

SIERRA SANDS UNIFIED SCHOOL DISTRICT

**Board of Education
Special Concurrent Meeting**

**SEPTEMBER 8, 2016
Ridgecrest City Council Chambers
100 West California Avenue
*www.ssusd.org***

We, the members of the Board of Education of the Sierra Sands Unified School District, are committed to providing the highest quality education in a safe environment to all K-12 students. We believe the school shares with the family, church, and community the responsibility for developing life-long learners who are responsible, productive citizens.

A G E N D A

CALL TO ORDER AND PLEDGE TO THE FLAG

7:00 P.M.

Amy Castillo-Covert
Bill Farris
Tim Johnson, Vice President/Clerk
Kurt Rockwell
Michael Scott, President

Ernest M. Bell, Jr., Superintendent

MOMENT OF SILENCE

1. ADOPTION OF AGENDA

10. CONSTRUCTION ADMINISTRATION

10.5 Approval to Enter into an Agreement with Colombo Construction Company, Inc. for Construction Management Services for Murray Middle School and Burroughs High School

11. ADJOURNMENT

10. CONSTRUCTION ADMINISTRATION

10.5 Approval to Enter into an Agreement with Colombo Construction Company, Inc. for Construction Management Services for Murray Middle School and Burroughs High School

BACKGROUND INFORMATION: In November of 2012, the district received two grants from the Department of Defense (DoD) Office of Economic Adjustment (OEA) for an approximate thirty-nine million dollars for the construction of a new Murray Middle School and an approximate thirty-one million dollars for the modernization of Burroughs High School. In response to these grants, the district has advertised, awarded contracts, and commenced construction for each of those projects. While it recently became necessary to terminate the existing Construction Management Consultant (CM), it is recognized that the requirement for continuing CM services still exists due to the complexity of the projects as well as budget and schedule demands. These services would be provided for construction phase operations for all projects. District staff and the district's consultants believe that the ability to expeditiously enter into a contract for CM services is the most effective way to serve the interests of the district and maintain the integrity of the projects.

CURRENT CONSIDERATIONS: The district reviewed the short list of CM candidates identified in the initial Request for Qualifications procedures for CM services. Upon review of the previously identified and interviewed firms and discussion with them regarding available staff to accomplish the district's DoD projects, Colombo Construction Company, Inc. (CCC) was identified as the most qualified team to execute continuing CM services for the projects. CCC provided a proposal of services and fees, along with a preliminary outline schedule to the district for review. Upon review of the proposal by district staff and Program Management consultants, it was determined that the proposal of fees and services meets the needs and budget constraints of the projects.

FINANCIAL IMPLICATIONS: The CCC Proposal for Fees and Services totals \$2,245,776, including personnel expense as well as fee, overhead, and profit. All expenses inside the construction trailer are included. It is projected that DoD funds will be used for 80% of the expense and Fund 35 and IKSFA will be used for the remaining 20% required to be provided by the district in both grant agreements.

SUPERINTENDENT'S RECOMMENDATION: It is recommended that the board authorize district staff to enter into an Agreement for Construction Management Services with Colombo Construction Company, Inc. in support of the New Murray Middle School and the Burroughs High School Modernization projects.

September 6, 2016



Mrs. Pamela Pence
Program Manager
Sierra Sands Unified School District
113 W. Felspar Avenue
Ridgecrest, CA 93555

**RE: Burroughs High School Modernization
Murray Middle School – New School**

Dear Mrs. Pence:

We propose the following fee structure for the Sierra Sands Burroughs High School Modernization and Murray Middle School New School Campus.

We will provide all Construction Management Services required to manage the multiple prime contractors for the duration of the project including project management, field supervision, safety oversight, monthly reports, weekly construction meetings, clerical and accounting functions. All jobsite offices, computers and general office supplies / equipment to support our efforts are included in our Fee.

- **Staff Costs**

All staff costs will be reimbursed by the District per Attachment 1 "Project Staffing Rate Schedule". These rates include all transportation and housing costs. Additional labor services would be reimbursed per the rates and terms per Attachment 2 "Additional Services Rate Schedule".

Project Staffing will be as follows:

1. Field Project Manager, - Project Management of Burroughs High School and Murray Middle School
2. Project Administrator – Administrative Services for Burroughs High School and Murray Middle School.
3. Burroughs High School
 - a. 2- Project Superintendents
 - b. 1 Project Engineer
4. Murray Middle School
 - a. 1- Project Superintendent
 - b. 1- Project Engineer

GENERAL CONTRACTORS License No. 191788



Mrs. Pamela Pence, Program Manager
Sierra Sands Unified School District
Page 2

- **Fee, Overhead & Profit**

For our home office overhead and profit, Colombo proposes a flat fee of Five Hundred Twenty-five Thousand Dollars (\$525,000.00) for the Burroughs High School Modernization and Five Hundred Twenty-five Thousand Dollars (\$525,000.00) for the Murray Middle School New Campus. This Flat Fee is based on twelve months of construction and includes the costs for the construction office equipment and supplies (computers, phones, fax machines, copiers, paper, and office supplies).

- **Jobsite Requirements**

There will be costs to the project for jobsite administrative and security requirements. These include, but are not necessarily limited to the Construction Trailers; monthly utility costs for temporary power, gas, telephone, water for Construction Trailers and construction work; after-hours security, temporary protection, etc. For items not contracted for in the General Facilities Prime Contract, our recommendation is to procure such costs on a case-by-case basis in the best interests of the District. Services and supplies may be reimbursed on an actual cost basis (with appropriate documentation) or furnished by the District. Districts sometimes have relationships with vendors that are able to provide services or supplies for the project at very competitive rates.

On behalf of the entire Colombo Construction Team, thank you for the opportunity to submit our proposal. We are very excited about the opportunity to work with you and your staff on these projects.

Sincerely,

COLOMBO CONSTRUCTION CO., INC.

A handwritten signature in black ink, appearing to read "Tom Reid". The signature is written in a cursive style with a long horizontal line extending to the left.

Tom Reid,
President



SIERRA SANDS SCHOOL DISTRICT
CONSTRUCTION MANAGEMENT PROPOSAL

PERSONNEL COSTS

September 7, 2016

Burroughs High School Modernization

	Monthly	12 Months
2 Superintendents @ \$17,300	\$34,600	\$415,200
1 Project Engineer @ \$10,380	\$10,380	\$124,560
1 Administrator (part time) @ \$4,325	\$ 4,325	\$ 51,900

Murray Middle School New Campus

	Monthly	12 Months
1 Field Project Manager @ \$18,338	\$18,338	\$220,056
1 Superintendent @ \$17,300	\$17,300	\$207,600
1 Project Engineer @ \$10,380	\$10,380	\$124,560
1 Administrator (part time) @ \$4,325	\$ 4,325	\$ 51,900
Totals	\$99,648	\$1,195,776

These rates include all wages, benefits, taxes, insurance, travel and lodging. The Total for 12 Months is offered as a Guaranteed Maximum Price based on 12 months to completion.

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is entered into this 8th day of September, 2016 by and between Sierra Sands Unified School District, a California School District ("District") and Colombo Construction Company, Inc., herein referred to as "the CM."

WHEREAS, Sierra Sands Unified School District was awarded two grants in December of 2012 by the Department of Defense (DOD) – Office of Economic Adjustment to modernize Burroughs High School (BHS) and to build a new Murray Middle School, adjacent to BHS. The program under which the grants were received was the result of brand new legislation generated by the fact that many of the school sites on military property were in dire need of repair and restoration. One of the conditions of the grants is that the DOD will pay 80% of the project whereas the district is responsible for the other 20%.

WHEREAS, in connection with the Projects, on or about June, 2014, the District issued a Request for Qualifications ("the RFQ") pursuant to which the District requested responses from Construction Management Services firms to provide construction management and related services for the Projects.

WHEREAS, the CM submitted a proposal (the "CM Proposal") dated September 6, 2016 to perform or provide Construction Management Services, including, without limitation, the Basic Services described herein.

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

WHEREAS, the District desires to retain the CM to provide and perform construction management and related services in connection the Construction and Post Construction phases of the Projects assigned by the District to the CM under this Agreement.

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

AGREEMENT

1 BASIC SERVICES; GENERAL

1.1 General. CM shall provide Basic Services and authorized Additional Services for the Project, as more particularly enumerated in this Agreement.

1.2 The Projects.

1.2.1 Burroughs High School Modernization Project. The modernization of Burroughs High School ("BHS") involves complete renovation of the permanent instructional spaces throughout the campus along with the addition of a new Administration Building and a new Concessions facility adjacent to the existing stadium. Work will include replacement of all existing HVAC systems, site paving improvements, a new and enlarged student parking lot, and modern audio visual and technology infrastructure. The total project budget for BHS is \$31,909,274.

1.2.2 Murray Middle School Project. The new construction of Murray Middle School ("Murray") will be designed to house all Murray students and in addition to classrooms, the grounds will contain a Music and Art Building, a library, a

gymnasium, Multi-Purpose Room and administration building along with playing fields and a central campus courtyard. The total project budget for Murray \$39,542,838.

- 1.3 Multi-Prime Delivery Method. The CM acknowledges that the District is using a multi-prime delivery method for the Projects, constructing the Projects by Trade Contractors each under direct contract to the District for a specific defined portion of the Project; and the CM's Basic Services hereunder shall include the following.
- 1.3.1 Master Project Schedule. Based upon the Bid Time Schedule prepared by the prior CM and the Trade Contractors' separate Construction Schedules prepared by Trade Contractors in accordance with the terms of their Trade Contracts, the CM shall develop a Master Project Schedule for District review and acceptance. The CM shall modify the Master Project Schedule as necessary to obtain the District Representative's acceptance of the entirety thereof. The Master Project Schedule accepted by the District shall be distributed by the CM to Trade Contractors and other Project Participants. During the course of Project construction and based upon Trade Contractors' updated Construction Schedules, CM shall monitor and update the Master Project Schedule on a monthly basis or more frequently as may be requested from time-to-time by the District so that the District is kept fully informed at all times of the status and overall construction progress of the Project construction and the status of each Trade Contractors' construction progress. Where the actual rate of construction progress of the Project or a Bid Package is behind that indicated by the then current Master Project Schedule, CM shall advise and make recommendations to the District for remedial measures. The CM shall implement such measures as directed or authorized by the District.
- 1.4 Completion of Project Basic Services. All Basic Services and authorized Additional Services for the Project shall be performed and completed by employees of the CM. To the extent that the District has established a Project Budget and/or a Project Schedule for the Project, the Basic Services of the CM shall include confirmation that the Project Budget and the Project Schedule are sufficient and reasonable for the Project. The CM shall prepare and submit a monthly report of the Project Budget to the District indicating: (1) shortfalls or surpluses in the budget, and (2) recommendations for cost reductions, value engineering, or revisions to the District's Project requirements. The CM shall consult with the Architect and District to suggest reasonable adjustments in the scope of the Projects, if any, to adjust the construction costs to conform to the Project Budget. The CM's Basic Services shall include the implementation of measures to modify the Project, Project Budget or Project Schedule, as directed or authorized by the District.
- 1.5 Meetings and Conferences. The CM acknowledges that completing the design, bidding and/or construction of the Project and the CM's completion of Basic Services for the Project under this Agreement involves the input or collaboration of a number of parties, including without limitation, the District's personnel, District shared governance committees, end-users, academic and operational departments of the District, the District's Board of Education and the community at large. The CM agrees that although not specifically enumerated in this Agreement, the scope of the CM's Basic Services in connection with the Project shall be its attendance and participation in meetings and conferences with the various parties engaged in an element of the design, bidding and/or construction of the Project as requested or directed by the

District. The CM's Basic Services for the Project shall include the CM's taking, transcribing and/or distribution of minutes of such meetings, as directed or authorized by the District.

- 1.6 Relationship of CM to Other Project Participants. CM's services hereunder shall be provided in conjunction with contracts between the District and: (i) the Architect; (ii) the Contractor(s); (iii) the Project Inspector; (iv) Test/Inspection Service Providers; and (v) others providing services in connection with design, bidding and/or construction of the Project, including without limitation CMs for the Project who are retained by the District (collectively "Project CMs").
- 1.7 Project Inspector; Test/Inspection Services. If requested by the District, the Basic Services of the CM for the Project shall include the CM's assistance to the District in the selection and retention of the Project Inspector, and/or Test/Inspection Service Providers. Regardless of the extent of the CM's Basic Services for the Project relating to the selection or retention of the Project Inspector or Project Test/Inspection Service Providers, the Basic Services of the CM for the Project shall include the CM's coordination, scheduling, monitoring and general oversight of the services of the Project Inspector, Test/Inspection Service Providers and other Project CMs. Unless otherwise set forth in this Agreement, the CM is not, however, responsible for the completeness or accuracy of the work product or services provided by the Project Inspector, Test/Inspection Service Providers or other Project CMs.
- 1.8 CM Project and Construction Management Team. CM will establish a Project and construction management team appropriately staffed to perform the Basic Services for the Project. CM's personnel and the specific roles, authority and responsibility of the CM's personnel are subject to the reasonable approval of the District; if any of the CM's District-approved personnel are removed from the Project, the District shall have the reasonable right of approval of the CM's replacement personnel. Prior to commencement of the Basic Services, the CM shall designate in writing a Project Manager who shall be reasonably satisfactory to the District and who shall have the overall responsibility for performance of CM's obligations hereunder and be authorized to act on behalf of the CM in discharge of CM's obligations in connection with the Project. The CM's Project Manager for the Project shall be, at all times while providing Basic Services for the Project, a contractor or architect licensed under California law or an engineer registered under California law. All of the Basic Services for the Project shall be performed by the CM's Project Manager or by other employees of the CM acting under the direction and control of the CM's Project Manager.
- 1.9 Regulatory Agencies. The Basic Services of the CM shall include coordination, management and scheduling of the services of the Architect and Project CMs with the procedures or processes for review(s) of Project Design Documents or the issuance of approvals, permits and other authorizations from regulatory agencies relating to the design, bidding or construction of the Project. The foregoing shall include without limitation, and as applicable to the Project, the review, approvals, permits and other authorizations issued by the Division of State Architect ("DSA") and California Community College Chancellor's Office.
- 1.10 CM Standard of Care. CM shall provide the Basic Services and authorized Additional Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. CM's services hereunder shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption or delay to the

- orderly progress and timely completion of the design, bidding and construction of the Project. The CM shall be liable to the District for all losses, costs, expenses, damages or other liabilities arising out of the failure or refusal of the CM to complete the Basic Services for the Project in accordance with the foregoing.
- 1.11 Document Management and Controls. The CM is responsible for management and control of document generation, transmission and archiving for the Project, as more particularly set forth herein. As used herein, "documents" refer to all drafts, copies and originals of Drawings, Specifications, calculations, memos, reports, notes and other materials of a written, graphic or electronic nature which relate in any manner to the Project or the design, bidding or construction of the Project.
- 1.11.1 District Processes and Procedures. The CM's generation, transmission and archival of documents relating to the Project shall conform to the processes and procedures established by the District, including modifications thereto implemented from time-to-time by the District.
- 1.11.2 Web-Based Management and Control of Documents. The District reserves the right to utilize an internet based document management and control system for Project records. If the District elects to implement such an internet based documents management system, the Contract Price hereunder shall not be subject to modification and all of the following shall apply. The District will provide the CM and its personnel with access to software and training materials for the District's documents management and control systems without cost or charge to the CM. The CM is responsible, without adjustment of the Contract Price to provide or acquire computer hardware equipment and other equipment/services necessary for use of the District documents management and control software. The CM and its personnel shall use the District provided document management software solely and exclusively in connection with the discharge of the CM's obligations relating to the Project and not for any other purpose or other project. The Basic Services of the CM includes training the CM's personnel to use the District's document management software and the use thereof in connection with management and control of the documents for the Project.

2 BASIC SERVICES; CONSTRUCTION PHASE

- 2.1 Administration and Coordination of Construction Contract and Construction. CM will provide administrative, management and related services necessary to administer the Construction Contract for the Project in conjunction with the services and responsibilities of the Architect. The scope of CM's services in the administration and management of the Construction Contract shall include all activities, responsibilities and obligations set forth herein and all CM activities, responsibilities and obligations set forth in the Contractor's Construction Contract, which shall be incorporated herein by reference, including, without limitation: (i) receive, review and forward to the District and the Architect the Contractor(s)' Certificates of Insurance and Bonds along with commentary as to the extent to which the same comply with requirements of the Construction Contract; (ii) advise and make recommendations to the District for issuance of Notice(s) to Proceed directing commencement of construction of the Project or portions thereof, including issuance of the Notice(s) to Proceed on behalf of the District; (iii) scheduling, coordinating and conducting pre-construction and construction meetings; recording, maintaining and distributing minutes thereof; (iv) in consultation with the Architect, develop and implement procedures for the submittal and processing of Submittals; (v) in consultation with the District and the Architect, develop and implement procedures for the handling and disposition of the Contractor's

requests for information or clarifications; (vi) establish and implement procedures for the transmittal and receipt of communications, drawings and other information between CM, Architect and the Contractor relating to construction of the Project; (vii) assist the District in selection and retention of Test/Inspection Service Providers and the Project Inspector; (viii) review the Contractor's Construction Schedules and implement provisions of the Construction Contract relating to the Contractor's obligations for development, maintenance, updating and compliance with the Construction Schedule for the Project; (ix) coordinate the mobilization and construction sequencing of all Contractors; (x) establish and coordinate Site staging, lay down and storage areas; (xi) provide management, oversight and related services as required to coordinate the work of the Contractors with each other and the activities and responsibilities of the Architect and the District in order to complete the Project in accordance with the Contract Documents and this Agreement within the Contract Time and Project Budget. The CM shall provide a full-time staff, with qualified and experienced personnel and management, at the Project sites to provide and perform the requirements and obligations of this Agreement. The CM's Basic Services relating to Project communications shall utilize forms, processes and other measures implemented by the District in connection with construction of the Project, including without limitation, an internet-based document control management system; if implemented for the Project by the District. Unless otherwise expressly provided herein, the CM shall distribute monthly to the Architect, Project Inspector and District Representative Change Order Logs, RFI Logs, other reports and similar materials. The foregoing notwithstanding, if the circumstances of the Project require or as directed by the District, the CM shall: (i) distribute such materials more frequently than monthly; and (ii) distribute other such similar materials with such frequency as directed by the District.

- 2.2 Construction Phase Meetings and Conferences. The CM shall conduct meetings and conferences during the Construction Phase of the Project.
- 2.2.1 Pre-Construction Conference. The CM shall conduct a Pre-Construction Conference after award of the Contract for the Project and prior to commencement of construction activities at the Site to address matters relating to: (i) scope and other requirements of the Project; (ii) the schedule for completion of the Project; (iii) administrative matters, including the submission and processing of payment requests, requests for information, Submittals and other similar matters; (iv) prevailing wage rates, Certified Payroll Records and other matters relating to the employment of labor; (v) test and inspection requirements; and (vi) other matters relating to the Project.
- 2.2.2 Regular Construction Conferences. During the course of construction of the Project, the CM shall conduct Regular Construction Conferences on a weekly basis. The Regular Construction Conferences shall address at least the following: (i) Project Progress Schedule reviews, updates and look-aheads; (ii) outstanding and open matters from prior Regular Construction Conferences; (iii) coordination of installation activities; and (iv) other matters relating to the Project, including without limitation, matters relating to the progress of Project construction, workmanship, scope and coordination of Project construction activities.
- 2.2.3 Special Construction Conferences. As required by the circumstances of construction of the Project or as directed by the District, the CM shall call and conduct Special Construction Conferences to address matters not subject to the agenda or subject matter of Regular Construction Conferences.
- 2.2.4 Minutes of Conferences. The CM shall maintain and issue minutes of Construction Phase Meetings and Conferences to the Contractor, the District, the Architect, the Project Inspector and others as directed or authorized by the

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

- 2.3 Coordination of Technical Inspection and Testing. The CM shall coordinate with the District's certified inspector all testing required by the Architect or other third parties. If requested, the CM shall assist the District in selecting any special consultants or testing laboratories. All inspection reports shall be provided to the CM on a regular basis.
- 2.3.1 Project Inspection Cards. The CM shall verify that the Project Inspector has the appropriate amount of Project Inspection Cards (Form DSA 152) that are needed for the inspection and completion of the entire Project prior to the commencement of any work by any Trade Contractor on the Project. The CM shall immediately inform the District and the Architect if the Project Inspector does not have the requisite Project Inspection Cards needed for the inspection and completion of the Project. The CM shall review the DSA approved Statement of Structural Tests and Special Inspections (Form DSA 103) for the Project prior to the commencement of any work on the Project in order to become familiar with the all testing and inspections that are required for the completion of the Project.
- 2.3.2 Coordination of Testing and Inspection. The CM shall meet with the Architect, Project Inspector, District, Trade Contractors, Laboratory of Record and Special Inspectors as needed throughout the completion of the Project to verify, acknowledge and coordinate the testing and special inspection program required by the DSA approved Construction Documents.
- 2.3.3 Timely Requests for Inspection. The CM shall coordinate with all Trade Contractors to ensure timely requests for inspections are made and that the requirements related to the DSA's Inspection Card Process and Form DSA 152 are being met for the Project. The CM shall notify the District, in writing, when delays or impacts to the Project Schedule are being caused by a party not complying with DSA's Inspection Card requirements and Form DSA 152. The CM shall establish a procedure to verify that the Architect, Architect's Consultants, Project Inspector, Laboratory of Record and Trades Contractors are performing services in compliance with the "Construction Oversight Process Procedure" required by the California Code of Regulations, Title 24 and as further described in the DSA's PR 13-01 and 13-02. As part of the procedure established under this section, CM must be able to verify that all interim verified reports and verified reports are being submitted to the DSA by the responsible parties in a timely manner. As part of the monthly reporting process, CM shall notify the Owner when the Architect, Architect's Consultants, Project Inspector, Laboratory of Record or Contractor have failed to comply with the Construction Oversight Process Procedure and must inform the Owner of the impact such failure(s) will have upon the Project and its schedule.

- 2.3.4 DSA Requirements. Any references to the DSA requirements, DSA forms, documents, manuals applicable to the Project shall be deemed to include and incorporate any revisions or updates thereto.
- 2.4 Monitoring of Construction Costs; Cost Reports. CM will monitor on-going Construction Costs and advise the District of the financial condition of the Project by: (i) development of Project cash flow reports, forecasts and other financial reports for the Project, including those reflecting variations between actual Construction Costs and the Construction Budget and estimated costs of unperformed activities of the Project; (ii) maintaining records reflecting the actual costs for activities completed or in progress, including records relating to work performed on a unit cost basis and additional work performed by the Contractor on a time and materials basis; (iii) monitoring and advising the District of costs pertaining to potential, pending and completed Changes; and (iv) advising and making recommendations to the District for adjustments to the Construction Budget relative to actual or anticipated Construction Costs. The CM shall prepare and submit cost reports of the Project to the District Representative on a monthly basis; provided that if the District Representative reasonably determines that more frequent cost reports for the Project are required, the CM shall comply with the directive(s) of the District Representative. The information compiled by the CM and reports generated by the CM relating to Construction Costs of the Project shall be in such detail, format and in accordance with processes/procedures required by the District. In addition, the extent of detail and the nature of the format of such reports, the information compiled by the CM and reports generated by the CM shall specifically indicate the original Contract Price of the Construction Contract, the extent of adjustment of the Contract Price by Change Orders approved by the District and the extent of potential further adjustment of the Contract Price as of the date of the CM's report based upon the Changes or potential Changes known at the time of the CM's preparation of a cost report.
- 2.5 Applications for Progress Payments. CM will participate in the review and disbursement of Progress Payments to the Contractor and in consultation with the District, Project Inspector and the Architect, make recommendations for the disbursement of Progress Payments to the Contractor as follows: (i) participate with the District, Architect and Project Inspector in the review, evaluation and acceptance of the Contractor's Schedule of Values breaking down the compensation due the Contractor under the terms of the Construction Contract, the foregoing includes all necessary discussions and conferences with the District, Architect, Project Inspector and/or the Contractor to develop a Schedule of Values acceptable to the District in its entirety; (ii) assist in the development of procedures for submittal, review, processing and disbursement of Progress Payments to Contractor, along with associated forms and reporting systems; (iii) based upon CM's observations and evaluations of each Application for Progress Payment, CM will review and certify to the District the amount due on each such Application for Progress Payment; CM's certifications constitute a representation to the District that, based on CM's observations at the Site, the data in each Application for Progress Payment, and to the best of CM's knowledge, information and belief, the Work has progressed to the point indicated in the Application for Progress Payment and the quality of the Work is generally in accordance with the Contract Documents; and (iv) CM's representations relative to Applications for Progress Payment are subject to an evaluation of the Work for conformity with the requirements for Substantial Completion, results of subsequent tests, inspections and other procedures, minor deviations from requirements correctable prior to completion and any specific qualifications expressed by CM in its certification. CM's issuance of a Certificate pursuant to the preceding shall be a

representation to the District that the Contractor is entitled to payment in the amount so certified. The CM's review of Applications for Progress Payment shall be undertaken and completed in a timely manner so that the District can meet its obligations to make Progress Payments due the Contractor within the time permitted by applicable law without incurring interest liability or other penalties/liabilities. If the CM fails to timely complete its review of any of the Contractor's Applications for Payment and the failure to timely complete such review results in the District incurring interest liability or other penalties/liabilities, the CM shall be liable to the District for all such interest liability or other penalties/liabilities. The District may withhold such amount from the Contract Price then or thereafter due the CM. The CM's liability pursuant to the foregoing shall be in addition to, and not in lieu of, all other liabilities of the CM to the District for losses, costs, damages or any other liability of the District arising out of the CM's failure to timely complete review of a Contractor's Application for Progress Payment.

2.6 Completion; Punchlist.

- 2.6.1 Substantial Completion. In consultation with the Architect, Project Inspector and the District, the CM will assist in ascertaining the achievement of Substantial Completion of the Project. If upon inspecting the Project, the CM determines that the Contractor has achieved Substantial Completion, the CM shall promptly thereafter prepare and issue to the District a certification from the CM indicating the CM's determination that Substantial Completion has been achieved. If upon inspection of the Work of the Project, the CM determines that Substantial Completion has not been achieved, the CM will assist the Architect and Project Inspector in noting the conditions of the Project and the measures necessary to achieve Substantial Completion of the Project. Upon the Contractor achieving Substantial Completion of the Project, the CM will participate with the District, Project Inspector and the Architect to inspect the Work completed to note Punchlist items to be completed as a condition to achieving Final Completion. The CM's Basic Services pursuant to the foregoing shall include, without limitation, the CM's scheduling and coordination of the Architect, Project Inspector and District Representative at the Project walk to determine achievement of Substantial Completion, compilation of lists of completion items and/or Punchlist items and distribution of completion/Punchlist items to the Contractor, Architect, Project Inspector, District Representative and others responsible for completing any portion of the completion/Punchlist items.
- 2.6.2 CM Monitoring of Punchlist Completion. The CM shall monitor the Contractor's performance and completion of Punchlist items noted upon Substantial Completion. If the Contractor fails or refuses to complete any Punchlist item or fails to do so in a timely manner, the CM shall notify the District Representative in writing of such failure or refusal along with the CM's specific recommendations for remedial actions to have the Punchlist items completed. The CM shall implement such measures as directed or authorized by the District.
- 2.6.3 Final Completion. Upon the Contractor's completion of the Punchlist items, the CM in consultation with the Architect and the Project Inspector shall inspect the Project to verify the Contractor's completion of Punchlist items. If upon such inspection, the CM determines that Punchlist items remain to be completed, the CM shall provide the District Representative with a written itemization of all such remaining Punchlist items, along with the necessary corrective/remedial measures to complete such Punchlist Items. The CM shall implement corrective/remedial measures as directed or authorized by the District and the CM shall monitor the Contractor's performance until all Punchlist items are completed. Upon the Contractor's completion of the Punchlist items the

Contractor's compliance with all requirements of the Construction Documents relating to the Contractor's Close-Out activities, the CM shall issue a certificate to the District verifying that Final Completion has been achieved.

2.7 Request(s) for Information ("RFI").

2.7.1 RFIs; RFI Logs. Based upon the processes and procedures established by the District for the submission, review and response to the Contractor(s)' RFIs, the CM shall implement such processes and procedures during construction of the Project. In addition to such processes and procedures, the CM shall maintain a log of RFIs ("RFI Log") which sets forth at least the following: (i) sequential numbering of RFIs; (ii) dates of: submission of each RFI, transmittal of the RFI to the Architect, the Architect's response to the RFI and the transmittal of the Architect's response to the Contractor; and (iii) actual or potential cost/time impact of each RFI and the response to each RFI. The CM's RFI Log shall include an assessment of the responsibility for any time or cost impacts arising out of a RFI or the response thereto. The CM shall distribute the then current RFI Log to the District Representative and others, as directed by the District Representative, on a monthly basis throughout construction of the Project.

2.7.2 CM Responsibilities. The CM's Basic Services and responsibilities relating to RFIs and responses to RFI include without limitation: (i) management, coordination and completion of the distribution of RFIs and RFI responses to all appropriate parties in a timely manner so that cost/time impacts of a RFI or a RFI response are eliminated or mitigated; (ii) review RFIs initiated by the Contractor for merit and confirmation that the Contractor has not utilized the RFI process for any purpose other than the clarification of an ambiguity, coordination issue, error, omission or similar matter in the Construction Documents; (iii) review RFI responses for timeliness of responses and reasonableness of the response to each RFI. In the course of discharging its responsibilities relating to the submittal, review and processing of RFIs, the CM shall determine whether any RFI or RFI response has a potential cost or time impact. If the CM determines that any RFI or RFI response has a potential cost or time impact, the CM shall: (i) notify the District Representative in writing of such determination; (ii) provide the District Representative with an assessment of the extent of impacts to time or costs as a result of a RFI or RFI response; (iii) provide the District Representative with specific written or graphical recommendations of measures to mitigate or eliminate the potential cost or time impact of a RFI or RFI response; and (iv) implement such measures as directed or authorized by the District Representative. If the CM determines, or should have determined in the discharge of its obligations hereunder, that a RFI or RFI response has a potential cost or time impact and the CM fails or refuses, for any reason to fully perform and discharge its obligations set forth herein, the CM shall be responsible for all cost and financial impacts of such an RFI or RFI response.

2.8 Submittals. Based upon the processes and procedures established by the District and the Construction Documents for the Project relating to the submission, review and evaluation of the Contractor(s)' Submittals, the CM shall implement such processes and procedures during construction of the Project. In addition to such processes and procedures, the CM shall maintain a log of Submittals ("Submittal Log") for the Project which set forth at least the following information: (i) sequential numbering or other means of tracking Submittals; (ii) the dates of: submission of a Submittal to the CM from a Contractor, the CM's transmittal of each Submittal to the Architect, the Architect's response to the Submittal and the CM's transmittal of the Architect's

Submittal response to the Contractor; and (iii) brief summary of Architect's Submittal response, including the requirement, if any, for revised or additional Submittals. The CM shall distribute the then current Submittal Log to the District Representative and others, as directed by the District Representative, on a monthly basis throughout construction of the Project.

2.9 Project Progress.

2.9.1 Contractor's Schedules.

2.9.1.1 Trade Contractors Construction of the Project. The District has elected to construct the Project by multiple Trade Contractors. Accordingly, the CM's Basic Services shall include the following.

2.9.1.1.1 Master Project Schedule. Based upon the Bid Time Schedule prepared by the CM pursuant to this Agreement and the Trade Contractors' separate Construction Schedules prepared by Trade Contractors in accordance with the terms of their Trade Contracts, the CM shall develop a Master Project Schedule for District review and acceptance. The CM shall modify the Master Project Schedule as necessary to obtain the District Representative's acceptance of the entirety thereof. The Master Project Schedule accepted by the District shall be distributed by the CM to Trade Contractors and other Project Participants. During the course of Project construction and based upon Trade Contractors' updated Construction Schedules, CM shall monitor and update the Master Project Schedule on a monthly basis or more frequently as may be requested from time-to-time by the District so that the District is kept fully informed at all times of the status and overall construction progress of the Project construction and the status of each Trade Contractors' construction progress. Where the actual rate of construction progress of the Project or a Bid Package is behind that indicated by the then current Master Project Schedule, CM shall advise and make recommendations to the District for remedial measures. The CM shall implement such measures as directed or authorized by the District.

2.9.1.1.2 Trade Contractors' Schedules. CM shall review the Construction Schedules prepared by each Trade Contractor and updates thereof for: (i) verification of conformity to the requirements established in the Trade Contract for the Bid Package; (ii) verification that all necessary activities to complete construction of the Bid Package in accordance with the DSA reviewed Design Documents and the Trade Contract for the Bid Package are reflected in the Trade Contractor's Schedules; (iii) verification that the duration for construction activities are reasonable; and (iv) if required by the terms of the Trade Contract for a Bid Package, verification that the Trade Contractor's Schedules incorporate requirements for manpower and other resources necessary for the Trade Contractor's construction of the Bid Package. If the CM, upon review of a Trade Contractor's Schedule is unable to verify any of the matters set forth above, the CM shall notify the District Representative in writing of such inability, along with recommendations for actions of the Trade Contractor or modifications to the Trade Contractor's Schedules so that the

CM can verify such matters. The CM shall implement such measures as directed or authorized by the District.

2.9.1.1.3 Coordination of Construction Activities. CM shall coordinate the activities of the Trade Contractors with each other and those of the CM, the Architect, Project Inspector, Test/Inspection Service Providers, Project CMs and the District in conformity with the Master Project Schedule, including the coordination and sequencing of Trade Contractors' construction activities so that Site space is appropriately allocated and progress in accordance with the then current Master Project Schedule is maintained. A material obligation of the CM under this Agreement is the scheduling, coordination and sequencing the activities of the Trade Contractors in a manner so that construction of the Project is completed in accordance with the Master Project Schedule and within the Construction Budget.

2.9.1.1.4 CM Responsibility for Construction Schedule and Sequences. Notwithstanding any provision of this Agreement to the contrary, since the District has elected to construct the Project by multiple Trade Contractors, the CM shall be responsible for the construction schedule and sequences of the Trade Contractors.

2.9.2 Progress Records.

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

2.9.2.2 Project Participants' Records. If required by applicable law, rule or regulation or by the terms of their respective contracts relating to the Project, the CM shall monitor the maintenance of records relating to Project construction by other Project Participants, including without limitation the Contractor and the Project Inspector. If, in the course of monitoring the maintenance of such Project records by Project Participants, the CM determines that a Project Participant who is required to maintain Project construction records has not maintained such records, the CM shall notify the District Representative in writing of such determination along with specific recommendations of measures for corrective or remedial action. The CM shall implement such measures as directed or authorized by the District.

2.9.3 Substantial Completion and Final Completion. Upon request of the Contractor, CM will, in conjunction with the District Representative, Project Inspector and the Architect determine that Substantial Completion and Final Completion have been achieved. Upon determining that Substantial Completion/Final Completion has been achieved, the CM shall issue to the District Certificates of Substantial Completion and Final Completion, as applicable.

2.10 Public Works Contractor Registration (SB 854). Basic Services of the CM relating to Contractor's compliance with Public Works Contractor Registration for the Project shall include the following:

- 2.10.1 Public Works Contractor Registration (SB 854). At the time of Bid Opening, review each Contractor's Bid Proposal to ensure that Contractors and its listed subcontractors have complied with the registration requirements and are identified on the DIR list of registered contractors and subcontractors. Conduct periodic inspections to ensure that only registered contractors and subcontractors are working on District public works projects.
- 2.10.2 Pre-Construction Conference. Assist the District in conducting pre-construction conference(s) with the Contractor and Subcontractors to discuss and answer questions regarding federal and state labor law requirements and procedures applicable to the Project, including, but not limited to, record keeping, wage rate determinations, apprenticeship requirements, required form filing(s) and other matters relating to compliance with requirements of SB 854.
- 2.11 Contractor Compliance with Labor Code Requirements. The CM shall review the Contractors' Certified Payroll records to generally confirm that appropriate classifications of labor are utilized and that the prevailing wage rates established for such classifications of labor are indicated in the Certified Payroll records as having been paid. A material obligation of the CM in its review of Certified Payroll records is to take cognizance of actual or potential violations of requirements or limitations relating to: (i) prevailing wage rates; (ii) days and hours of work by laborers; and (iii) apprenticeship programs. If upon such review, the CM determines that actual or potential violations of the foregoing have occurred, the CM shall notify the District Representative in writing of such determination along with recommendations for further investigation and/or implementation of appropriate proceedings. The CM shall implement recommendations accepted by the District Representative, as directed or authorized by the District Representative.
- 2.12 Site Observations.
- 2.12.1 CM On-Site. During construction of the Project and at substantially all times during which there are construction activities at the Site, CM shall have its Project Manager, Field Superintendent or other authorized representative at the Site, to observe Site construction activities and to coordinate the activities of the Trade Contractors if construction of the Project is by Trade Contractors. CM shall maintain at the Site the Drawings, Specifications, approved Change Orders, Submittals, applicable codes, rules and regulations and other written, graphic or electronic materials relating to the Project.
- 2.12.2 Construction Quality. The CM shall guard the District against defects and deficiencies in construction and workmanship of the Project on the basis of its Site observations, and a quality control program established and implemented hereunder to monitor construction workmanship for conformity with: (i) accepted industry standards; (ii) applicable laws, codes, regulations, ordinances or rules; and (iii) the requirements of the Construction Documents.
- 2.12.3 Rejection of Work. Whenever in the ordinary course of discharging its services hereunder CM shall discover or observe patent conditions of defective or deficient construction or workmanship of the Project which has or may have an adverse impact upon building life-safety systems or operations, structural elements or integrity or the safety of persons or property, CM shall take prompt action appropriate under the circumstances, including stopping the work and thereupon notifying the District in writing. In other circumstances where defective or deficient Work is observed by CM, the District shall be notified in writing by the CM of such conditions and if directed by the District, the CM shall stop or reject such Work.

- 2.13 Site Safety.
- 2.13.1 District Safety Program. Prior to any performance of Work at the Site, the CM Shall review the District's safety requirements for the Project and to address measures to be implemented by the CM to verify that the Contractor implements a safety programs during construction of the Project.
- 2.13.2 Contractor Safety Programs. CM shall review safety programs of the Contractor for conformity with requirements of the Construction Documents and applicable law; CM shall monitor the Contractors' compliance with their respective safety programs and advise the District of measures, if any, necessary or appropriate to obtain the Contractors' compliance. By undertaking the obligations hereunder, CM shall not be deemed to have assumed responsibility for the adequacy or sufficiency of safety programs implemented by Contractor, but the CM is responsible for verifying that the Contractor has established a safety program, that the safety program established by the Contractor is in compliance with the Construction Documents and applicable law, rule or regulation and that the Contractor implements its safety program during construction of the Project.
- 2.13.3 Safety Violations; Safety Conditions. The CM shall promptly notify the District Representative in writing of all CM observed instances of a Contractor(s)' failure to comply with applicable safety requirements or safety programs. In the event of a safety violation or other unsafe conditions on or about the Site of the Project which have an immediate potential or actual adverse effect on life or property, the CM is authorized, without prior notice to the District or prior directive of the District, to take all actions deemed necessary and appropriate by the CM under the then existing circumstances to prevent such actual or potential adverse effect.
- 2.13.4 Site Safety Safeguards. The CM shall routinely conduct Site observations to ascertain that safety safeguards, including without limitation, signs, barriers, lights and other similar devices which provide warnings/barriers to hazards and hazardous conditions resulting from Project construction as required by: (i) the Construction Documents; (ii) applicable law, regulation or rule; or (iii) by the circumstances of Project construction. If in the course of such observations, the CM determines that the Contractor or the Trade Contractor with the responsibility for such safeguards has not implemented such safeguards, the CM shall notify the District Representative in writing of such determination and the CM shall, without prior authority or direction of the District Representative, enforce such responsibilities of the Contractor or applicable Trade Contractor, or otherwise cause necessary safeguards to be implemented.
- 2.14 Changes and Claims.
- 2.14.1 Coordination of Changes. CM will coordinate and disseminate correspondence, Drawings and other written materials by and between the Contractor(s), the District, Project Inspector, Test/Inspection Service Providers, Project CMs and the Architect relating to Changes to the Work of the Project. CM will coordinate: (i) the Architect's preparation of modifications to the Design Documents as necessary for the Contractor to implement a District authorized Change; (ii) DSA review and approval/acceptance of modified Design Documents relating to a Change; and (iii) the Contractor(s)' performance of Changes authorized by the District. CM will maintain a log or other written records to monitor the pendency and disposition of Changes and Change Orders to keep the District advised of the status of the same and the actual or potential impact of any particular Change or Change Order or the cumulative effects thereof on Construction Costs or time for completing construction of the

Project. If requested by the District, the Change Order Log shall include an evaluation of the underlying reason(s) for implementing a Change or Change Order. The CM shall distribute the then current Change Order Log to the District Representative and others, as directed by the District Representative, on a monthly basis throughout construction of the Project.

- 2.14.2 Processing of Changes and Change Orders. CM will assist the District and the Architect in evaluation of requests by Contractor(s) for issuance of Change Orders, assist in negotiations with Contractor(s) relative to Change Orders proposals and the adjustment of Contract Price or Contract Time under the Construction Contract for the Project. CM will make recommendations to the District and the Architect for handling and disposition of the Contractor's proposals relative to Change Orders. If a Change to a Construction Contract is approved or authorized by the District, CM will assist the District and the Architect in the preparation of a Change Order reflecting such approved or authorized change to the Construction Contract. The CM is not authorized, without the prior written consent and approval of the District, to effectuate or authorize any Change to the Work of the Project. The CM shall be liable to the District for all direct and consequential costs, losses or damages resulting from the CM's direction or authorization to effectuate a Change to the Work of the Project with the prior direction and authorization of the District.
- 2.14.3 Claims Handling. CM will assist the Architect in the review, evaluation and processing of claims asserted by Contractor; CM will make recommendations to the District as to merit, handling and disposition of Contractor(s)' claims. Except in the event that the CM is alleged to have caused or contributed to the circumstances giving rise to a Contractor claim or other Contractor demand for compensation, services of the CM to prepare documentation or provide testimony in a mediation, arbitration or judicial proceeding arising out of such a claim or demand for compensation shall be deemed Additional Services. If the CM is alleged to have caused or contributed to a Contractor claim, the CM's claims handling services, including without limitation, claims analysis, assistance in preparing briefs/graphic materials in connection with negotiations or dispute resolution proceedings relating to a Contractor claim and participation in negotiations or dispute resolution proceedings relating to a Contractor claim shall be deemed part of the CM's Basic Services under this Agreement.
- 2.15 District Furnished Materials/Equipment/Furnishings. The CM shall assist the District in receiving, storing and protecting until installation, materials, equipment, furnishings and other similar items until incorporated into the Project. The foregoing shall include materials, equipment, furnishings and other items whether incorporated by the Contractor or others.

3 BASIC SERVICES; POST-CONSTRUCTION PHASE

- 3.1 Building Systems; Equipment Start-Up/Commissioning. The CM shall schedule and coordinate the start-up and testing of utility services systems, Project equipment and other building systems with the District Representative, District maintenance and operations staff, the Architect, the Architect's Design CMs, the Contractor and Subcontractors, as appropriate. In conjunction with the District Representative, the District's maintenance staff and the Architect, the CM shall observe the check-out and start-up of utility services, building systems and equipment in readiness for occupancy and use. As directed or authorized by the District, the CM shall assist: (i) the start-up and testing of utility/building systems and equipment; (ii) assist in trouble-shooting performance failures/limitations; and (iii) assist in re-testing corrections/remedial work to utility/building systems or equipment.
- 3.2 Review and Transmittal of Contractor Closeout Documents. The CM shall receive from the Contractor(s) the closeout documents and items to be submitted by the Contractor(s) under the terms of the Construction Contract(s) upon completion of their obligations under the Construction Contract(s) ("Close-Out Submittals"). The CM shall review each Contractor's Close-Out Submittals to determine conformity with requirements of each Construction Contract; if the CM determines that any Contractors' Close-Out Submittals are not in conformity with requirements of the Construction Contract, the CM shall make recommendations to the District for measures to secure compliance with the requirements of the Construction Contract. If complete and in accordance with the terms of the Construction Contract, the CM shall deliver to the District Representative all of the Contractors' Close-Out Submittals, except for the Contractors' as-built drawings which the CM shall transmit to the Architect for preparation of the Record Drawings. The CM shall monitor the Architect's preparation and completion the Project Record Drawings.
- 3.3 CM Project Records. Within thirty (30) days of the date after Final Completion of the Project, the CM shall assemble and deliver to the District all of the records maintained by the CM during the Construction Phase of the Project.
- 3.4 Contractor's Post-Construction Obligations. If a Contractor is obligated under the terms of the Construction Contract to provide work, labor, materials or services after completing construction of the Project, the CM shall monitor such Contractors' post-construction activities for conformity with requirements of the Contract. The CM shall make recommendations, as necessary, for securing the Contractor's compliance with post-construction obligations. The CM shall implement such recommendations as directed or authorized by the District Representative.
- 3.5 Project Reports. The CM shall monitor the filing of DSA reports and other filings or administrative actions required by applicable law, rule or regulation to be undertaken by the Architect, Project Inspector and Contractor(s) during construction of the Project and upon completing construction of the Project. If the Architect, Project Inspector or any Contractor(s) have not filed reports or taken other actions required during construction of the Project or upon completing construction of the Project, the CM shall make recommendations to the District for measures to secure compliance by the Architect, Project Inspector or Contractor(s) with regard to such requirements. The CM will assist the District in completion and submission of reports and other actions required to be undertaken by the District during construction of the Project or upon completing construction of the Project pursuant to applicable law, rule or regulation.

- 3.6 Project Occupancy. The CM shall assist the District in securing an occupancy permit for the Project or portions thereof as designated by the District. The scope of the foregoing may include the following: (i) accompanying government officials during inspections of the Project; (ii) preparation and submittal of documentation required by governmental agencies to establish completion of Project construction; and (iii) other similar activities and tasks.
- 3.7 DSA Project Certification. The CM shall assist the District in filings, discussions and other actions necessary for DSA Project Certification upon completion of Project construction certifying to completion of the Project in accordance with the Construction Documents and applicable laws, codes, regulations and/or rules. Obtaining DSA Project Certification is a material obligation of the CM under this Agreement.

4 CM COMPENSATION

- 4.1 Contract Price. The compensation due the CM for Basic Services for the Projects shall be as follows:

BHS & Murray Projects: A stipulated Fixed Fee Contract Price of TWO MILLION TWO HUNDRED FORTY FIVE THOUSAND SEVEN HUNDRED SEVENTY SIX DOLLARS (\$2,245,776.) shall be paid to the CM for performing and providing all Basic Services set forth in this Agreement.

Payment of the Contract Price for each Project will be made by the District in accordance with the terms hereof. The Contract Price includes the fee of the CM and any Sub-CM to the CM, personnel expenses of the CM and sub-CMs, inclusive of all benefits and burdens, travel for personnel of the CM and sub-CMs to and from the Site, travel within the Counties of Kern, Tulare, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Monterey and King, insurance and other overhead costs associated with or arising out of performance and completion of Basic Services for the Project.

- 4.2 Reimbursable Expenses. Unless authorized in advance in writing by the District, there shall be no expenses, costs or other charges arising out of or related to providing Basic Services or authorized Additional Services under this Agreement ("Reimbursable Expenses") which are reimbursable to the CM. If any Reimbursable Expense is approved in advance by the District, the CM's reimbursement shall be limited to the actual costs, without mark-ups or multiples.
- 4.3 Additional Services. If the District shall authorize or direct CM to perform or provide Additional Services described generally in this Agreement, CM shall be compensated for its personnel providing such Additional Services in accordance with the Rate Schedule attached hereto as Exhibit "A" ("the Rate Schedule") and incorporated herein by this reference.
- 4.4 District Payments.
- 4.4.1 CM Billings to District. During the Term of this Agreement, the CM will submit monthly billings for payment of the Contract Price. The CM's billings shall: (i) identify each member of the CM's personnel who performed any Basic Services

or authorized Additional Services in the preceding month; (ii) a detailed description of the services, tasks or other activities for each time entry; (iii) time entries shall be in increments of no more than one-quarter hour; and (iv) limited by the amount(s) allocated to each Phase of the CM's Basic Services for the Project, or portions thereof.

- 4.4.2 Allocation of Contract Price. The Contract Price for the Project shall be allocated to each Phase of the Basic Services as described below. The portion of the Contract Price to be disbursed by the District for each Phase or portion of Basic Services for the Project shall be limited by the allocation thereof as set forth below.

Construction Phase	75 percent (75%) of Contract Price
Post-Construction Phase	25 percent (25%) of Contract Price

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

5 INSURANCE AND INDEMNITY

5.1 CM Insurance.

- 5.1.1 Workers Compensation and Employers Liability Insurance. The CM shall purchase and maintain Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts under which the CM may be liable. The CM shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee, which arises out of the employee's employment by CM. The Employer's Liability Insurance required of the CM hereunder may be obtained by the CM as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by the CM hereunder.
- 5.1.2 Commercial General Liability and Property Insurance. The CM shall purchase and maintain Commercial General Liability and Property Insurance as will protect the CM from the types of claims set forth below which may arise out of or result from the CM services under this Agreement and for which the CM may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the CM's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to

employment of such person by the CM, or (b) by another person; (iii) claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (d) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (e) contractual liability insurance applicable to the CM's obligations under this Agreement; and (f) for completed operations. District shall be an additional named insured to the CM's Commercial General Liability insurance policy.

- 5.1.3 Professional Liability Insurance. The CM shall procure and maintain professional liability insurance covering claims arising out of the performance of services under this Agreement.
- 5.1.4 Coverage Amounts. Minimum coverage amounts for policies of insurance obtained by the CM for the Project shall be as follows:

Insurance Policy	Minimum Coverage Amount
Workers' Compensation	In accordance with applicable law
Employer's Liability	One Million Dollars (\$1,000,000)
Commercial General Liability (including coverage for automobile liability and property casualty)	One Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$3,000,000) in the aggregate
Professional Liability	Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$4,000,000) in the aggregate

- 5.1.5 Policy Endorsements; Evidence of Insurance. Prior to commencing performance of Basic Services for the Project, the CM shall deliver Certificates of Insurance to the District Representative which evidence each of the policies of insurance in the minimum coverage amounts required in connection with the Project. All policies of insurance required hereunder shall be issued by insurer(s) authorized to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance, whether by endorsement or otherwise, shall provide that such policy will not be materially modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District.

- 5.2 District General Liability Insurance. District shall obtain and maintain General Liability Insurance covering District for claims of bodily injury, death or property damage arising out of the Project.

5.3 Indemnity.

- 5.3.1 CM Indemnity of District. The CM shall indemnify, defend and hold harmless the Indemnified Parties from all claims, demands, liabilities, actions and causes of action arising out of this Agreement, including without limitation, claims for bodily injury, death, physical property damage and/or demands, losses, liabilities or other claims arising out of the CM's services hereunder or the negligent, willful acts omissions or other conduct of CM, the employees, agents or representatives of the CM, a Sub-CM to the CM or the employees, agents or representatives of a Sub-CM. The Indemnified Parties are: the District, the District's Board of Education and each individual member thereof and the employees, officers, agents and representatives of the District. The CM's obligations hereunder shall survive termination of this Agreement and/or the

completion of Basic Services, until barred by the applicable statute of limitations.

- 5.3.2 District Indemnity of CM. The District shall indemnify, defend and hold harmless the CM from all claims arising out of this Agreement, including without limitation, claims for bodily injury (including death) and physical property damage which arise out of the negligent or willful acts, work of the omissions or other conduct of the District.

6 TERM OF AGREEMENT; TIME

- 6.1 Term. The Term of this Agreement shall commence upon the District and the CM each executing a counterpart copy hereof, delivery of an executed counterpart copy hereof to the other and ratification of this Agreement by the District's Board of Education and shall terminate for each Project thirty (30) days after Final Acceptance of each respective Project by the District's Board of Education reflecting completion of the Project construction in accordance with the Construction Documents and applicable law, codes, regulations and rules.
- 6.2 Time. All of the Basic Services and authorized Additional Services for the Project shall be completed by the CM in a prompt and diligent manner; time is of the essence under this Agreement. If a schedule for completion of Basic Services in connection with the Project is agreed upon between the District and the CM, the CM's performance and completion of Basic Services shall be in accordance with such schedule. The CM shall be liable to the District for all costs, losses, damages or other liabilities arising out of the failure of the CM to complete Basic Services for the Project in accordance with an agreed upon schedule, provided that the CM's liabilities hereunder shall not extend to costs, losses, damages or other liabilities caused by factors beyond the reasonable control of the CM.

7 TERMINATION; SUSPENSION

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

hereunder, to the extent that such losses, damages or other costs exceed any amount due CM hereunder for Basic Services or authorized Additional Services.

- 7.2 District's Right to Suspend. The District may, in its discretion, suspend all or any part of the design, bidding or construction of the Project, work under a Construction Contract or CM's services provided, however, that if the District shall suspend design, bidding or construction of the Project, work under a Construction Contract or CM's services hereunder for a period of sixty (60) consecutive days or more and such suspension is not caused by CM or the acts or omissions of CM, upon recession of such suspension, the Contract Price will be subject to adjusted to provide for actual costs and expenses incurred by CM as a direct result of the suspension and resumption of design, bidding or construction of the Project, construction under a Construction Contract or CM's services hereunder.
- 7.3 District's Termination of Agreement for Convenience of the District. The District may, at any time, upon seven (7) days advance written notice to CM terminate, in whole or in part, this Agreement for the District's convenience and without fault, neglect or default on the part of CM. In such event, the Agreement (or portions thereof as designated by the District) shall be deemed terminated seven (7) days after the date of the District's written notice to CM or such other time as the District and CM may mutually agree upon. In such event, the District shall make payment of the Contract Price to the CM for services provided through the date of termination plus actual costs incurred by CM directly attributable to such termination. Except as set forth herein, no other payment or compensation shall be due the CM upon the District's termination of this Agreement.
- 7.4 CM Suspension of Services. If the District shall fail to make payment of undisputed portions of the Contract Price for the Project when due CM hereunder, CM may, upon seven (7) calendar days advance written notice to the District, suspend further performance of services hereunder until payment of the undisputed portions of the Contract Price in full is tendered by the District. In such event, CM shall have no liability for any delays or additional costs to design, bid or construct the Project due to, or arising out of, such suspension. Except as expressly set forth herein, the CM shall have no other right to suspend is performance and completion of Basic Services in accordance with the terms of this Agreement.

8 MISCELLANEOUS

- 8.1 Governing Law; Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or CM. In the event of conflict or inconsistency between the provisions of this Agreement and the CM Proposal, the terms of this Agreement shall prevail.
- 8.2 Successors; Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of CM and the District. Neither CM nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.
- 8.3 Authority. The individual(s) executing this Agreement on behalf of CM warrant and represent that she/he is authorized to execute this Agreement and bind CM to all terms hereof. The individual(s) executing this Agreement on behalf of District warrant and represent that she/he is authorized to execute this Agreement and subject to approval and ratification by the District's Board of Education, to bind District to all terms hereof.

8.4 CM Personnel. At all times while at the Site or any District owned/operated facility, the CM's personnel shall comply with all applicable District rules, regulations and policies. Personnel who violate the District's rules, regulations and policies may be prohibited from access to the Site or other District owned/operated facilities in the sole discretion of the District. If the District exercises discretion pursuant to the foregoing, the effects of the removal of such personnel shall not result in adjustment of the Contract Price hereunder.

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

If to District:
Sierra Sands Unified School District
113 W. Felspar
Ridgecrest, CA 93555
Telephone: 760 499-1604

If to CM:
Colombo Construction Company, Inc.
3211 Rio Mirada Drive
Bakersfield, CA 93308-4945
Telephone: 661 316-0100

8.6 Disputes.

8.6.1 Continuation of CM Services. Except in the event of the District's failure to make payment of undisputed portions of the Contract Price when due the CM for the Project, notwithstanding any disputes between District and CM arising hereunder, CM shall continue to provide and perform services hereunder pending a subsequent resolution of such disputes.

8.6.2 Mandatory Mediation. All claims, disputes and other matters in controversy, excepting therefrom claims for indemnity, between the CM and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the Judicial Arbitration and Mediation Services ("JAMS"). The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the CM commencing arbitration proceedings pursuant to Paragraph 8.6.3 below.

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

initiated between CM and District hereunder shall be consolidated with any arbitration proceedings initiated in connection with such other claim or dispute with the Architect or Contractor, regardless of the arbitration forum and without the necessity of court order pursuant to Code of Civil Procedure § 1281.3.

- 8.6.4 CM Compliance with Government Code §900, et seq. The foregoing dispute resolution procedures notwithstanding, neither the provisions of this Agreement issued hereunder, shall be deemed to waive, limit or modify any requirements under Government Code §900, et seq. relating to the CM's submission of claims to the District. The CM's strict compliance with all applicable provisions of Government Code §900, et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the CM's initiation of any other dispute resolution procedure or proceeding.

8.7 Definitions.

- 8.7.1 Contractor. The entity or individual under direct contract to the District for construction of the Project. As necessary by the context of usage, the term "Contractor" shall include Trade Contractors.
- 8.7.2 Construction Contract. A Contract for Construction of the Project.
- 8.7.3 Design Documents. The Drawings, Specifications, calculations and other work product and Instruments of Service prepared by or on behalf of the Architect for the Project. Design Documents include surveys, soils reports and other documents prepared for the Project by a licensed Architect or registered Engineer, whether under contract to the Architect or District.
- 8.7.4 Architect. The Architect is the firm or individual retained by the District in connection with the Project to provide architectural and related design services in connection with the Project. References to the Architect include Design CMs retained by the Architect to prepare or provide any portion of the Design Documents for the Project.
- 8.7.5 Laws. The term "Laws" as used in the Contract Documents shall refer to all laws, ordinances, codes, rules and/or regulations promulgated by any governmental or quasi-governmental agency with jurisdiction over any portion of the Work and which apply to any portion of the Work. Laws refer to those enacted and in effect as of the execution of the Agreement, amendments thereto occurring during the performance of the Work, and subsequently enacted Laws which take effect during the performance of the Work. No adjustment of the Contract Time or the Contract Price shall be allowed for compliance with the Laws.
- 8.7.6 Submittals. Shop Drawings, Product Data or Samples prepared or provided by the Contractor or a Subcontractor to the Contractor or suppliers illustrating some portion of the work of the Project.
- 8.7.7 Site. The physical area for construction and activities relating to construction of the Project.
- 8.7.8 Project Budget. The Project Budget is to the total costs allocated by the District for design, bidding and construction of the Project by Contractors, exclusive of fees and costs of the Architect, CM and District CMs, Site acquisition costs and the costs of furniture, furnishing and/or equipment for the Project which are not included in the scope of the Construction Contract for the Project. The Project Budget established by the District may be modified by the District from time-to-time.
- 8.7.9 Construction Cost Estimates. Construction Cost Estimates are estimates of the then current costs of labor, materials, equipment and services plus a reasonable allowance for the Contractor's profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with

- the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of bids for construction of the Project and Changes to the Project during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Budget, if any.
- 8.7.10 Construction Budget. The "Construction Budget" is the portion of the Project Budget allocated for construction of the Project.
- 8.7.11 Construction Costs. The costs of labor, materials, equipment (inclusive of the Contractor's general administrative and overhead costs/profit) necessary to complete construction of the Project.
- 8.7.12 Construction Schedule. A Construction Schedule is the written or graphic description of the scheduling, sequencing and interrelationships of activities necessary to complete construction of the Project. Construction Schedules prepared by the Contractor for review by the CM and acceptance by the District.
- 8.7.13 Construction Documents. The Contract Documents issued by or on behalf of the District under a Construction Contract of all or a portion of the Project. Construction Contract Documents include all modifications issued by or on behalf of the District.
- 8.7.14 Substantial Completion. Substantial Completion is when the Work of a Construction Contract for the Project has been completed and installed and the Project can be used or occupied for its intended purposes, subject only to minor corrections, repairs or modifications.
- 8.7.15 Final Completion. Final Completion is when all of the Work of a Construction Contract for the Project has been completed and installed (including items noted for correction, repair or modification upon Substantial Completion) and the Contractor has completed all other obligations to be performed on its part under the Construction Contract.
- 8.7.16 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Education; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Education after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon which the District's Board of Education approves of the Final Acceptance of the Work.
- 8.8 Time. Time is of the essence in the performance and completion of obligations under this Agreement.
- 8.9 Entire Agreement. This Agreement, the CM Proposal and Exhibit A (Rate Schedule) are all of the documents forming a part of the Agreement. The foregoing constitute the entire agreement and understanding between the District and CM concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal. In the event of conflict or inconsistency between the provisions of this Agreement and the CM Proposal, the terms of this Agreement shall prevail. No term or condition of this Agreement shall be modified or amended except by a subsequent writing executed by the District and CM.

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

"DISTRICT"
SIERRA SANDS UNIFIED SCHOOL DISTRICT

"CM"
Colombo Construction Company, Inc.

By: _____

Title: _____

Date: _____

By: T. Rein

Title: PRESIDENT

Date: 9/7/14

**EXHIBIT A
RATE SCHEDULE**

(See rate schedule in proposal of September 6, 2016 by Colombo Construction Company, Inc.)