purposes of allocating responsibility for the costs of the mediation. If a Sub-consultant or
Contract Worker refuses to pay its allocable share, such share shall, without limitation to any right of
Contractor to recover such costs from the Sub-consultant or Contract Worker, be paid by the Program
Manager.

.5 Privileges. All discussions that occur during the mediation and all documents
prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California
Evidence Code §§1119, 1120 and 1152.
.6 End of Mediation. At any point during the mediation, District or Program Manager may, if either determines in good faith that further mediation would not be productive, declare in writing the end of the mediation.

10.4.3 Third Step: Binding Arbitration. Any Claim that is not resolved by mediation pursuant to Paragraph 10.4.2 above, and that a party wishes to pursue further shall be submitted for final and binding determination by arbitration.

.1 Arbitration Initiation. A Demand for Arbitration is made by a Party issuing a written request for same to either: the American Arbitration Association; JAMS Dispute Resolution; or ADR; with a copy to the other Party. All supporting documents, information and data in support of the Claim shall accompany the written Demand for Arbitration with copies of all supporting documents, data and information simultaneously sent to the other Party. In addition to any witness testimony and/or expert reports and/or testimony, only the information, data and documents submitted may be used at the Arbitration, unless discovery, permitted herein is granted. There is no discovery permitted unless: both Parties agree in writing; or, a Party can demonstrate good cause to the Arbitrator for some specific limited discovery. A Party who fails to provide information and/or documentation required by this Agreement as an obligation hereof, cannot fail to do so and then submit such latter prepared documentation, or the equivalent at the Arbitration Hearing, as the original failure to do so as required by this Agreement is deemed to have irreparably prejudiced the other Party and deprive it of options, rights and remedies. If both Parties agree in writing, they may elect to use an independent Arbitrator or an Arbitrator from another alternative dispute resolution provider.

.2 Qualifications of the Arbitrator. The arbitrator shall be selected based on mutual agreement of the parties to the arbitration. If the Claim involves a claim by or against a third person or entity who is joined in the arbitration as a party to the arbitration, then such third person or entity shall be given the opportunity to participate in the selection of the arbitrator in accordance with the procedures provided for in this Paragraph 10.4.3. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience with public works construction contract law and in arbitrating public works construction disputes. In the event the parties to the arbitration cannot agree upon a mutually acceptable arbitrator, then the provisions of the chosen arbitration association shall be followed in selecting an arbitrator possessing the qualifications required herein. The Arbitrator has no power to fashion a remedy that is “related to the Contract.” Rather, each of the Arbitrator’s decisions and award(s), interim and/or final, shall be in writing, shall set forth statements of fact and conclusions of law explaining how and why each item of the decision/award was reached, shall be supported by substantial evidence, shall be supported by applicable law, and shall otherwise comply with the requirements of Code of Civil Procedure Section 1296. Provided the Arbitrator has issued an award in compliance with the requirements of this Article, the Final Award is binding and all appellate rights are waived. Any judicial review of such an award is limited to the circumstances described herein for the Arbitrator’s non-compliance with these requirements. A Court shall, subject to Code of Civil Procedure section 1286.4, and/or other applicable law, vacate any award, in whole or in part, which the Court determines, after review, is not supported by substantial evidence, or the Award is based on an error of law.

.3 Hearing Days and Location. Arbitration hearings shall be held at the offices of District. Once commenced, hearings shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.

.4 Hearing Delays. Arbitration hearings shall not be delayed, continued or postponed except upon good cause shown or stipulation of all of the parties to the arbitration.

.5 Stenographic Record. All hearings to receive evidence shall be recorded by a certified stenographic reporter.
.6 Limitation of Discovery. Limited discovery, upon a showing of good cause, may be permitted by the arbitrator. Expert reports shall be exchanged at least thirty (30) days or more, before receipt of evidence, in accordance with the direction of the arbitrator, and expert reports (including initial and rebuttal reports) not so submitted shall not be admissible as evidence.

.7 Authority of the Arbitrator. The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards. See also paragraph 10.4.3.2 above.

.8 Waiver of Jury and Court Trial. Program Manager and District each voluntarily waives its right to a jury and court trial with respect to any Claim that is subject to binding arbitration in accordance with the provisions of this Paragraph 10.4.3. Program Manager shall include a provision in its contracts with its Sub-consultants and Contract Workers a waiver of jury and court trial by any Sub-consultant or Contract Worker who provided any portion of the Work involved in any dispute resolution process or action involving District as a party.

.9 Consolidation, Joinder. The Parties hereto consent to the consolidation or joinder of any Claims involving other Program Team members to the extent that resolution of such Claims is reasonably necessary to the complete resolution of a Claim between District and Program Manager or against whom District or Program Manager may assert a Claim in the nature of indemnity or contribution.

.10 Allocation of Costs. All arbitration fees, arbitrator compensation and stenographic costs shall be allocated in equal parts among District, Program Manager and each third party that is a party to the arbitration. The Arbitrator shall have no authority to alter that arrangement by way of any Award or Decision. If either the District or Program Manager fails to pay its share (or the share of a third party that is its responsibility, as hereinafter provided) of such fees and costs as they become due, then the arbitrator is authorized to conduct the hearings of any claim or cross-claim by or against the non-paying party as a default proceeding. If a third party that is a party to the arbitration refuses to pay its aliquot share of such fees and costs, such share shall be advanced by the District or Program Manager, based on whether the third party is in a vertical line of contractual privity to the District or Program Manager. For example, if the non-paying third party is a Sub-consultant, the Sub-consultant’s share shall be paid by the Program Manager and if the non-paying third party is a Design Consultant, the Design Consultant’s share shall be paid by the District.

.11 Interpretation. The requirements of this Paragraph 10.4.3 shall control the arbitration, and wherever possible, be interpreted as controlling over any rules for arbitration that may be in place or put in place by any arbitration association.

.12 Refusal to Cooperate. In the event that either Program Manager or District fails or refuses upon written request to reasonably cooperate or participate in the binding arbitration step of the Claims Dispute Resolution Process, then the other Party shall have the right, in its sole and absolute discretion, to file a request with a court of competent jurisdiction seeking an order compelling arbitration in accordance with the Claims Dispute Resolution Process.

10.5 NON-WAIVER

Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release, or compromise of any defense of either District or Program Manager, including, without limitation, any defense based on the assertion that the rights that are the basis of a Claim were previously waived due to failure to comply with the Agreement.
ARTICLE 11
NON-DISCRIMINATION

11.1 NON-DISCRIMINATION IN SERVICES

11.1.1 Program Manager shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws. For the purpose of this Section 11.1, discrimination in the provision of services may include, but is not limited to the following:

.1 Denying any person any service or benefit or the availability of a facility.

.2 Providing any service or benefit to any person which is not equivalent, or in a non-equivalent manner or at a non-equivalent time, from that provided to others.

.3 Subjecting any person to segregation or separate treatment in any manner related to the receipt of any service.

.4 Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

.5 Treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

11.1.2 Program Manager shall determine that intended beneficiaries of this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

11.1.3 Program Manager shall establish and maintain written procedures under which any person, applying for or receiving services hereunder, may seek resolution from Program Manager of a complaint with respect to any alleged discrimination in the provisions of services by Program Manager’s personnel. At any time any person applies for services under this Agreement, he or she shall be advised by Program Manager of these procedures. A copy of such procedures shall be posted by Program Manager in a conspicuous place, available and open to the public, in each of Program Manager’s facilities where services are provided hereunder.

11.2 NON-DISCRIMINATION IN EMPLOYMENT

11.2.1 Program Manager will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with requirements of Applicable Laws. Program Manager shall determine that qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

.1 Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

.2 Selection for training, including apprenticeship.

11.2.2 Program Manager agrees to post in conspicuous places in each of Program Manager's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this Section 11.2.
11.2.3 Program Manager shall, in all solicitations or advertisements for employees placed by or on behalf of Program Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws.

11.2.4 Program Manager shall send to each labor union or representative co-workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Program Manager's commitments under this Section 11.2.

11.2.5 Program Manager certifies and agrees that it will deal with its Sub-consultants, Contract Workers, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws.

11.2.6 In accordance with Applicable Laws, Program Manager shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of this Section 11.2. Program Manager shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of this Section 11.2.

11.2.7 If the District finds that any of the provisions of this Section 11.2 have been violated, such violation shall constitute a material breach of this Agreement upon which District may cancel, terminate or suspend this Agreement. While District reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Program Manager has violated State or Federal anti-discrimination laws shall constitute a finding by District that Program Manager has violated the provisions of this Section 11.2.

11.2.8 Program Manager hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by applicable Federal Regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Program Manager receiving Federal Financial Assistance.

ARTICLE 12
NOTICES

12.1 DELIVERY

12.1.1 All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received in any of the following ways:

.1 on the date delivered if delivered personally;

.2 on the third (3rd) business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;

.3 on the date sent if sent by facsimile transmission; and

.4 on the date it is accepted or rejected if sent by certified mail.
12.2 ADDRESSES

All notices, demands or requests shall include the date of this Agreement (and the number assigned to this Agreement, if any) and be addressed to the parties as follows:

To District at:
San Bernardino Community College District
114 South Del Rosa Drive
San Bernardino, CA 92408
Attention: Jose Torres, Executive Vice Chancellor

In addition, copies of all notices of default or termination served by Program Manager under this Agreement must, in order to be effective, be provided to:

John P. Dacey, Esq.
Bergman Dacey Goldsmith, PLC.
10880 Wilshire Boulevard,
Suite 900
Los Angeles, CA 90024

To Program Manager at:
[insert person's name]
[insert company name]
[insert company address]

With copies to:
[insert person's name]
[insert company name]
[insert company address]

ARTICLE 13
GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California. The Superior Court for the County of San Bernardino shall have exclusive jurisdiction over any litigation arising out of or relating to this Agreement as provided for herein.

ARTICLE 14
NUISANCE

Program Manager shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

ARTICLE 15
HAZARDOUS SUBSTANCES

If Program Manager becomes aware that a Hazardous Substance is located on a College campus that has not been previously identified as requiring remediation or other action, then the Program Manager shall immediately notify the representative of the District to receive information on such matters. The Attachment 14 to the RFQP

Professional Services Agreement – Program Management Services – District- Wide
Program Manager will document any actions taken in accordance with the requirements of the Program Documents.

ARTICLE 16
FEDERAL GRANTS

In the event of a federal grant or other federal financing participation in the funding of the Program or a College Project, Program Manager shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under this Agreement. Program Manager shall comply with all applicable federal agency requirements including those pertaining to work hours, overtime compensation, non-discrimination, contingent fees, etc.

ARTICLE 17
WAIVER

Provisions of this Agreement may be waived by District only in writing signed by the Executive Vice Chancellor stating expressly that it is intended as a waiver of specified provisions of the Agreement. A waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

ARTICLE 18
NO THIRD PARTY RIGHTS

Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of Applicable Law.

ARTICLE 19
EXTENT OF AGREEMENT

This Agreement represents the entire agreement with District and Program Manager for furnishing of program management services from and after the Effective Date and to that extent supersedes all prior negotiations, representations or agreements, either written or oral, and including, without limitation, any interim agreement(s) or other arrangements contractual or otherwise, between District and Program Manager. This Agreement may be amended only by written instrument signed by both District and Program Manager, and formally approved or ratified by the Board of Trustees.

ARTICLE 20
SEVERABILITY

Should any part, term, portion or provision of this Agreement, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with any Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other any party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

ARTICLE 21
SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon District and Program Manager and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any Claim hereunder, may be assigned by Program Manager without the
prior written consent and approval of District, which may be granted or withheld in District’s sole discretion.

ARTICLE 22
CONFIDENTIALITY

Program Manager shall treat all information and data furnished to it by a College, District or any other Program Team member or otherwise obtained or prepared by Program Manager as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Program Manager's performance of this Agreement or any governmental filings or applications or as otherwise required by Applicable Laws. Program Manager’s obligations of confidentiality shall not apply to: (1) information which was in or subsequently enters the public domain through no action or inaction of Program Manager; or (2) information proprietary to the Program Manager that was in the possession of Program Manager prior to its commencing performing services for District. Program Manager shall not engage in or permit any public references or statements to the Bond Program, Colleges, District or Program Manager's services hereunder, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld in the sole discretion of the District. Notwithstanding the foregoing, Program Manager may list this project in its responses to future requests for qualifications or requests for proposals without obtaining the consent of District. Program Manager shall instruct all of its employees of this obligation and shall be responsible for their full compliance with this Article 22.

ARTICLE 23
INDEPENDENT CONTRACTOR

Program Manager is and shall at all times remain as to the District a wholly independent contractor. Neither the District nor any of its agents shall have control over the conduct of Program Manager or any of Program Manager’s officers, agents or employees, except as herein set forth. Program Manager shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the District.

ARTICLE 24
FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS

In the performance of this Agreement, Program Manager shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e - 217), whichever is more restrictive.

ARTICLE 25
PERMITS AND LICENSES

Program Manager, at its sole expense, shall obtain and maintain during the Term of this Agreement, all required business and professional permits, licenses and certificates which are required for its performance of services required under this Agreement.

ARTICLE 26
CONFLICTS OF INTEREST

Program Manager agrees not to accept any employment or representation during the Term of this Agreement which is or may likely make Program Manager "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by a College or District on any matter in connection with which Program Manager has been retained pursuant to this Agreement.
ARTICLE 27
WAIVER OF CONSEQUENTIAL DAMAGES

Program Manager and District waive all rights and claims against each other for consequential damages arising out of or relating to the performance or nonperformance of any obligation under this Agreement. This mutual waiver includes damages incurred by either the District or the Program Manager for loss of use, loss of profit or income, interest (except as required by Section 6.4, above), loss of management or services, loss of productivity, loss of financing or funding, loss of business reputation, loss of bonding and all such consequential damages due to termination or suspension by the Program Manager or District. Notwithstanding the foregoing, nothing contained in this Article 27 shall be deemed to be a waiver of or limitation on: (1) the District’s rights to recovery of Losses (including, without limitation, any direct, indirect or consequential Loss) that involve or arise out of personal injury, death or damage to physical or tangible property of the District or of any other person or entity to whom the District is or may be liable; (2) District’s or Program Manager’s rights of recovery for Loss due to willful misconduct or gross negligence; (3) District’s or Program Manager’s rights of recovery under any policy of insurance; or (5) District’s express or implied rights of indemnification, including, without limitation, the District’s rights under Section 9.1, above.

ARTICLE 28
SURVIVAL

All provisions of this Agreement that either expressly, or by their nature, require performance or assumption by the Program Manager of an obligation that extends beyond termination or full performance of this Agreement, including, without limitation, the Program Manager’s obligations of, or relating to, indemnification, insurance, confidentiality, advertising, ownership of documents, audit, records retention, and warranties, shall be deemed to survive either termination or complete performance of this Agreement.

ARTICLE 29
EXHIBITS

The following Exhibits are attached hereto and incorporated herein by this reference:

Exhibit “1” - Proposal
Exhibit “2” - RFQP Documents & Addenda

In the event of an irreconcilable conflict between or among the foregoing terms of this Agreement and the exhibits attached hereto, the former shall govern. In the event of an irreconcilable conflict between Exhibit “1” and Exhibit “2” attached hereto, the former shall govern; provided, however, that if there is a service provided for in Exhibit “1” and not in Exhibit “2,” such service shall be interpreted as being supplemental to Exhibit “2” and not in conflict with Exhibit “1.”

NOTWITHSTANDING EXECUTION OF THIS AGREEMENT BY DISTRICT AND PROGRAM MANAGER BELOW, IT IS UNDERSTOOD AND AGREED THAT APPROVAL BY THE DISTRICT’S BOARD OF TRUSTEES IS A CONDITION PRECEDENT TO THE EFFECTIVENESS AND ENFORCEABILITY OF THIS AGREEMENT

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the dates shown below.

“PROGRAM MANAGER”

“DISTRICT”
15 - District Bid-Proposal Protest Procedure
District Bid/Proposal Protest Procedure

Proposers may file a “protest” of a contract award with the District’s Business Manager, San Bernardino Community College District, 114 South Del Rosa Drive, San Bernardino, CA 92408.

In order for a Proposer's protest to be considered valid, the protest must:

a. Be filed timely and in writing as detailed in this Paragraph.
b. Clearly identify in detail the specific issues related to the bid protest.
c. Clearly identify in detail the specific District Staff/Board recommendation or action being protested.
d. Clearly identify in detail the specific grounds of the protest and the facts supporting the particular protest.
e. Include all relevant and supporting documentation with the protest at the time of filing.
f. The party filing the protest shall concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest, which may be adversely affected by the outcome of the protest. Such parties include all other Proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

The District will issue a decision on the protest. If the District determines that a protest is frivolous, the party originating the protest may be determined to be irresponsible and that party may be determined to be ineligible for future Contract awards.

The procedure and time limits set forth in this section are mandatory and are the Proposer’s sole remedy in the event of bid protest and failure to comply with these procedures shall constitute a waiver of any rights to further pursue the bid protest, including filing a Government Code claim or legal proceeding.

If the Proposal protest does not comply with each and every one of the requirements set forth above, it will be rejected as invalid. A protest regarding the recommended award of a contract solicited by the Request for Qualifications and Proposals must be filed in writing with the District within five (5) calendar days after the issuance of Notice of Intent to Award. If the protest is valid, the District shall review the basis of the protest along with all relevant information and documents and will provide the protesting Proposer a written decision.