

INDEPENDENT CONSULTANT AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
Laney College Title IX Locker Room Renovations & Improvements Project

This Independent Consultant Agreement for Construction Management Services ("Agreement") is made and entered into as of the 9th day of October, 2019 by and between the Peralta Community College District, ("District") and Swinerton Management & Consulting ("Consultant"), (together, "Parties").

WHEREAS, the District is authorized by Government Code section 4526 to procure a contract for construction project management services on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies; and

WHEREAS, the Consultant has provide evidence that the firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project;

WHEREAS, the Consultant is specially trained and experienced and competent to perform the construction management services required by the District, and those services are needed on a limited basis; and

WHEREAS, the District has determined to select Consultant to perform the construction management services set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide construction management services for the Laney College Title IX Locker Room Renovations and Improvement Project, located at 900 Fallon Street, Oakland, California, as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Consultant shall commence providing services under this Agreement on September 25, 2019 and will diligently perform as required and complete performance by December 31, 2021, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form
<u> </u>	Other: _____

4. **Compensation.** District agrees to pay Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed One Million Two Hundred Seventy-One Thousand Dollars and no Cents (\$1,271,000.00). The total fee includes a not to exceed fee of Eight Hundred Twenty-Eight Thousand Dollars and no Cents (\$828,000) for the Locker Room Renovation and Interim Locker Room and a not to exceed fee of Four Hundred Forty-Three

Thousand Dollars and no Cents (\$443,000) for the Campus Modernization and Improvements Project. The District shall pay Consultant according to the following terms and conditions:

- 4.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made.
- 4.2. The Services shall be performed at the hourly billing rates and/or unit prices included in **Exhibit "B."** If hourly billing applies, the itemized invoice shall reflect the hours spent by Consultant in performing its Services pursuant to this Agreement.
- 4.3. The Services shall be performed pursuant to the Project Schedule set forth in **Exhibit "C."**
- 4.4. If Consultant works at more than one site, Consultant shall invoice for each site separately.
- 4.5. District will withhold 2% of each billing until the Division of the State Architect certification is received for the entire project.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District.
6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California community college districts.

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or

omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.

- 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
- 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Ownership of Data.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Consultant prepared or caused to be prepared pursuant to this Agreement. Consultant retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Consultant prepares or causes to be prepared pursuant to this Agreement.
- In the event the District changes or uses any fully or partially completed documents without Consultant's knowledge or participation or both, the District agrees to release Consultant of responsibility for such changes, and shall hold Consultant harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Consultant is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant.
11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
12. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the

performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

13. Termination.

13.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

13.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.2.1. material violation of this Agreement by Consultant; or

13.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

14. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

15. Insurance.

- 15.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 1,000,000
Workers' Compensation	Statutory Limits
Employers' Liability	\$ 1,000,000

15.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

15.1.2. **Workers' Compensation and Employers' Liability Insurance.**

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.

- 15.2. **Proof of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 15.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

15.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

15.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance Policies shall be written on an occurrence form.

15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

16. **Assignment.** The obligations of Consultant pursuant to this Agreement shall not be assigned by Consultant.

17. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District.

18. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

20. **Anti-Discrimination.** Consultant herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

21. **Disabled Veteran Business Enterprises.** Pursuant to section 71028 of the Education Code and Public Contract Code section 10115, the District may have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the community college district for disabled veteran business enterprises ("DVBE"). In

accordance therewith, Consultant must submit, upon request by the District, appropriate documentation to the District identifying the steps Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

22. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

23. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

23.1. Requesting that District employee(s) evaluate Consultant and Consultant's employees and subcontractors and each of their performance.

23.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

24. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial 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.

25. **Confidentiality.** Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

26. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission or electronic mail, addressed as follows:

District:

Peralta Community College District
Department of General Services
333 East 8th Street
Oakland, CA 94606
Fax: 510-587-7873
Email: lsata@peralta.edu
ATTN: Leigh Sata

Consultant:

Swinerton Management & Consulting
260 Townsend Street
San Francisco, CA 94107
Fax: 510-549-3607
Email: jgee@swinerton.com
ATTN: Jeffrey Gee

Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) calendar days after deposit in the United States mail.

27. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
28. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
29. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
30. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
31. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
32. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
33. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
34. **Tolling of District's Claims.** Consultant agrees to toll all statutes of limitations for District's assertion of claims against Consultant that arise out of, pertain to, or relate to contractors' or subcontractors' claims against District involving Consultant's services under this Agreement, until the contractors' or subcontractors' claims are finally resolved.
35. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
36. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
37. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
38. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

39. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: _____, 2019

Dated: _____, 2019

Peralta Community College District

Swinerton Management & Consulting

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Consultant:

License No.: _____

Registration No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

____ Individual

____ Sole Proprietorship

____ Partnership

____ Limited Partnership

____ Corporation, State: _____

____ Limited Liability Company

____ Other: _____

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires Consultant to furnish the information requested in this section.

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. Monitor and advise the District as to all material developments in the Project. Maintain reporting systems for scope, sequencing, scheduling, budgets and communication for the Project using existing District software.
- 1.3. Be the focal point of all communication to and from construction Contractor(s).
- 1.4. Implement methods to budget and track all expenditures on the Project. Construction Manager shall generate monthly reports to the District reflecting this information, and shall maintain the District's financial reporting systems.
- 1.5. Prepare methods to track and report on schedule status for the Project. Construction Manager shall develop master schedules and milestone schedules for the Project, and shall report on same each month to the District.
- 1.6. The Construction Manager will be required to attend and provide updates at each Board meeting. The Construction Manager shall work cooperatively with District and Program Manager to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 1.7. Construction Manager shall work cooperatively with the Design Team, the Program Manager, and the District to:
 - 1.7.1. Define and schedule the Project.
 - 1.7.2. Provide Services that will result in the development of an overall Project strategy with regard to phases, construction schedules, timing, budget, prequalification, contractor procurement, construction materials, building systems, and equipment.
- 1.8. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, of materials, preliminary budgets, and possible economies.
- 1.9. Interface with the Contractor and all subcontractors all general and/or trade Contractors during construction to ensure that the District is provided with an acceptable Project and the best value for taxpayer dollars.
- 1.10. Advise the District and Program Manager as to the regulatory agencies that have jurisdiction over any portion or all of the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without

limitation DSA.

- 1.11. 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.
- 1.12. Cooperate with the District, Board, and other professionals employed by the District for the design, coordination or management of other work related to the Project, including District staff and consultants, Program Manager, project manager(s), citizens' oversight committee, other District committees, and the community to facilitate the timely completion of the Project within Board-approved budgets and to District design standards.
- 1.13. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Project. Construction Manager shall invite the District and/or its representative and the Project Inspector to participate in these meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings.
- 1.14. Develop for District approval a Project time schedule at the start of Project development that does the following:
 - 1.14.1. Provides sufficient time for prequalification, and if necessary the resolution of any appeals, bidding, and, if necessary, rebidding, or negotiating if applicable, the Project;
 - 1.14.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;
 - 1.14.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
 - 1.14.4. Takes into account the District's occupancy requirements (showing portions of the Project having occupancy priority and ongoing operational occupancy requirements).
- 1.15. 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.
- 1.16. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the 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.

- 1.17. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
- 1.18. Prepare a bidders list for each bid package for approval by the District.
- 1.19. Assist the District in pre-qualifying bidders if prequalification is permitted or required by the District. This service shall include the following:
 - 1.19.1. Preparation and distribution of prequalification questionnaires;
 - 1.19.2. Receiving and analyzing completed questionnaires;
 - 1.19.3. Interviewing possible bidders, references, bonding agents and financial institutions;
 - 1.19.4. Preparing recommendations for the District; and
 - 1.19.5. Assisting with resolution of any appeals.
- 1.20. Conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders.
- 1.21. Assist the District in preparing and placing notices and advertisements to solicit bids for the Project.
- 1.22. Coordinate the delivery of Bid Documents to the bidders. The District shall obtain the District-approved contract documents from the design professional(s) and the Construction Manager shall arrange for printing, binding, wrapping, and delivery to the bidders. The Construction Manager shall maintain a list of bidders receiving contract documents.
- 1.23. For Lease Leaseback projects, coordinate Request for Qualifications/Proposal ("RFP") process and assist in negotiation of agreements, including Preliminary Services Agreement, Site Lease, and Facilities Lease with guaranteed maximum price.
- 1.24. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website, and as otherwise necessary, for public access to show Project status.
- 1.25. Ensure that Contractor, all subcontractor(s), Consultants, and 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.
- 1.26. 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 Consultants, the Contractors and subcontractors, and all 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.

- 1.27. Maintain accurate Project cost accounting records, using GAAP, on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. Construction Manager shall provide accounting records to the District on a monthly basis, or as reasonably requested by District. Construction Manager shall afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.
- 1.28. Assist Architect with the preparation of an estimate of costs for all addenda and coordinate with Architect to submit the estimate to the District for approval. Assist and coordinate with Architect as required to adjust the Construction Cost Budget and other Project costs as indicated in this Agreement and as required in the Agreement for Architectural Services.
- 1.29. Provide and maintain a management presence on the Project site(s).
- 1.30. Construction Manager is **NOT** responsible for:
 - 1.30.1. Ground contamination or hazardous material analysis.
 - 1.30.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 1.30.3. 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 the work of Contractor and the Design Team to provide current information for use in CEQA compliance documents and to identify and carry out mitigation measures.
 - 1.30.4. Historical significance report.
 - 1.30.5. Soils investigation.
 - 1.30.6. Geotechnical hazard report.
 - 1.30.7. Topographic survey, including utility locating services.

2. GENERAL PROJECT SERVICES

- 2.1. **General:** Monitor and advise the District as to all material developments on the Project. Construction Manager shall implement with District approval reporting methods for schedules, cost and budget status. The Construction Manager shall be the focal point of all communication to and from construction Contractor and shall be copied on all communications between the District and its design professional(s).
- 2.2. **Scheduling:** Track and report on schedule status for Project using methods.

The Construction Manager shall develop Project master schedules and milestone schedules, and review and approve Contractor project schedules and milestone schedules for the project per specifications, and shall report on same each month to the District.

- 2.3. **Cost Controls:** Implement methods to track construction expenditures on the Project using methods. 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 Board meetings, and to provide updates at each meeting.

3. PRECONSTRUCTION PHASE

- 3.1. Provide overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Design Team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction Contractor to the District and Design Team shall be through the Construction Manager. The Construction Manager shall receive simultaneous copies of all written communications from the District or the Design Team to the construction Contractor.
- 3.2. Assist with the detailed definition of project scope, budget, and schedule, as needed. Review and reconcile cost estimates from the assigned architect and coordinate peer review estimates when requested by the District. Assist in organizing and, if relevant, segregating bid packages for maximum cost effectiveness for the District. Advise the District regarding owner-supplied equipment and other potential cost-saving measures.
- 3.3. Assist the District in the solicitation and retention of design and engineering consultants, and coordinate design consultants' activities and delivery schedules, as needed. Provide value engineering and life cycle cost analysis.
- 3.4. Provide design-phase services in conjunction with the architecture firms awarded the Project by the District. Work with the Architect to conform and refine designs to correlate designs to budget and Facilities Master Plan, if applicable. Review design documents for constructability, scheduling, consistency, and coordination during schematic and design development phases of work. Perform constructability reviews at appropriate stages of design. Assist with verification of site conditions. Expedite design reviews, including modifications. Keep accurate documentation of all discussions with users regarding scope and resolution.
- 3.5. Prepare and maintain a Construction Management schedule for the Project. Prepare a procurement plan, where required.
- 3.6. Monitor and report to the District on status of design and state approval in relation to the schedule for the Project. Attend meetings to coordinate design efforts for the Program. Assist in identifying and obtaining all necessary approvals.
- 3.7. Solicit proposals, evaluate, and recommend other professional consultants needed to complete the Project.

- 3.8. Implement District-approved implementation procedures, forms and reporting requirements for the Project that involve all members of the Project team, including the District, design professional(s), and construction Contractor(s).
- 3.9. Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Project.
- 3.10. Provide value engineering at the Schematic Design and/or 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the design documents and shall be coordinated with the District's design guidelines and design professional(s). The Construction Manager will prepare a value engineering report documenting the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
- 3.11. Perform or subcontract for constructability reviews of the Project at the Design Development Phase and at 90% of the Construction Documents Phase. The Project Manager shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The Construction Manager shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, and construction duration
- 3.12. Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by the District, in coordination with design professional(s) and advise and consult with the District. Construction Manager shall review and approve construction Contractor's schedules, but shall not dictate any construction Contractor's means and/or methods of performance.
- 3.13. Establish schedules for any Consultant, and for any hazardous materials or other testing, and review costs, estimates, and invoices of each.
- 3.14. 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. Prepare monthly progress reports for the District and Program Manager regarding the schedule for the Project.
- 3.15. Organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical

events and milestone activities.

- 3.16. Provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phases as directed by District or Program Manager; coordinate with design professional(s) and Program Manager and reconcile cost estimates with design professional(s)' estimates.
- 3.17. Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 3.18. Fully coordinate all changes requested by any utility company needed to complete the Project.
- 3.19. Review and tailor the District's front end documents for the Project. Recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of the liquidated damages.

4. PRE-BID PHASE

- 4.1. Develop master schedules and construction schedules for the Project. Develop budget(s) for the Project based on construction cost estimates.
- 4.2. In consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 4.3. Work with the design professional(s) to modify or add to standard, special, or general conditions for contract documents that might be needed for unique Project or contract conditions, for the District's approval, and/or assist in the development of documents necessary for the bidding phase.
- 4.4. Make recommendations for development and implementation of procedures to comply with applicable bidding or RFP requirements for the Project as applicable and for expediting completion of the bidding process for the Project. The scope of the foregoing includes without limitation, recommendations of Construction Manager with respect to: (a) pre-qualification of potential contractors; and (b) alternative construction delivery approaches for the Project, including consideration of a single general contractor and/or Lease Leaseback approach to construction for the Project.

5. BIDDING PHASE

- 5.1. Assist with pre-qualification process for the selection of prime and/or sub-contractors based on the detailed definition of Project scope, budget, schedule, and programming support. Develop a list of pre-qualified prime and sub-contractors, as required.
- 5.2. Develop bidders' interest in the Project. Coordinate all bid phase activities with District departments. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with

Project procedures. Conduct job walks and bidders' conferences, maintain and prepare minutes of job walks or bidder's conferences. Field questions from bidders, referring questions to design professional(s) and District as required. Coordinate with design professional(s) to respond to bidder questions by addenda.

- 5.3. Prepare public solicitation notices for District approval. Review, coordinate, and estimate cost of bid phase addenda.
- 5.4. Review bid proposals for responsiveness to bid requirements, evaluate bidder responsibility, and conduct reference checks. Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.
- 5.5. Conduct post-bid conferences as required. Assist and advise regarding bid protests.
- 5.6. If appropriate, coordinate contracting with Contractor awarded the contract, including evaluating bonds and insurance, and negotiate final terms of construction contractor's contract(s), if applicable.
- 5.7. Conduct pre-award conferences with successful bidders.
- 5.8. Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.
- 5.9. Assist with the preparation of agenda items for Board approval. Coordinate submittals required by governing agencies.

6. CONSTRUCTION PHASE

- 6.1. Administer the construction Contract.
- 6.2. Develop detailed construction schedules or review Contractor's submitted schedules, as needed. Administer and coordinate the work of Contractor on a daily basis. Enforce performance, scheduling, and notice requirements. Review Contractor's schedule submittals and make recommendations to the District.
- 6.3. Monitor schedule and cost information for Contractor. Document the progress and costs of the Project. Report and advise proactively on potential schedule and budget variances and impacts. Recommend potential solutions to schedule and cost problems. Work cooperatively with the District, Architect, and Contractor to ensure that Project is delivered on time and within budget. Review construction progress and prepare reports.
- 6.4. Verify permits, approvals, bonds, insurances, and schedules of values. Coordinate with DSA Project inspector, and ensure compliance with all DSA reporting and closeout requirements. Submit necessary reports to state and local authorities.
- 6.5. Monitor the construction Contractor to verify that tools, equipment, and labor are

furnished and work performed and completed within the time required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. The Construction Manager expressly agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.

- 6.6. Coordinate work of the construction Contractor and effectively manage the Project to achieve the District's objectives in relation to cost, time and quality.
- 6.7. Provide continuous on-site construction management personnel, as needed. 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 construction Contractor, and design professional(s).
- 6.8. Establish and implement team communication procedures.
- 6.9. Ensure that construction Contractor provides construction schedules as required by the construction Contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The Construction Manager shall review construction Contractor's construction schedules for conformity with the requirements of the construction Contract and conformity with the overall schedule for the Project. Where construction Contractor's construction schedules do not so conform, the Construction Manager will take appropriate measures to secure compliance, subject to District approval.
- 6.10. Ensure construction Contractor's compliance with the requirements of the respective construction Contract for updating, revising, and other obligations relative to their respective construction schedules.
- 6.11. Cost Control. Construction Manager shall develop and monitor an effective system of construction cost control for the Project. Construction Manager shall identify variances between actual and budgeted or estimated costs and advise District and design professional(s) whenever a Project cost exceeds budgets or estimates. Construction Manager shall manage the construction bids and contracts in accordance with the Construction Budget.
- 6.12. Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when Contractor fails to fulfill contractual requirements.
- 6.13. 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. The Construction Manager shall provide to the design professional(s) and the District copies of these authorizations.
- 6.14. Evaluate and process payment applications and verify progress.

- 6.15. Verify that safety programs are developed and submitted by the construction Contractor as required by the Contract. Neither Construction Manager, Program Manager, nor District shall be responsible for or have any liability for Contractor's failure to provide, comply with, or enforce said safety programs.
- 6.16. Implement quality control program, including As-Built Drawings accuracy. Coordinate and evaluate Contractor's recovery schedules.
- 6.17. Record the progress of the Project by a log.
- 6.18. 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.
- 6.19. Negotiate Contractor's proposals and review change orders prepared by design professional(s), with design professional(s)' input as needed, for approval by the District.
- 6.20. Evaluate and process change order requests. Make recommendations to the District. Determine cost and schedule effects of change orders. Prepare change order reports and maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 6.21. Assist the District in coordinating the services of special consultants and testing laboratories on the Project.
- 6.22. In conjunction with the design professional(s), monitor work of the construction Contractor to determine that the work is being performed in accordance with the requirements of the respective construction documents for the Project, including but not limited to the plans, specifications, addenda, and all other contract documents, as well as all applicable laws, regulations and directives of agencies with jurisdiction over any of the Project. As appropriate, with assistance of design professional(s), make recommendations to the District and Program Manager regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents.
- 6.23. To guard District against defects in the work of the construction Contractor, the Construction Manager shall implement a quality control program to monitor the quality and workmanship of construction for conformity with:
 - 6.23.1. Accepted industry standards;
 - 6.23.2. Applicable laws, rules, or ordinances; and
 - 6.23.3. The design documents and contract documents.
- 6.24. Where the work of a construction Contractor does not conform as set forth above, the Construction Manager shall, with the input of design professional(s):
 - 6.24.1. Notify the District and Program Manager of any non-conforming work observed by the Construction Manager;
 - 6.24.2. Reject the non-conforming work; and

- 6.24.3. Take any and all action(s) necessary to compel the construction Contractor to correct the work.
- 6.25. Evaluate, track, and maintain logs of requests for information ("RFI") from construction Contractor and responses, shop drawings, samples, and other submittals, based, in part, on information obtained from the design professional(s). Advise District and Program Manager as to status and criticality of RFIs.
- 6.26. 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 all submittals from the construction Contractor to the design professional(s) for review and approval. Maintain submittal and shop drawing logs.
- 6.27. Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction Contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 6.28. Prepare and distribute monthly project status reports for the Project including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 6.29. Coordinate, assist, and support Architect during construction administration phase as required.
- 6.30. Construction Manager shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction Contractor. At the completion of the Project, deliver all such records to District. Construction Contractor and design professional(s) share responsibility to prepare Record Drawings and As-Built Drawings.
- 6.31. Coordinate the move into the Project.
- 6.32. Work with District team to develop lists of incomplete or unsatisfactory work ("punch lists").
- 6.33. Fully document and prepare deductive change orders for extra services of consultants that are the responsibility of a Contractor or another consultant. Present such a change order for signature by the Contractor or consultant.
- 6.34. Determine final completion and payment. Determine completion dates, final payments, and release of retention. Coordinate procurement and installation of Furniture, Fixtures, and Equipment ("FF&E").

7. PROJECT COMPLETION

- 7.1. The Construction Manager shall observe 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 construction Contractor and shall ensure the District of compliance with applicable provisions of the Contract, that all work has been performed and accepted, and that all systems are complete and operative.

- 7.2. At the punch list phase of the Project or designated portions thereof, the Construction Manager, in consultation with the Architect, shall ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager shall provide this list to the construction Contractor. The Construction Manager shall coordinate construction Contractor's performance and completion of punch list work. The Construction Manager shall review, with the Architect and District, the completed punch list work. The Construction Manager shall ensure, with input of the Architect, that the completed punch list work complies with applicable provisions of the construction Contract.
- 7.3. The Construction Manager shall determine, with the Architect and District, when the Project or designated portions thereof are complete.
- 7.4. The Construction Manager shall conduct, with the Architect and District, final inspections of the Project or designated portions thereof. The Construction Manager shall notify the District of final completion.
- 7.5. The Construction Manager shall consult with the Architect and District and shall determine when the Project and the construction Contractor's 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.
- 7.6. The Construction Manager shall coordinate close-out procedures, including personnel training. Advise District staff on systems operations, training and close-out of Projects.
- 7.7. The Construction Manager shall coordinate and expedite Contractor close-out requirements, including guarantees/warranties, certificates, keys, manuals, As-Built Drawings, Record Drawings, specifications, daily logs, and verified reports. Ensure that all other project participants submit necessary close-out documentation.
- 7.8. The Construction Manager shall coordinate operational safety reviews with District post occupancy and manage corrective work as necessary.
- 7.9. The Construction Manager shall ensure that all building commissioning requirements have been fulfilled in a timely manner through District commissioning agents.
- 7.10. The Construction Manager shall obtain occupancy permits (where required), coordinate final testing, documentation, and regulatory inspections. Prepare occupancy plan report.
- 7.11. The Construction Manager shall prepare final accounting reports.

8. FINAL DOCUMENTS

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 and Program Manager 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.

9. WARRANTY

The Construction Manager shall assist Program Manager as necessary to implement a Warranty Inspection and Warranty Work procedure for the Project that Contractor must follow. The procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT "B"
FEES

Consultant's entire Proposal is **not** made part of this Agreement.

FEE

Our Proposed Fee is as follows:

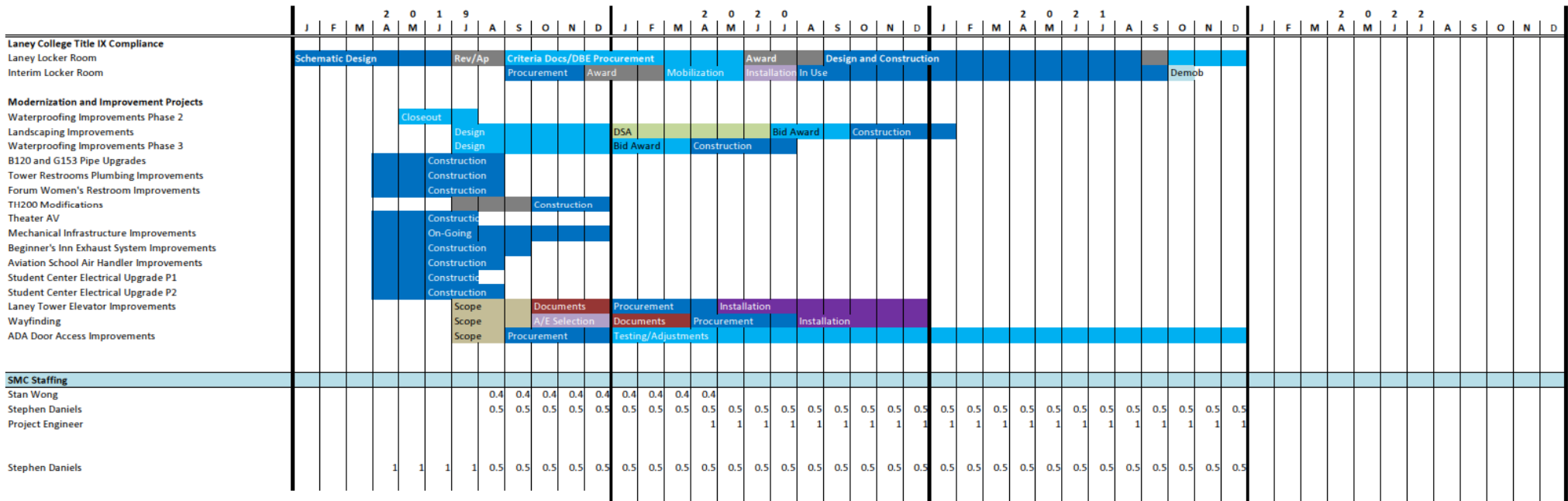
Locker Room Renovation and Interim Locker Room	\$828,000 NTE
Campus Modernization and Improvement Projects	\$443,000 NTE

HOURLY RATES

Stan Wong, Senior Project Manager	\$180
Stephen Daniels, Project Manager	\$148
Project Engineer	\$105

EXHIBIT "C" PROJECT SCHEDULE

PCCD Laney College, Swinerton Management & Consulting Projects
Oakland, CA
Project Schedules
6/19/19



WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which 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 I will comply with such provisions before commencing the performance of the Services of this Agreement.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Services under this Agreement.)

END OF DOCUMENT