

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

SOLANO COMMUNITY COLLEGE DISTRICT

AND

KITCHELL CEM, INC.

June 1, 2014

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AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This Agreement for Program Management Services ("Agreement") is made as of the 1st day of June in the year 2014, between the Solano Community College District, a California community college district ("District") and Kitchell Capital Expenditure Managers, Inc. ("Program Manager") (both collectively "Parties"), for the District's Measure "Q" Bond/Capital Improvement Program ("Program"). In consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. The following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Program, including all consultants to the Architect(s).
 - 1.1.3. **Construction Budget:** The total amount indicated by the District for the Program and for each Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.4. **Construction Cost Estimate:** The total cost to District of all elements of each Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Estimate does not include the compensation of the Program Manager, the Architect and the Architect's consultants, any Program Manager, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
 - 1.1.5. **Consultant(s):** Any and all consultant(s), sub-consultant(s), contractor(s), subcontractor(s), or agent(s) of any tier to the Program Manager.
 - 1.1.6. **Design Team:** The Architect(s) that the District designates as being the architect(s) for all or a portion of the Program, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Program either directly or as a subconsultant or subcontractor.
 - 1.1.7. **District Representative:** The individual identified herein that is authorized to act on the District's behalf with respect to the Program.
 - 1.1.8. **DSA:** The Division of the State Architect.
 - 1.1.9. **Program Budget:** The total amount available for all costs related to the Program including, but not limited to, Program design, Program

administration, Program financing, the services pursuant to this Agreement, and the construction of the Program. The Program Budget is the sum of all the Construction Budgets. The Program Budget is derived from the funds designated by the District for the Program; thus the Program Manager shall ensure that no additional funds are necessary for the Program. The District's Board may, at its sole discretion, determine to expand the Program Budget based on receipt of additional funding.

1.1.10. **Projects:** The projects listed in **Exhibit "C"**.

1.1.11. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Program Manager is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of each Project.

Article 2. Scope, Responsibilities and Services of Program Manager

2.1. Program Manager shall perform all Services for the Program as set forth herein and at **Exhibit "A"**, attached hereto and incorporated herein by reference. The parties agree that the Program Manager's Services described herein are based on a (1) program manager/construction manager/general contractor structure, (2) program manager/construction manager/developer, or (3) program manager/construction manager/design-builder structure.

2.2. In addition to those Services set forth in **Exhibit "A"**, Program Manager's Services shall include, but not be limited to:

2.2.1. Developing and implementing the Measure "Q" Bond/Capital Improvement Program based on the 2014 Facilities Master Plan.

2.2.2. Providing the District with budget recommendations, based on documented estimates, for the Projects. The District's Board shall make the final decisions as to all budgets.

2.2.3. Providing the District with recommendations for all pre-design and preconstruction testing and analysis necessary to ensure that the District's Program is completed within the Program Budget.

2.3. Review of General Obligation Bond Program Report and Education Master Plan: Program Manager shall review the General Obligation Bond Program Report and Education Master Plans for the District and other written materials made available by the District to Program Manager to fully understand the nature, extent and intent of the General Obligation Bond Program Report and the Education Master Plan and the Projects.

2.4. Review of Measure "Q" and 2014 Facilities Master Plan: Program Manager shall review Measure "Q", the 2012 Facilities Master Plan, and other written materials made available by the District to Program Manager which relate to Measure "Q" to fully understand the extent of funding available to implement the General Obligation Bond Program Report plans for the District, the

anticipated schedule for issuance of Bonds under Measure "Q" relative to the anticipated design, bidding and construction of projects.

- 2.5. Coordination: In the performance of Program Manager's services under this Agreement, Program Manager agrees that it will maintain such coordination with District personnel and/or its designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's team, and Compliance Monitoring Unit of the Division of Labor Standards Enforcement (CMU).
- 2.6. Additional Scope of Work: Should the District's Board determine to expand the scope of the Program and/or supplement the Program Budget based upon availability of additional funds, Program Manager agrees to perform the additional scope of work under the fee and cost terms of this Agreement.
- 2.7. To the maximum extent permissible by law, Program Manager will establish and assist the District in enforcing program(s) that will result in economic advantage to the local small business community.
- 2.8. Conflicts of Interest Prohibited: The Program Manager shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by the District in connection with any Project: Design Professional, Project Construction Management, IOR or Test/Inspection. If the Program Manager identifies potential Design Professionals, Project Construction Managers, IORs or Test/Inspection services in connection with a Project, the Program Manager shall affirmatively and unequivocally represent and warrant to the District that neither the Program Manager nor any person who holds any equity interest in Program Manager's organization is a former or current holder of any equity interest in the firm identified and that neither the Program Manager nor any holder of any equity interest in the Program Manager's organization has any financial interest in the firm identified. The District reserves the sole discretion to waive this subsection's requirement on a case-by-case basis. The Program Manager will also disclose any relationships between Program Manager's staff and employees of the District before assigning that person to the Program.

Article 3. Program Manager Staff

- 3.1. The Program Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 3.2. The Program Manager agrees that the following key people in Program Manager's firm shall be associated with the Project in the following capacities:

Principal In Charge:	Dave Gianelli
Program Executive:	Bob Fuselier
Program Manager:	Ines Zildzic
Director of Budget & Accounting:	Sandy Su, Alma Strategies
- 3.3. The Program Manager shall not change any of the key personnel listed above without prior written approval by District, unless said personnel cease to be

employed by Program Manager. In either case, District shall be allowed to interview and approve replacement personnel.

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

Article 4. Schedule of Work

The duration of Program Manager's Services under this Agreement shall be from June 1, 2014, through May 30, 2018. Program Manager shall prosecute the work diligently as described in **Exhibit "A"** and complete all Services required by this Agreement within the times specified in the schedule attached as **Exhibit "C."** Time is of the essence and failure of Program Manager to perform work on time as specified in this Agreement is a material breach of this Agreement. If the time to complete its scope of work under Exhibit "C" exceeds five (5) years, the District may, at its sole discretion, extend the term of this contract for five separate twelve-month option periods by providing written notice to the Program Manager not less than ninety (90) days before the contract expiration date. The total duration of any associated contract shall not exceed five (5) years.

Article 5. Program Budget; Construction Cost Estimates

- 5.1. The Program Manager shall have responsibility to review, and reconcile each Project Construction Cost Estimate with the Architect and the District throughout the design process and construction. Program Manager shall develop and present for Board Approval the Program Budget and each component thereof. Program Manager shall revise these until the Board accepts a final Program Budget and all the components thereof.
- 5.2. Program Manager shall specify all pre-design and pre-construction investigations and analyses necessary to prevent cost overruns, differing site conditions claims, other construction claims, design omissions, and budget overruns.
- 5.3. The Construction Cost Estimate shall be the total cost to District of all elements of the Project designed or specified by the Project design professional(s). The Construction Cost Estimate does not include the compensation of the Program Manager, the Project design professional(s), sub-consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the District.

- 5.4. Program Manager shall work cooperatively with the Project design professional(s) during the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Project design professional(s) will not exceed the Construction Cost Estimate, as may be adjusted subsequently with the District's written approval. The Program Manager shall notify the District if it believes the construction cost of the work by the Project design profession(s) will exceed the Construction Cost Estimate. The Program Manager, however, shall not perform or be responsible for any design or architectural services. The Program Manager shall notify the District immediately if it believes the construction cost of a Project will exceed the Construction Cost Estimate for that Project.
- 5.5. Evaluations of the District's Program Budget, and preliminary and detailed cost estimates prepared by the Program Manager, represent the Program Manager's best judgment as a professional familiar with the construction industry in the geographic area of the District.
- 5.6. If the Bidding Phase has not commenced within ninety (90) days after DSA approval, the Construction Cost Estimate shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 5.7. Program Manager specifically acknowledges that the District is relying on Program Manager to monitor, review, verify, and revise each Project Construction Cost Budget at multiple instances throughout the Program. If any of the following events occur:
 - 5.7.1. Program Manager also specifically acknowledges that the District shall have the right to take any or all of the options listed below for one or more of the Projects.
 - 5.7.2. If the lowest responsive base bid received is in excess of ten percent (10%) of the Construction Cost Estimate, or
 - 5.7.3. If the combined total of base bid and all additive alternates come in fifteen percent (15%) or more under the Construction Cost Estimate, or
 - 5.7.4. If the Construction Cost Estimate increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy,
 - 5.7.5. Then the District, in its sole discretion, has one or a combination of the following alternatives:
 - 5.7.5.1. Give the Program Manager written approval on an agreed adjustment to the Construction Cost Estimate.

- 5.7.5.2. Authorize the Program Manager to re-negotiate, where appropriate, or re-bid one or more projects within three (3) months time (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.7.5.3. Terminate this Agreement, without further obligation by either party.
 - 5.7.5.4. Instruct the Project design professional(s) to revise the drawings and specifications to bring the Project(s) within the Construction Cost Estimate for re-bidding, with Program Manager's performing cost estimating, value engineering, and/or bidding support at no additional cost to the District.
- 5.8. The Designer's Construction Cost Estimate for each Project shall be reconciled with the Program Manager's construction cost estimate for that Project and adjusted at the completion of each design phase for that Project.
 - 5.9. The Program may include multiple projects, each with multiple components. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Projects or the Program, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Program Manager shall invoice for each component separately and District shall compensate Program Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

Article 6. Fee and Method of Payment

- 6.1. District shall pay Program Manager an amount equal to Six million, three-hundred seventy-six thousand, seven-hundred thirty-five dollars and no cents (**\$ 6,376,735**) for all services contracted for under this Agreement based on the Fee Schedule attached as **Exhibit "D."**
- 6.2. District shall pay Program Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.3. Program Manager shall bill its work under this Agreement on a monthly basis in accordance with **Exhibit "D."**
- 6.4. No increase in fee will be due from change orders generated during the construction period to the extent caused by Program Manager's error.
- 6.5. The Program Manager's fee set forth in this Agreement shall be full compensation for all of Program Manager's Services incurred in the performance hereof as indicated in **Exhibit "D"**, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location (travel reimbursements must be approved by the District prior to travel), offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**

The parties acknowledge and agree, in general, that the Program has an existing inventory (i.e. offices, computers and peripherals, printers, fax machines, photocopy equipment, etc.) and significant expenditures in these areas are not anticipated.

Article 7. Payment for Extra Services

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

Article 8. Ownership of Data

After completion of each project or after termination of this Agreement, Program Manager shall deliver to District a complete set of Project records, including without limitation all documents generated by Program Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Said Project records shall be indexed and appropriately organized for easy use by District personnel. All Project records are property of the District, whether or not those records are in the Program Manager's possession.

Article 9. Termination of Contract

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

- 9.3. The Program Manager has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Program Manager. Such termination shall be effective after receipt of written notice from Program Manager to the District.
- 9.4. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.5. If, at any time in the progress of the Program, the governing board of the District determines that the Program should be terminated, the Program Manager, upon written notice from the District of such termination, shall immediately cease work on the Program. The District shall pay the Program Manager only the fee associated with the services provided, since the last invoice that has been paid and up to the notice of termination.
- 9.6. If the Program is suspended by the District for more than one hundred eighty (180) consecutive days, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Program is resumed, the schedule shall be adjusted and the Program Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Program Manager's services. Upon resumption of the Program after suspension, the Program Manager will take all reasonable efforts to maintain the same personnel.

Article 10. Indemnity

- 10.1. To the furthest extent permitted by California law, Program Manager shall defend, indemnify, and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Program Manager, its officers, employees, subcontractors, consultants, or agents.
- 10.2. Programs Manager's obligation pursuant to section 10.1 includes reimbursing District for the cost of any settlement paid by the indemnified parties and for any and all fees and costs incurred by the indemnified parties to enforce the indemnity herein. Program Manager's obligation to indemnify shall not be restricted to insurance proceeds. District shall also have the right to accept or reject any legal representation that Program Manager proposes to defend the indemnified parties
- 10.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Program Manager from amounts owing to Program Manager.

Article 11. [Reserved]

Article 12. Responsibilities of the District

- 12.1. The District shall examine the documents submitted by the Program Manager and shall render decisions so as to avoid unreasonable delay in the process of the Program Manager's services.
- 12.2. The District shall provide to the Program Manager complete information regarding the District's requirements for the Project.
- 12.3. The District shall retain design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and design professional(s).
- 12.4. The District shall, in a timely manner, and with Program Manager's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to Program Manager's and/or the design professional(s) duties to recommend or provide same.
- 12.5. The District, its representatives, and consultants shall communicate with the contractor either directly or through the Program Manager.
- 12.6. During the Construction Phase of the Project, the District may require that the contractors submit all notices and communication relating to the Project directly to the Program Manager.
- 12.7. The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The District's representative for the Project shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 13. Liability of District

- 13.1. Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 13.2. Any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent acts or omissions of Program Manager in its performance hereunder, shall be paid to District by Program Manager as provided for herein and/or under California law.
- 13.3. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Program Manager, or by its employees, even though such equipment be furnished or loaned to Program Manager by District.

- 13.4. If a loss or damage is covered by valid and collectible insurance policy(ies), the Program Manager hereby waives any and all claim(s) for recovery directly from the District under this Agreement for that loss or damage. This waiver shall extend to claims paid, or expenses incurred, by Program Manager's insurance company on behalf of the District. Program Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver.

Article 14. Insurance

- 14.1. Program Manager shall procure prior to commencement of the work of this Agreement and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Program Manager, their agents, representatives, employees and sub-consultant(s).
- 14.2. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:
- 14.2.1. **Commercial General Liability.** Insurance Services Office Form CG 00 01 Covering CGL on an occurrence basis, including products completed operations, property damage, bodily injury, death and personal & advertising injury with limits no less than Five Million Dollars (\$5,000,000) per occurrence and either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 14.2.2. **Commercial Automobile Liability, Any Auto.** Insurance Services Office Form CA 0001 covering, Code 1 (any auto), or if Program Manager has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage and Two Million Dollars (\$2,000,000) general aggregate for bodily injury and property damage.
- 14.2.3. **Workers' Compensation.** Statutory limits required by the State of California.
- 14.2.4. **Employer's Liability.** One Million Dollars (\$1,000,000) per accident for bodily injury or disease.
- 14.2.5. **Professional Liability (Errors and Omissions).** This insurance shall cover the Program Manager and his/her sub-consultant(s) for Two Million Dollars (\$2,000,000) aggregate limit subject to no more than One Hundred Thousand Dollars (\$100,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

- 14.3. The District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 14.4. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by the District, except as otherwise provided herein. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or the Program Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 14.5. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 14.5.1. Occurrence Form: All policies except for the professional insurance policy shall be written on an occurrence form
- 14.5.2. Additional Insured status: The District, the Architect, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") shall be named as additional insureds as respects liability arising out of activities performed by or on behalf of the Program Manager; instruments of service and completed operations of the Program Manager; premises owned, occupied or used by the Program Manager; or automobiles owned, leased, hired or borrowed by the Program Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 14.5.3. Primary & Non-Contributory: For any claims related to this Program, the Program Manager's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Program Manager's insurance and shall not contribute with it.
- 14.5.4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 14.5.5. The Program Manager's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 14.5.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

- 14.5.7. Waiver of Subrogation: Program Manager hereby grant to the District a waiver of any right to subrogation which any insurer of said Program Manager may acquire against the District by virtue of payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.
- 14.5.8. Claims made policies: If any of the required policies provide coverage on a claims-made basis, then Program Manager must comply with the following conditions:
- 14.5.8.1. The Retroactive Date must be shown on the policy and must be before the date of the Agreement or the beginning of the Service.
- 14.5.8.2. Insurance must be maintained and evidence of insurance must be provided **for at least (5) years after completion of the Services**.
- 14.5.8.3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the effective date of the Agreement, the Program Manager must purchase "extended reporting" coverage for a minimum of **five (5)** years after the completion of the Services.
- 14.6. **Acceptability of Insurers**: Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII.
- 14.7. **Verification of Coverage**: Program Manager shall furnish the District with:
- 14.7.1. Certificates of insurance showing maintenance of the required insurance coverage;
- 14.7.2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Program Manager's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 14.7.3. Notice of Cancellation: Each insurance policy required in Article 14 shall state that coverage shall not be canceled, except with notice to the District.

Article 15. Nondiscrimination

Program Manager agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, national origin, ancestry, religion, age, physical disability, sex, or sexual orientation of

such person. Program Manager shall comply with any and all regulations and laws governing nondiscrimination in employment.

Article 16. Covenant Against Contingent Fees

Program Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Program Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 17. Entire Agreement/Modification

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

Article 18. Non-Assignment of Agreement

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

Article 19. Law, Venue

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

Article 20. Alternative Dispute Resolution

Notwithstanding any disputes, claims or other disagreements between Program Manager and the District, Program Manager shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If this method proves unsuccessful, then all claims, disputes or controversies as stated above may be decided through arbitration, if agreed to by all Parties.

Article 21. Severability

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

Article 22. Employment Status

- 22.1. Program Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Program Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Program Manager shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 22.2. Program Manager understands and agrees that the Program Manager's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 22.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Program Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Program Manager which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 22.4. Should a relevant taxing authority determine a liability for past services performed by Program Manager for District, upon notification of such fact by District, Program Manager shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Program Manager under this Agreement (again, offsetting any amounts already paid by Program Manager which can be applied as a credit against such liability).

- 22.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Program Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Program Manager is an employee for any other purpose, then Program Manager agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Program Manager was not an employee.
- 22.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 23. Warranty of Program Manager

- 23.1. Program Manager warrants that the Program Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 23.2. Program Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.
- 23.3. Program Manager certifies that it is aware of the provisions of California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Program Manager is performing work as part of an applicable "public works" or "maintenance" project, and since the total compensation is \$1,000 or more, the Program Manager agrees to fully comply with and to require its sub-consultant(s) to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Article 24. Cost Disclosure - Documents And Written Reports

Program Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over five thousand dollars (\$5,000).

Article 25. Communications

Communications between the parties to this Agreement may be sent to the following addresses:

District:
Measure Q Bond Office/Leigh Sata
Solano Community College District
4000 Suisun Valley Road
Fairfield, CA 94534
Facsimile: (707) 646-7703

Program Manager:
Dave Gianelli
Kitchell CEM, Inc.
2750 Gateway Oaks Drive, Suite 300
Sacramento, CA 95833
Facsimile: (916) 648-6534

Article 26. Disabled Veteran Business Enterprise Participation

Pursuant to section 71028 of the Education Code and Public Contract Code section 10115, the District has a participation goal for disabled veteran business enterprises (DVBEs) of at least three (3) percent, per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible, the Program Manager shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, or documentation demonstrating the Program Manager's good faith efforts to meet these goals.

Article 27. Other Provisions

- 27.1. The Program Manager shall be responsible for the cost of construction change orders caused directly by the Program Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Program Manager's liability for indirect or consequential cost impacts, the direct costs for which the Program Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared construction documents.
- 27.2. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Program Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Program Manager's failure to perform any of the Services furnished under this Agreement to the standard of care of the Program Manager for its Services, which shall be, at a minimum, the standard of care of Program Managers performing similar work for California community District districts at or around the same time and in or around the same geographic area of the District.
- 27.3. All of the work product of Program Manager, prepared or generated, in connection with this Agreement is the property of the District. If the District exercises the right to terminate this Agreement pursuant to the terms hereof, upon request of the District, Program Manager shall assemble and transmit to the District all of the work product of the Program Manager generated, prepared, reviewed or compiled in connection with this Agreement and the Basic Services and authorized Extra Services hereunder. Upon request of the District, the Program Manager shall make available to the District all work

product completed or in progress at the time of such a request.

- 27.4. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 27.5. The individual executing this Agreement on behalf of the Program Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Program Manager to all terms hereof.

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

Solano Community College District

Kitchell CEM, Inc.

Date: _____, 2014

Date: _____, 2014

By: _____
Jowel C. Laguerre, Ph.D.

By: _____
Dave Gianelli

Title: Superintendent-President

Title: Senior Vice-President