

**SOLANO COMMUNITY COLLEGE DISTRICT  
GOVERNING BOARD AGENDA ITEM**

**TO: Members of the Governing Board**

**SUBJECT: CONTRACT AWARD TO SWINERTON MANAGEMENT  
AND CONSULTING FOR CONSTRUCTION  
MANAGEMENT SERVICES FOR SCIENCE BUILDING  
PHASE 1 PROJECT**

**REQUESTED ACTION:**

Information    OR     Approval  
 Consent        OR     Non-Consent

**SUMMARY:**

Board approval is requested for award of contract to Swinerton Management and Consulting for construction management services for the Science Building project at the Fairfield Campus.

A request for proposal (RFP) was issued to Swinerton Management and Consulting, one of the firms in the District's approved pool of construction management firms, for construction management services for the new Science Building to be built on the Fairfield Campus. Contract negotiations are complete and the Governing Board is asked to approve the Swinerton Management and Consulting construction management services contract for the Science Project. The contract includes

*CONTINUED ON THE NEXT PAGE*

**STUDENT SUCCESS IMPACT:**

- Help our students achieve their educational, professional and personal goals
- Basic skills education
- Workforce development and training
- Transfer-level education
- Other: New instructional space and equipment.

*Ed. Code: Board Policy: 3225; 3520 Estimated Fiscal Impact: \$ 1,143,094 Measure Q Funds*

**SUPERINTENDENT'S RECOMMENDATION:**       APPROVAL       DISAPPROVAL  
 NOT REQUIRED       TABLE

Yulian Ligioso  
Vice President, Finance & Administration

**PRESENTER'S NAME**

4000 Suisun Valley Road  
Fairfield, CA 94534

**ADDRESS**

(707) 864-7209

**TELEPHONE NUMBER**

Yulian Ligioso  
Vice President, Finance & Administration

**VICE PRESIDENT APPROVAL**

March 4, 2016

**DATE SUBMITTED TO  
SUPERINTENDENT-PRESIDENT**

Celia Esposito-Noy, Ed.D.  
Superintendent-President

March 4, 2016

**DATE APPROVED BY  
SUPERINTENDENT-PRESIDENT**

**SOLANO COMMUNITY COLLEGE DISTRICT  
GOVERNING BOARD AGENDA ITEM**

**TO: Members of the Governing Board**

**SUBJECT: CONTRACT AWARD TO SWINERTON MANAGEMENT  
AND CONSULTING FOR CONSTRUCTION  
MANAGEMENT SERVICES FOR SCIENCE BUILDING  
PHASE 1 PROJECT**

---

**SUMMARY:**

*CONTINUED FROM THE PREVIOUS PAGE*

management of design efforts by the Design Build Entity, Division of the State Architect plan approval process (collaborative process, submittals, approvals, and closeout), construction of the building, and final project close-out.

The Governing Board is asked to approve a contract for Swinerton Management and Consulting in the amount not to exceed \$ 1,143,094.

The contract is available online at: <http://www.solano.edu/measureq/planning.php>.

**AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**

**SOLANO COMMUNITY COLLEGE DISTRICT**

**WITH**

**SWINERTON MANAGEMENT AND CONSULTING**

**FOR**

**FAIRFIELD CAMPUS NEW SCIENCE BUILDING PROJECT**

**March 16, 2016**

**TABLE OF CONTENTS**

ARTICLE 1. Definitions ..... 1  
ARTICLE 2. Scope, Responsibilities And Services Of Construction Manager ..... 3  
ARTICLE 3. Construction Manager Staff ..... 4  
ARTICLE 4. Schedule Of Work ..... 5  
ARTICLE 5. Construction Cost Budget..... 5  
ARTICLE 6. Fee And Method Of Payment..... 6  
ARTICLE 7. Payment for Extra Services ..... 7  
ARTICLE 8. Districtship Of Data ..... 7  
ARTICLE 9. Termination Of Contract..... 8  
ARTICLE 10. Indemnity ..... 9  
ARTICLE 11. Conduct on Project Site ..... 9  
ARTICLE 12. Responsibilities Of The District..... 10  
ARTICLE 13. Liability Of District ..... 10  
ARTICLE 14. Insurance ..... 11  
ARTICLE 15. Nondiscrimination ..... 13  
ARTICLE 16. Entire Agreement/Modification ..... 13  
ARTICLE 17. Non-Assignment Of Agreement ..... 14  
ARTICLE 18. Law, Venue ..... 14  
ARTICLE 19. Alternative Dispute Resolution ..... 14  
ARTICLE 20. Severability ..... 14  
ARTICLE 21. Employment Status ..... 15  
ARTICLE 22. Warranty Of Construction Manager ..... 16  
ARTICLE 23. Communications / Notice ..... 16  
ARTICLE 24. Other Provisions ..... 17

## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of March 16, 2016, between the Solano Community College District, a California public community college district ("District"), and Swinerton Management and Consulting ("Construction Manager") (both collectively "Parties"), for the following project ("Project"):

The construction administration of the New Science Building Project on the Fairfield Campus.

See **Exhibit "A"** for detailed Project scope.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

### ARTICLE 1. Definitions

- 1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1 **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2 **Architect:** Criteria Architect: The Architect responsible for preparing Criteria Documents for inclusion in the Design/Build Request for Proposals. Criteria Documents are Design/Build Contract Document. Architect of Record: The Architect responsible for preparing Construction Documents utilized by the Design/Builder to permit and construct the Project.
  - 1.1.3 **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor on a Conforming Set.
  - 1.1.4 **Board:** The District's Governing Board.
  - 1.1.5 **CMU:** The Compliance Monitoring Unit ("CMU") of the California Department of Industrial Relations.
  - 1.1.6 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.
  - 1.1.7 **Construction Budget:** The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.

- 1.1.8 **Construction Change Documents (“CCD”)**: The documentation of changes to the DSA-approved construction documents.
- 1.1.9 **Construction Cost Budget**: The total cost to District of all elements of the Project designed and constructed by the Design/Builder. The Construction Cost Budget does not include the compensation of the Criteria Architect, the Program Manager (if any), the Construction Manager and any subconsultants, DSA inspector, testing and special inspections, commissioning agent, the cost of the land, rights-of-way, or financing which are the responsibility of the District.
- 1.1.10 **Construction Manager**: The entity listed in the first paragraph of this Agreement.
- 1.1.11 **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Construction Manager.
- 1.1.12 **Design/Builder**: The entity responsible for design and construction of the project. Design/Builder shall be a General Contractor licensed in the State of California.
- 1.1.13 **Design Team**: The Architect that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the architect(s), plus engineer(s) or other design consultants who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. Both the Criteria Architect and Architect of Record shall have Design Teams.
- 1.1.14 **DIR**: California Department of Industrial Relations.
- 1.1.15 **DSA**: Division of the State Architect in the California Department of General Services.
- 1.1.16 **Extra Services**: District-authorized Services outside of the scope in **Exhibit “A”** or District-authorized reimbursables not included in Construction Manager’s fee.
- 1.1.17 **Fee**: The Construction Manager’s Fee is defined in Section 6.1, payable as set forth in Article 6 and in **Exhibit “D.”**
- 1.1.18 **District’s Representative**: The individual identified herein that is authorized to act on the District’s behalf with respect to the Project. The District’s Representative shall be the Executive Bond Manager. District may change the District’s Representative by notice as set forth herein.

- 1.1.19 **Program Manager:** Any program manager hired to perform program management services for the District, including all Consultant(s) to the Program Manager. If no Program Manager is hired by the District for the Project, then all references to "Program Manager" shall be read and interpreted as the District.
- 1.1.20 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.
- 1.1.21 **Record Drawings:** A final set of drawings prepared by the Design/Builder's Architect of Record that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.22 **Service(s):** All labor, materials, supervision, services, tasks, and work that the Construction 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 the Project.

**ARTICLE 2. Scope, Responsibilities And Services Of Construction Manager**

- 2.1 **Scope:** Construction Manager shall provide the Services described herein and under **Exhibit "A"** for the Project. The Parties agree that the Construction Manager's Services described herein are based on a design-builder contract structure on this Project.
- 2.2 **Coordination:** In the performance of Construction Manager's services under this Agreement, Construction Manager agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Criteria Architect team, the Project Inspector, and the Program Manager, if any. If the Construction Manager employs sub-consultant(s), the Construction Manager shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 2.3 **Construction Manager's Services:** Construction Manager shall act as the District's agent to render the services and furnish the work as described in **Exhibit "A,"** which will commence upon the receipt of a Notice to Proceed signed by the District representative. Construction Manager's services will be completed in accordance with the schedule attached as **Exhibit "C."**

- 2.4 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 Construction Manager.
- 2.5 Review of General Obligation Bond Program Report and Education Master Plan: Construction 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 Construction Manager to fully understand the nature, extent and intent of the General Obligation Bond Program Report and the Education Master Plan and the Projects.
- 2.6 Review of Measure "Q" and 2014 Facilities Master Plan: Construction Manager shall review the 2014 Facilities Master Plan for the District and other written materials made available by the District to Construction Manager to understand fully the nature, extent and intent of the Facilities Plan and the Project.
- 2.7 Additional Scope of Work: Should the District's Board determine to expand the scope of the Project and/or supplement the Project Budget based upon availability of additional funds, Construction Manager agrees to perform the additional scope of work in accordance with Exhibit B, Item 1.

**ARTICLE 3. Construction Manager Staff**

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

Principal in Charge:	Jeff Gee
Project Executive:	John Baker
Construction Manager:	Bob Collins
- 3.3 The Construction 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 Construction Manager. Regardless of the reason for the change in key personnel, 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 by the District, the Construction Manager shall immediately remove that person from the Project and provide a temporary replacement. Within seven (7) days of such removal, Construction Manager shall 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 stated in this Agreement.

- 3.5 Construction Manager represents that the Construction 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 Construction Manager.

#### **ARTICLE 4. Schedule Of Work**

The Construction Manager shall commence work under this Agreement upon receipt of a Notice to Proceed, and shall prosecute the work diligently as described in **Exhibit "A"** in accordance with the schedule attached as **Exhibit "C."** Time is of the essence and failure of Construction Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

#### **ARTICLE 5. Construction Cost Budget**

- 5.1 The Construction Manager shall have responsibility, along with the Design/Builder, to develop, review, and reconcile the Construction Cost Budget with the Criteria Architect, Program Manager, and the District throughout the design process and construction.
- 5.2 The Construction Cost Budget shall be the total cost to District of all elements of the Project designed and constructed by the Design/Builder, as defined in Article 1.
- 5.3 Construction Manager shall work cooperatively with the District's Criteria Architect and Program Manager providing review of and input to the development of the Criteria Documents and Design/Build RFP, and review and comment upon the Program Manager's cost estimates and provide value engineering recommendations if needed, so that the construction cost of the work designed by the Criteria Architect team will not exceed the District's Construction Cost Budget. The Construction Manager shall notify the District if it believes the construction cost of the work specified by the Criteria Architect Team will exceed the Construction Cost Budget. The Construction Manager, however, shall not perform or be responsible for any design or architectural services.
- 5.4 Construction Manager shall work cooperatively with the Design/Builder throughout the Project, including but not limited to, the Design Confirmation Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the construction cost of the work designed by the Design/Builder will not exceed the Design Build contract price. The Construction Manager shall maintain a log of any and all potential adjustments to the project that may have a cost impact, either cost increase or savings. The Construction Manager, however, shall not perform or be responsible for any design or architectural services.

Construction Manager shall also maintain a log, provide complete back-up documentation and Construction Manager's recommendation, and process for District approval, any Design/Builder requests for use of Owner's Contingency Allowance within the Design/Build contract.

- 5.5 Evaluations of the District's Construction Cost Budget, evaluations of the Program Manager's cost estimates, and preliminary and detailed cost estimates prepared by the Construction Manager, represent the Construction Manager's best judgment as a professional familiar with the construction industry.
- 5.6 The District may, in its sole discretion, do one, or a combination, of the following:
  - 5.6.1 Give Construction Manager written approval of an agreed adjustment to the Construction Cost Budget.
  - 5.6.2 Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.

**ARTICLE 6. Fee And Method Of Payment For Basic Services**

- 6.1 District shall pay Construction Manager an amount not to exceed one-million, one hundred forty three thousand, ninety four dollars and zero cents (\$1,143,094.00) for all services contracted for under this Agreement and based on the Fee Schedule set forth in **Exhibit "D."**
- 6.2 District shall pay Construction Manager the Fee pursuant to the provisions herein and in **Exhibit "D."**
- 6.3 Construction Manager shall bill its work under this Agreement on a percent of completion 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 Construction Manager's error.
- 6.5 The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction 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, offices, per diem expenses, printing, providing or shipping of deliverables in the quantities set forth in **Exhibit "A."**

**ARTICLE 7. Payment for Extra Services**

- 7.1 Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** at the rates set forth in **Exhibit "D"** 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 Construction Manager to the District for written approval before proceeding with any Extra Services.

**ARTICLE 8. Ownership Of Data**

- 8.1 All of the work product of the Construction Manager, prepared or generated, in connection with this Agreement is the property of the District.
- 8.2 Upon request of the District, the Construction Manager shall make available to the District all work product completed or in progress at the time of such a request.
- 8.3 After completion of the Project or, if the District exercises the right to terminate this Agreement pursuant to the terms hereof, after termination of this Agreement, Construction Manager shall assemble and deliver to District all of the work product of the Construction Manager generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, a complete set of Project records, including without limitation all documents generated by Construction 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.
- 8.4 All Project records are property of the District, whether or not those records are in the Construction Manager's possession. District retains all rights to all copyrights, designs and other intellectual

property embodied in the plans, record drawings, specifications, estimates, and other documents that Construction Manager or its Consultants prepare or cause to be prepared pursuant to this Agreement, but Construction Manager and its Consultants shall be entitled to reuse work product generated under this Agreement.

## **ARTICLE 9. Termination Of Contract**

- 9.1 If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the District, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective within 7 days of the District giving written notice thereof to the Construction Manager. In the event of a termination pursuant to this subdivision, Construction 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 Construction Manager's actions, errors, or omissions.
- 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, Construction 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 Construction Manager if there is a termination for convenience.
- 9.3 The Construction 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 of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Construction Manager. Such termination shall be effective after receipt of written notice from Construction 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 Project, the District determines that the Project should be terminated, the Construction Manager, upon written notice from the District of such termination, shall immediately cease work on the Project. The District shall pay the Construction Manager only the fee associated with the services provided and approved by District since the last paid invoice and up to the notice of termination.

- 9.6 If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's services. Upon resumption of the Project after suspension Construction Manager shall make every effort to maintain the same Project personnel.

## **ARTICLE 10. Indemnity**

- 10.1 To the furthest extent permitted by California law, Construction 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, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Construction Manager, its officers, employees, subcontractors, consultants, or agents, including without limitation the payment of all consequential damages.
- 10.2 Construction Manager shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Construction Manager's obligation pursuant to Article 10.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein. Construction 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 Construction 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 Construction Manager from amounts owing to Construction Manager.

## **ARTICLE 11. Conduct on Project Site**

- 11.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 11.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No

students, staff, visitors or contractors are to use drugs on District's property.

**ARTICLE 12. Responsibilities Of The District**

- 12.1 The District shall examine the documents submitted by the Construction Manager and shall render decisions so as to avoid unreasonable delay in the process of the Construction Manager's services.
- 12.2 The District shall provide to the Construction Manager as complete information as is available to District regarding the District's requirements for the Project.
- 12.3 The District shall retain a Criteria Architect design professional(s) whose services, duties and responsibilities shall be described in written agreement(s) between the District and the Criteria Architect.
- 12.4 Unless the contract documents require that Design/Builder provide any of the following, the District shall, in a timely manner, and with Construction 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 Construction Manager, Program Project Manager and/or the Criteria Architect's duties to recommend or provide same.
- 12.5 The District, its representatives, and consultants shall communicate with the Design/Builder through the Construction Manager.
- 12.6 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 delays, acts, or omissions of Construction Manager in its performance hereunder, shall be paid to District by Construction 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 Construction Manager, or by its employees, even though such equipment be furnished or loaned to Construction Manager by District.
- 13.4 The Construction Manager hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Construction Manager's insurance company on behalf of the District.

#### **ARTICLE 14. Insurance**

- 14.1 Construction 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 Construction 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.** Five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 14.2.2 **Commercial Automobile Liability, Any Auto.** 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.** This insurance shall cover the Construction Manager and its sub-consultant(s), if any, 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 charges 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. 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 Construction 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 All policies except for the professional liability insurance policy shall be written on an occurrence form.
- 14.5.2 The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Construction Manager; instruments of service and completed operations of the Construction Manager; premises owned, occupied or used by the Construction Manager; or automobiles owned, leased, hired or borrowed by the Construction Manager. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
- 14.5.3 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.
- 14.5.4 The Construction 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.
- 14.5.5 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.

14.5.6 Construction Manager's insurance coverage shall be primary insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Construction Manager's insurance and shall not contribute with it.

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:** Construction 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 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.

**ARTICLE 15. Nondiscrimination**

Construction 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 or mental disability, sex, sexual orientation or perceived sexual orientation, or gender identity of such person. Construction Manager shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

**ARTICLE 16. Covenant Against Contingent Fees**

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction 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 Construction 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. Construction 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. Construction Manager specifically acknowledges that in entering into this Agreement, Construction 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 Construction Manager, Construction Manager may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any assignment, transfer, delegation or sublease without the District'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's 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**

- 20.1 Notwithstanding any disputes, claims or other disagreements between the Construction Manager and the District, the Construction Manager shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.
- 20.2 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 Construction Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Construction Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Construction Manager shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 22.2 Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.
- 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 Construction Manager or any employee of Construction Manager is an employee of District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction 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 Construction Manager for District, upon notification of such fact by District, Construction Manager shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to Construction Manager under this Agreement (again, offsetting any amounts already paid by Construction Manager which can be applied as a credit against that 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, Construction Manager shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction 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 Construction 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 Construction Manager**

- 23.1 Construction Manager warrants that the Construction 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. Construction Manager further warrants that all of the work performed under this Agreement by the Construction Manager shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. The Construction Manager also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of the County in which the District is located.
- 23.2 Construction 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, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 23.3 Construction 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 Construction 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 Construction 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. Construction Manger shall cooperate with the DIR and provide certified payroll reports as required.

**ARTICLE 24. Cost Disclosure - Documents And Written Reports**

Construction 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 / Notice**

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

If to District:

Measure Q Bond Office/Brian Bush  
Solano Community College District  
4000 Suisun Valley Road  
Fairfield, CA 94534  
Facsimile: (707) 646-7710

If to Construction Manager:

**Swinerton Management and Consulting**  
John Baker  
260 Townsend Street  
San Francisco, CA 94107  
Facsimile: (415) 984-1292

If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for. If notice is given by overnight delivery service, it shall be considered delivered on the date stated in the proof of delivery.

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

**ARTICLE 26. Other Provisions**

- 26.1 The Construction Manager shall be responsible for the cost of construction change orders caused directly by the Construction Manager's willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager's liability for indirect or consequential cost impacts, the direct costs for which the Construction 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.
- 26.2 Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Construction Manager shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Construction Manager's failure to perform any of the services furnished under this Agreement to the standard of care of the Construction Manager for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California public community college districts at or around the same time and in or around the same geographic area of the District.
- 26.3 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.

26.4 The individual executing this Agreement on behalf of Construction Manager warrants and represents that she/he is authorized to execute this Agreement and bind the Construction 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**

Date: \_\_\_\_\_, 2016

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

Yulian Ligioso

Title: VP Finance & Administration

**SWINERTON MANAGEMENT AND  
CONSULTING**

Date: \_\_\_\_\_, 2016

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

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

**EXHIBIT "A"**

**RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER**

1.	BASIC SERVICES	A-1
2.	GENERAL PROGRAM SERVICES	A-2
3.	PRECONSTRUCTION PHASE	A-3
4.	CONSTRUCTION PHASE	A-4
5.	PROJECT COMPLETION	A-5
6.	FINAL DOCUMENTS	A-6
7.	WARRANTY	A-7

## EXHIBIT "A"

### RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

Construction Manager shall provide professional services necessary for completing the following:

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

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Advise the District as to the regulatory agencies that have jurisdiction over the project(s), and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation the Division of the State Architect.
- 1.3. Contract for or employ, at Construction Manager's expense, sub-consultant(s) to the extent deemed necessary for Construction Manager's Services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the Construction Manager under terms of this Agreement.
- 1.4. Cooperate with other professionals employed by the District for the design, coordination or management of other work related to the Project.
- 1.5. Chair, conduct and take minutes of periodic meetings between the District and its design professional(s) of the Site Committee meetings and of construction meetings during the course of the Project. Construction Manager shall invite the District and/or its representative to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings, but shall not be responsible for analyzing design issues raised in said meetings.
- 1.6. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to Construction Manager. Construction Manager shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 1.7. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.
- 1.8. At the request of the District, the Construction Manager and the Design/Builder will use and maintain the Management Information System ("MIS"), EADOC, to assist in establishing, and maintaining communications between the District, Program Project Manager, Construction Manager,



Criteria Architect, Design/Builder and other parties on the Project. The Construction Manager shall confirm with the District's Executive Bond Manager and Program Project Manager the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system.

- 1.9. Coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completion of such reviews.
- 1.10. Prepare an estimate of costs for all changes to scope and submit the estimate to the Program Project Manager and District for approval.
- 1.11. Provide and maintain a management team on the Project site(s).
- 1.12. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 1.13. Cooperate and coordinate with the persons responsible for operation of the District's labor compliance program.
- 1.14. Comply with any storm water management program that is approved by the District and applicable to the Project, at no additional cost to the District.
- 1.15. Ensure that all Design/Builder's project contractors and sub-consultant(s) and Construction Manager's sub-consultant(s) comply with any District-approved storm water management program that is applicable to the Project, at no additional cost to the District.
- 1.16. Provide direction and planning to ensure Project adherence to applicable environmental requirements such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the California Environmental Quality Act ("CEQA"), Air Quality Management District and State of California and Regional Water Quality Control Board laws, regulations and rules. The Construction Manager shall comply with, and ensure that all contractors and their subcontractors and Design Professionals and their sub-consultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.
- 1.17. Construction Manager is NOT responsible for:
  - 1.17.1. Ground contamination or hazardous material analysis.
  - 1.17.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
  - 1.17.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Construction Manager agrees to coordinate its work with

that of any CEQA consultants retained by the District, and to provide current information for use in CEQA compliance documents.

- 1.17.4. Historical significance report.
- 1.17.5. Soils investigation.
- 1.17.6. Geotechnical hazard report.
- 1.17.7. Topographic survey, including utility locating services.
- 1.17.8. Other items specifically designated as the District's responsibilities under this Agreement.
- 1.17.9. As-built documentation from previous construction projects.

## **2. GENERAL PROGRAM SERVICES**

- 2.1. **General:** Monitor and advise the District as to all material developments in the Project. Construction Manager shall develop and implement with District approval reporting methods for schedules, cost and budget status, and projections for the project and provide updates for the District's quarterly progress reports in the format requested by the Program Manager. The Construction Manager shall be the focal point of all communication to and from the Design/Builder and shall be copied on all communications between the District, the Program Project Manager, and the Criteria Architect.
- 2.2. **Scheduling:** Prepare methods to track and report on schedule status for the project. The Construction Manager shall develop master schedules and milestone schedules for the project, and shall report on same each month to the District.
- 2.3. **Cost Controls:** Prepare and implement methods to track all potential change orders to the Project. The Construction Manager shall generate monthly reports to the District reflecting this information.
- 2.4. **Communications to Board:** The Construction Manager may be required to attend monthly meetings of the District's Board of Education, and to provide updates.

### 3. PRECONSTRUCTION PHASE

- 3.1. **RFQ/RFP Phase:** The District's Program Management team will provide overall coordination of development of the Criteria Documents, the Request for Qualifications (RFQ) and the Request for Proposals (RFP). The Program Manager will also coordinate the selection process to determine the Design/Builder that will contract with the District to provide Design/Build services for this project.
  - 3.1.1. The role of the Construction Manager during the Criteria Documents development and the RFQ/RFP process will include, but not be limited to:
    - 3.1.1.1. Formal review of Criteria Documents at 75% completion
    - 3.1.1.2. In conjunction with the Criteria Architect and District Stakeholders, Value Engineer Criteria Documents for constructability and construction technology efficiency. Develop recommendations to the District relative to components and/or systems proposed to be included in the Project Scope, i.e. LEED/sustainability features, building components, project phasing, etc.
    - 3.1.1.3. Familiarization with Criteria Document budget and all aspects of the project.
    - 3.1.1.4. Review of Program Manager's cost estimate and assistance in setting the stipulated sum.
    - 3.1.1.5. Participation in proposal phase confidential meetings and evaluation of proposals.
    - 3.1.1.6. Assist Program Project Manager and District in final negotiations of the Design/Build contract.
- 3.2. Provide overall coordination of the Project once the Design/Build contract is approved. Serve as the focal point of communication, transmitting information to the District and Project team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Work with District to develop stakeholder group(s), communication protocols, level of participation, and schedule for participation. Develop and monitor review and approval process. Communications from the Design/Builder to the District, Program Project Manager, and the Criteria Architect shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District, Program Project Manager or the Criteria Architect design team to the Design/Builder.
- 3.3. **Budget Control:** Prepare and distribute updates to the Project Budget which will compare actual costs and progress with planned costs and progress for the overall Project to date. Advise the District should problems arise with project costs, or activities which have the potential to impact project cost or schedule, and advise the District regarding proposed corrective actions. Utilize the District's existing accounting protocols and reporting formats.
- 3.4. **Schedule compliance:** Prepare a Master Project Schedule using Critical Path Method, MS Project format, covering all Design/Build activities.

- 3.5. Assist the District in managing the Design/Builder pre-qualification process and Request for Proposals process to contract award.
- 3.6. Cause Design/Builder to prepare and manage a Criteria Compliance Log and manage review of Design/Build progress documents for conformance to the Criteria Documents. The recommendations resulting from such review shall be provided to the District and Design/Builder in writing or as notations on the design documents.
- 3.7. Develop and implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project. The system will allow for monthly progress reports to the District regarding the schedule for the Project.
- 3.8. Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 3.9. Participate in scheduled work sessions with District and Design/Builder and provide such information as necessary to inform District of the project design status, and obtain District input and approval regarding design issues. Monitor Design/Builder's scheduling, coordination, and the participation in these meetings. Monitor Design/Builder's development of System Confirmation documents. These documents shall depict the materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Criteria Documents.
- 3.10. Monitor Design/Builder's preparation of Construction Documents. Design/Builder shall prepare Construction Documents for the entire Project in full compliance with all applicable building codes, ordinances, and other regulatory authorities. The Construction Documents shall at a minimum comply with all applicable California State Building Codes, to include but not be limited to, Title 8 (Industrial Relations), Title 17 (Public Health), and Title 24 (Building Standards).
- 3.11. Conduct value engineering workshops based on progress Construction Documents, with input by the Criteria A/E, other District Consultants and District stakeholders. The results of these studies will be in written report form and will be distributed to the District, Design/Builder and other project stakeholders as appropriate. Monitor the completion of the Construction Documents to confirm that the approved value engineering items are incorporated.
- 3.12. Review progress of Design/Build Documents for constructability and construction technology efficiency. Make written recommendations to the District and Design/Builder as to construction technology, constructability, scheduling, and time of construction; as to clarity, consistency, and coordination of documents. The recommendations resulting from such review shall be provided to the District and Design/Builder in writing or as notations on the design documents.

#### **4. CONSTRUCTION SERVICES**

- 4.1. Review Design/Build cost estimates to ensure compliance with District project budget. Review and reconcile the Design/Builder's detailed schedule of values against the Criteria Document estimate of probable construction cost. Review to assess compliance with the requirements of the Criteria Documents and Design/Build RFP. Maintain a log of potential changes to the project along with potential cost impacts, if any. Keep the Program Project Manager apprised of the status on a continuous basis.
- 4.2. Administer the Design/Build contract(s).
- 4.3. Monitor the Design/Builder to verify that tools, equipment, and labor are furnished and work performed and completed within the time as required or indicated by the Contract Documents, under the direction and to the satisfaction of the District. The Construction Manager expressly agrees to verify that the requirements of the Design/Build Contract Documents are met, observed performed, and followed in accordance with the professional standards of care for construction management. The Construction Manager shall not, however, be responsible for directing the Design/Builder's means and methods.
- 4.4. Monitor Design/Builder's RFI's (to the District), and Criteria A/E responses as required, to determine the anticipated effect on compliance with the Project Budget and Schedule. Comment on matters of cost, scheduling and time of construction, and clarity, consistency, and coordination of documentation.
- 4.5. Coordinate work of the Design/Builder and effectively manage the project to achieve the District's objectives in relation to cost, time and quality. Construction Manager shall not, however, be responsible for directing Design/Builder's means and methods.
- 4.6. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected Design/Builder, and design professional(s).
- 4.7. Ensure that Design/Builder provides construction schedules as required by their construction contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The Construction Manager shall review Design Builder's construction schedules for conformity with the requirements of the construction contract(s) and conformity with the overall schedule for the Project. Where Design/Builder's construction schedules do not so conform, the Construction Manager will take appropriate measures to secure compliance, subject to District approval.

- 4.8. Ensure Design/Builder's compliance with the requirements of their respective construction contracts for updating, revising, and other obligations relative to their respective construction schedules. The Construction Manager shall incorporate Design Builder's construction schedule updates and revisions into the Project construction schedule.
- 4.9. Perform regular performance analysis of Design/Builder and include in monthly report to District. Provide claim cost and time reports during the course of the project. Review, analyze and resolve disputes during the course of the project in order to mitigate the need to resolve claims through mediation, arbitration, or litigation. Require that the Design/Builder submit a Cost loaded CPM construction schedule, review the Schedule, and verify that it is prepared in accordance with the contract requirements.
- 4.10. Continually monitor whether Design/Build contract requirements are being fulfilled and recommend courses of action to the District when Design/Builder fails to fulfill contractual requirements. Verify Design/Builder status for compliance and approval of payment.
- 4.11. The Construction Manager may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents.
- 4.12. The Construction Manager shall provide to the Program Project Manager, Criteria Architect, and the District copies of these authorizations.
- 4.13. Develop, implement, and coordinate with assistance from the District, the design professional(s), and the Project Inspector(s) ("Inspector"), procedures for the submittal, review, verification and processing of applications by contractor(s) for progress and final payments for all construction contracts.
- 4.14. Verify that safety programs are developed and submitted by the Design/Builder as required by the contract(s). Neither Construction Manager nor District shall be responsible for or have any liability for contractor(s) failure to provide, comply with, or enforce said safety programs.
- 4.15. Record the progress of the Project by a daily log.
- 4.16. Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.
- 4.17. Negotiate Design/Builder's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District's governing board.
- 4.18. Maintain a change order log for the Project and implement procedures to expedite processing of change orders.

- 4.19. Implement procedures for issues identification and resolution of actual or potential claims of Design/Builder and take actions to mitigate all claims against the District and attempt to eliminate and/or settle all claims.
- 4.20. In conjunction with the Inspector and the design professional(s), monitor work of the Design/Builder to determine that the work is being performed in accordance with the requirements of the respective Construction Documents. As appropriate, with assistance of design professional(s) and the Inspector, make recommendations to the District regarding special inspection or testing of work that is not in accordance with the provisions of the Contract Documents.
  - 4.20.1. To guard District against defects in the work of the Design/Builder, the Construction Manager shall establish and implement a quality control (QC) and quality assurance (QA) program to monitor the quality and workmanship of construction for conformity with:
    - 4.20.1.1. Accepted industry standards;
    - 4.20.1.2. Applicable laws, rules, or ordinances; and

- 4.20.1.3. All Design and Contract Documents;
- 4.20.2. Where the work of a construction contractor does not conform as set forth above, the Construction Manager shall, with the input of the Criteria Architect and the Design/Builder's design professional(s):
  - 4.20.2.1. Notify the District of any non-conforming work observed by the Construction Manager;
  - 4.20.2.2. Reject the non-conforming work; and
  - 4.20.2.3. Take any and all action(s) necessary to compel the Design/Builder to correct the work.
- 4.21. Maintain logs of requests for information ("RFI") from Design/Builder.
- 4.22. Cause the Design/Builder to develop a list of anticipated submittals along with a matrix identifying which submittals will be required to be submitted to the District and/or the Criteria Architect for conformance to District Standards and the Criteria Documents for review and approval.
- 4.23. Establish and implement procedures, in collaboration with the District and design professional(s), for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit submittals from the Design/Builder to the Criteria Architect or District, as appropriate for review and approval. Maintain submittal and shop drawing logs.
- 4.24. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, Design/Builder present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 4.25. Prepare and distribute monthly project status reports for each active project and the Program, including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 4.26. Maintain at the Project site and, if necessary, at the Construction Manager's office, a current copy of all approved documents, drawings, requirements of the Design/Build Contract Documents, addenda, change orders and other modifications, and drawings marked by the Design/Builder to record all changes made during construction. These shall include shop drawings, product data, samples, submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work. Maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the Design/Builder. At the completion of the Project, deliver all such records to District. Design/Builder and design professional(s) share responsibility to prepare "Record Drawings" and "As-Built" documents.



## 5. PROJECT COMPLETION

- 5.1. The Construction Manager shall observe, with the District's maintenance personnel, the construction contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The Construction Manager shall maintain records of start-up and testing as provided by the Design/Builder and shall ensure the District of compliance with applicable provisions of the contract(s), that all work has been performed and accepted, and that all systems are complete and operative. The Construction Manager will facilitate and coordinate the activities of the District's Commissioning agent.
- 5.2. Support District and project stakeholders in planning and procurement of Furniture, Fixtures and Equipment (FF&E) including Security, furniture, data/telecommunications, Audio/Visual, and other equipment. Create and maintain FF&E schedule including scope confirmation, procurement, delivery, and installation activities. Interface with District purchasing staff to schedule procurement of FF&E. Review requisitions and/or purchase orders for accuracy, and confirm delivery dates and delivery scope.
- 5.3. Work with District to procure move manager (issue RFP; evaluate Proposals, make recommendation for selection). Work with move manager and building users to develop move procedures and schedule; monitor execution of move manager services. Manage keying with Design/Builder and project stakeholders.
- 5.4. Punch List & back check (in coordination with Design/Builder). Monitor the completion of omission and defect items identified on the final inspection Punch list. Recommend acceptance of completed work or rejection of unsatisfactory work and coordinate walk-throughs by District personnel.
- 5.5. The Construction Manager shall determine, along with the Criteria Architect, Architect of Record, the Program Project Manager, and District, when the Project or designated portions thereof are complete.
- 5.6. The Construction Manager shall conduct, along with the Criteria Architect, Architect of Record, the Program Project Manager, and District, final inspections of the Project or designated portions thereof. The Construction Manager shall notify the District of final completion.
- 5.7. The Construction Manager shall consult along with the Criteria Architect, Architect of Record, Program Project Manager, the Project Inspector and District and shall determine when the Project and the Design/Builder' work are finally completed. The Construction Manager shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the contractor(s).

## **6. FINAL DOCUMENTS**

- 6.1. The Construction Manager shall review and monitor all as-built drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall secure and transmit to the District those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the project.

## **7. WARRANTY**

- 7.1. Obtain from the Design/Builder Operation and Maintenance Manuals, Warranties, and Guarantees for materials and equipment. Coordinate reviews of this information with the Criteria A/E, District maintenance staff, and the Commissioning Agent. Following review and incorporation of appropriate comments, deliver this information to the District and provide a copy of the information to the Criteria A/E. Also coordinate required equipment and operations training of District's maintenance staff. Assist the District in obtaining follow-up services for required warranty work for a period of one year following Final Completion of the Project. Develop warranty call-back procedures, implementation of such procedures, and participation in meetings with the District and Design/Builder to review and resolve outstanding issues.

## EXHIBIT "B"

### CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by Construction Manager if needed and requested by District as indicated in the Agreement:

1. Providing services required because of significant and reasonable documented and approved changes in the Project initiated by the District or by the Design/Builder, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction.
2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
3. Providing services made necessary by the default of contractor(s), or by major defects or deficiencies in the work of the contractor, or by failure of performance of the District's consultants, or in the absence of a final Certificate of Payment, more than sixty (60) days after the date of completion of work on the project involved.
4. The selection, layout, procurement or specification at the District's request of movable furniture, furnishings, equipment or other articles that is not included in the Contract Documents.
5. Providing surveys relative to future facilities, systems or equipment which are not intended to be constructed during the Construction Phase.
6. Preparation of applications and supporting documents for governmental grants and permits other than as required in this Agreement.
7. Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District.
8. Providing coordination of Services or providing services related to Services performed by the District's own forces.
9. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is party thereto, except for a contractor's hearing necessitated by its request to substitute a subcontractor.
10. Performing technical inspection and testing.
11. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted scope of program or project management practice.
12. Construction Manager may be compensated for any significant additional time required for training and familiarization of assigned projects due to changes in District and/or Program Management personnel.

The rates identified in the Fee Schedule attached to **Exhibit "D"** include overhead, administrative cost and profit and shall be utilized in arriving at the fee for Extra Services.

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

EXHIBIT "C"  
SCHEDULE OF WORK

NEW SCIENCE BUILDING	2015													2017													2018													2019		
	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	
DBE Prequalifications	DB Pre-Quals																																									
Programming/Criteria Docs	Criteria Documents																																									
DBE Procurement	DBE Procurement																																									
Design Development (DD)														Design Development																												
Construction Documents (CD)														Construction Docs																												
DSA Increment #1														DSA Increment #1																												
DSA Increment #2														DSA Increment #2																												
Bidding (by DBE)														Bidding																												
Construction																																										
Grading/Site Utilities														Grading/Utilities																												
Foundation/Structure														Found./Structure																												
Shell/Core/Interiors														Shell/Core/Interiors																												
Landscape/Sitework														Landscaping																												
Move-In																											Move-in															
Close-Out																											Close-out															

**EXHIBIT "D"**

**FEE SCHEDULE**

**Compensation**

1. The Construction Manager's fee set forth in this Agreement shall be full compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**
2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses, without advance written approval of the District.

**Method of Payment**

1. Construction Manager shall submit monthly invoices on a form and in the format approved by the District.
2. Construction Manager shall submit these invoices in duplicate to the District via the District's authorized representative.
3. Construction Manager shall submit to District on a monthly basis documentation showing proof that payments were made to his/her/its sub-consultants.
4. Upon receipt and approval of Construction Manager's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.

**Hourly Rates**

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

<b><u>Job Title</u></b>	<b><u>Hourly Rate</u></b>
Principal In Charge:	\$180.00
Project Executive:	\$180.00
Construction Manager	\$160.00
Estimator	\$140.00
Project Engineer	\$ 90.00

2. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed ten percent (10%).