

**SWEETWATER UNION HIGH SCHOOL DISTRICT
PROGRAM AND PROJECT MANAGEMENT
AGREEMENT
FOR
PROPOSITION “O” MODERNIZATION PROGRAM
AND
OTHER FACILITIES MASTER PLAN SERVICES**

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**SWEETWATER UNION HIGH SCHOOL DISTRICT
PROGRAM AND PROJECT MANAGEMENT AGREEMENT**

This PROGRAM AND PROJECT MANAGEMENT AGREEMENT (“Agreement”) is entered into on this 1st day of June, 2010 by and between The Seville Group, a California corporation, doing business as SGI Construction Management (“Program Manager”), and the Sweetwater Union High School District (“District”), a California school district, for program and project management services in connection with the District’s Bond Program as defined herein and such other services as are set forth herein.

RECITALS

A. The District is a 7-12 school district duly organized and validly existing under the laws of the State of California.

B. The Program Manager represents it has the proper business and professional State of California licenses and the background, knowledge, experience and expertise necessary to provide the program management services and construction management services required by the District in connection with the Bond Program, as set forth herein (the “Services”).

C. The District and Program Manager desire to enter into this Agreement to provide a framework for Program Manager to provide the District with professional program management services and construction management services as needed to ensure the successful completion of as many of the projects contemplated under Proposition O as available funding allows and to ensure that all actions and measures needed to be taken in connection with such projects and funding are properly defined and implemented in accordance with all applicable laws, rules, regulations and proceedings without unnecessarily burdening the District or the District staff, or unnecessarily duplicating efforts already undertaken or to be performed by others, and without requiring the District to retain unnecessary or overlapping consultants.

D. It is also the intent of the parties that Program Manager assist the District with any other projects identified by the District from time to time in accordance with all applicable provisions of this Agreement and in accordance with the highest standard of care, provided that such additional services shall not be compensated from funds derived from the sale of bonds under Proposition O or from any other sources targeted to fund Proposition O projects unless such additional services relate to matters authorized under Proposition O.

E. This Program Management Agreement supersedes the Program Management Agreement previously entered into by the District and Gilbane/SGI, a joint venture consisting of Gilbane Building Company, a Rhode Island corporation, and The Seville Group, a California corporation on May 17, 2007, which agreement was terminated effective May 31, 2010 (the “Joint Venture Agreement”).

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

ARTICLE I

GENERAL CONDITIONS

1.1 DEFINITIONS

1.1.1 Additional Services. Services requested by the District in writing, and approved by the District in writing, prior to their being performed by Program Manager and that do not arise, in whole or in part, from the fault, negligence or breach of this Agreement by Program Manager and which: (i) are not within the scope of Basic Services described in Article 2; or (ii) except as otherwise provided in Paragraph 4.5 of this Agreement, are performed after the expiration of the Basic Term.

1.1.2 Agreement. This PROGRAM AND CONSTRUCTION MANAGEMENT AGREEMENT by and between the District and Program Manager, including the Recitals, which are incorporated herein by reference, and all Exhibits and Attachments hereto, which are also incorporated herein by reference, as may be amended by the parties in writing.

1.1.3 Applicable Laws. All Governmental Regulations and applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of Governmental Authorities having jurisdiction over the Building Program, the District or Program Manager, including, without limitation, rules and regulations enacted by the District.

1.1.4 Application for Payment. A monthly invoice, itemized by hour, submitted by Program Manager for review and approval by the District, which is prepared, submitted and accompanied by supporting documentation in accordance with Section 5.1 of this Agreement.

1.1.5 Authorization to Proceed. Written notice given by the District to Program Manager to begin performing the Services pursuant to this Agreement.

1.1.6 Basic Term. The term of this Agreement as defined in Section 4.6 of this Agreement.

1.1.7 Board of Trustees. The governing board of the District.

1.1.8 Bond Program. The construction, modernization and upgrading of facilities to be achieved using (i) the remaining proceeds of Proposition O; (ii) the remaining proceeds of Proposition BB; and (iii) matching funds received from the state.

1.1.9 Building Program. The Long Range Facilities Master Plan, as revised by the District from time to time, including any design objectives, equalization and educational facilities standards, constraints

and criteria, including budget and space requirements and relationships, flexibility and expandability, special equipment and systems, requirements and performance criteria. The Bond Program is a part of the Building Program.

- 1.1.10 Claim.** A written demand or assertion by the District, Program Manager or any other member of the Project Team seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (i) penalties or forfeitures prescribed by statute or regulation imposed by a Governmental Authority; (ii) tort claims for personal injury or death; (iii) false claims liability under California Government Code Section 12650, *et seq.*; (iv) physical defects in the Work first discovered by the District after final payment by the District to a Contractor; (v) stop notices; and (vi) the right of the District to specific performance or injunctive relief to compel performance.
- 1.1.11 Claims Dispute Resolution Process.** The process of resolution of Claims is set forth in Article 9 of this Agreement.
- 1.1.12 Comprehensive Management Plan.** The Comprehensive Management Plan in effect as of the effective date of this Agreement.
- 1.1.13 Contract Documents.** Without limitation, the collection of documents that govern a Contractor's performance of the Work of a Site Project including the request for qualifications, the executed agreement or contract, executed change orders, and contract addenda.
- 1.1.14 Contractor.** The person, firm or entity with whom the District enters into a contract to provide construction services for a Project.
- 1.1.15 Day.** Whether capitalized or not, means calendar day, unless otherwise specifically provided, and includes weekends and legal holidays. If the date on which the District or the Program Manager is required to take any action under the terms of this Agreement is a weekend or legal holiday, the action shall be taken on the next succeeding business Day.
- 1.1.16 Defective Services.** Work or services that do not fulfill the requirements of this Agreement or Applicable Laws or does not meet the applicable standard of care.
- 1.1.17 Deliverables.** The written work product, consisting of, without limitation, reports, summaries, schedules, projections, plans, programs, procedures and meetings minutes required to be prepared and submitted by Program Manager to the District under the terms of this Agreement.
- 1.1.18 Design Consultant.** The Project Architect, individual, firm, or design team under contract with the District to provide design or engineering services for a Site Project.

- 1.1.19 District.** Sweetwater Union High School District acting through its Board of Trustees, Superintendent or other designee, as appropriate in the context in which used.
- 1.1.20 Drawings.** The graphic and pictorial portions of the Site Project prepared by a Design Consultant showing the design, location and dimensions of the work, generally including plans, elevations, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."
- 1.1.21 Environmental Law.** Without limitation, any applicable federal, state or local laws, ordinances or regulations relating to the environment, health and safety, Hazardous Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Site, including, without limitation, soil, groundwater and indoor and ambient air conditions, including, without limitation, the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901-6992k), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1307), the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601-2692), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 15 U.S.C. §§ 2681-2692 and also 42 U.S.C. §§ 4851-4856, the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Indoor Radon Abatement Act, 15 U.S.C. §§ 2661-2671, and the Safe Drinking Water Act Amendments of 1996, Pub L. No. 104-182, 110 Stat. 1613 (1996) and all similar federal, state and local statutes and regulations.
- 1.1.22 Force Majeure Circumstances.** Unavoidable circumstances beyond the reasonable control of the Program Manager, not due to any error, omission, negligence or willful conduct of the Program Manager, that prevent the Program Manager from completing the Services utilizing the resources authorized by this Agreement or that prevent the Program Manager from satisfying or complying with its other obligations under this Agreement for which the Program Manager will be allowed an extension of time to complete the Services.
- 1.1.23 Governmental Authority.** Any governmental or quasi-governmental body, agency or entity having jurisdiction over any portion of the Building Program or the Project and/or the planning, design, construction, alteration, rehabilitation, remediation, maintenance, use or operation of the Project.
- 1.1.24 Governmental Regulations.** Any and all laws, ordinances, rules, requirements, resolutions, policy statements, regulations, codes, standards and orders (including, without limitation, those relating to land use, subdivision, zoning, environmental protection, Hazardous Substances, occupational health and safety, public bidding, use of bond proceeds, water quality, earthquake hazard reduction, and building and fire codes) of any and all Governmental Authorities having jurisdiction over the planning,

design, construction, alteration, rehabilitation, remediation, maintenance, funding, use or operation of the Project or any portion thereof.

- 1.1.25 Hazardous Substances.** The term "Hazardous Substance" refers to, without limitation, any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally.
- 1.1.26 Inspector of Record.** The DSA-certified inspector for a Site Project pursuant to the Field Act (*California Education Code, Section 17280 et seq.*).
- 1.1.27 Key Personnel.** Those individuals listed in **Exhibit A** to this Agreement, and any additions or replacements thereto approved by the District and Program Manager, whose personal performance of Services is considered of the essence to this Agreement.
- 1.1.28 Long Range Facilities Master Plan.** The District's long-range facilities master plan approved in 2005 and anticipated to be updated in 2010, identifying approximately 40 Site Projects (including, without limitation, non-bond projects and composite projects) that are needed to accommodate and meet growth and specifying, where appropriate, approximate square footages, building footprints and infrastructure.
- 1.1.29 Loss, Losses.** Any and all costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties, but excluding attorney's fees, court costs, or expert or consultant fees used in connection with legal services unless otherwise specified.
- 1.1.30 Master Files Archives System.** The master filing system prepared or improved by Program Manager whereby all documents (electronic and hard copy) are stored and cataloged, including Laser Fiche, in a format acceptable to the District, and compatible with the District's technology, for ready access by authorized Project Team members, auditors of the District or other authorized users.
- 1.1.31 Master Schedule.** An initial Bond Program schedule, which when completed will be attached to this Agreement as **Exhibit E**. Updates to the schedule contained in **Exhibit E** shall be deemed to be included herein as though a part hereof as of the execution of this Agreement.
- 1.1.32 Plans.** See definition 1.1.20 "Drawings."

- 1.1.33 Program Budget.** The District's statement of funds available to pay for all Project Costs, acquisition, administrative costs, financing costs, temporary facilities and all other costs of a Site Project or collection of Site Projects, as from time to time amended by the District.
- 1.1.34 Program Manager.** The Seville Group, a California corporation doing business as SGI Construction Management.
- 1.1.35 Project Budget.** The estimated project budget for each project as identified in **Exhibit F** hereto. Updates to any Project Budget approved by the Board of Trustees shall be deemed to be a change to this Agreement accepted by the parties and shall, without the necessity for further action, be incorporated herein.
- 1.1.36 Projects.** The totality of works of improvement comprising the collection of Site Projects to be defined, designed and constructed for the District under this Agreement. Depending on context, "Project" may refer to each individual work or improvement being pursued.
- 1.1.37 Project Architect.** A professional design consultant selected by the District to be eligible to provide design services for projects identified in the Bond Program.
- 1.1.38 Project Construction Budget.** That portion of the Program Budget that sets forth the District's budget for construction costs for a Site Project or collection of Site Projects. The Project Construction Budget does not include architect or other professional, such as Program Manager, fees or other "soft costs", but may include a construction contingency amount approved by the District. It is the desire of the District to maximize the Project Construction Budget and target seventy percent (70%) or more of funds available for Project Costs.
- 1.1.39 Project Costs.** The total of all costs related to design, construction, consultants, including fees of Program Manager, and any other Project-related costs (such as, but not limited to, personnel relocation and costs for temporary facilities, fixtures, furniture and equipment for a Site Project). Project Costs do not include (i) land acquisition costs; (ii) finance costs; (iii) District administrative costs; or (iv) legal fees and court costs.
- 1.1.40 Project Manager.** Any person assigned by Program Manager to perform management services for one or more projects identified in the Bond Program .
- 1.1.41 Project Representative.** Jaime Ortiz, or a replacement accepted by the District, each, authorized to act on behalf of Program Manager with the authority set forth in Paragraph 1.5.4 of this Agreement.

- 1.1.42 Project Safety Guidelines/Standards.** The plan setting forth the safety policies, procedures and forms to be followed and used by Contractors providing work or services in connection with the construction of a Site Project, including without limitation, CAL/OSHA guidelines.
- 1.1.43 Project Team.** The District, Program Manager, Project Manager, Specialty Consultants, Design Consultant, Contractor, Subconsultants, Subcontractors and other firms or individuals retained by the District or others with the District's approval, who participate in the planning, programming, design or construction of the Site Projects.
- 1.1.44 Proposition BB.** The District's Bond Measure, approved by the voters in November of 2000, proceeds from which are being utilized to pay for construction projects identified in **Exhibit F** hereto.
- 1.1.45 Proposition O.** The District's Bond Measure, approved by the voters in November of 2006, proceeds from which are being utilized to pay for construction projects identified in **Exhibit F** hereto.
- 1.1.46 Reimbursable Expense.** Those expenses that are reimbursable to the Program Manager as provided in Section 4.3 of this Agreement.
- 1.1.47 Review Agencies.** Any and all Governmental Authorities and departments having jurisdiction to review, approve or reject the Contract Documents or the work for compliance with Applicable Laws and Government Regulations, including, without limitation, the Division of the State Architect for the State of California and the Inspector of Record.
- 1.1.48 Services.** The duties and/or work to be provided by the Program Manager pursuant to this Agreement.
- 1.1.49 Site.** The term "Site" refers to: (i) the parcel of real property located at the school at which work related to the Bond Program or Building Program, as applicable, is proceeding; (ii) all areas adjacent to such parcels that may be used by a Contractor or Program Manager or its Subconsultants for staging, storage, parking or temporary offices; and (iii) all land areas, both private and public, adjacent to such parcels on which work is required to be performed under the Contract Documents, Government Regulations and Applicable Laws or permits relating to the Project.
- 1.1.50 Site Project.** The individual works of improvement comprising the Bond Program to be designed, bid and constructed under separate contracts between the District and Design Consultants or Contractors.
- 1.1.51 Specialty Consultants.** The professionals, other than the Program Manager, of any Tier, retained by a Design Consultant or the District to provide professional services for any Site Project, including,

without limitation, programming consultants, soils and geotechnical engineers, environmental consultants, Hazardous Substances consultants, infrastructure consultants, or landscape designers.

1.1.52 Staffing Plan. The agreed plan attached to **Exhibit C** showing the numbers of individuals and working hours that Program Manager is authorized to expend in performance of the Services and which serves as the basis for payments to Program Manager under this Agreement.

1.1.53 Statement of Dispute. A written description of a dispute regarding a Claim required to be submitted as part of the Claims Dispute Resolution Process provided for in Article 9 of this Agreement.

1.1.54 Subconsultant. A person or firm that has an approved contract with Program Manager to perform a portion of the Services covered by this Agreement.

1.1.55 Subcontractor. A person or firm that has a contract with a Specialty Consultant or Contractor to perform a portion of the work, including without limitation, subcontractors, sub-subcontractors, suppliers and vendors, of every Tier.

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

1.1.57 Unavoidable Delay. Means actual and demonstrable delay in the critical path of the implementation of the Bond Program design or construction (a) occurring following issuance of the Initial Notice to Proceed and (b) caused by acts of God, casualty or other unforeseeable exigencies, in each case, unforeseeable by the Program Manager and beyond the Program Manager's reasonable control. No event shall be deemed "Unavoidable Delay" unless the District determines in the exercise of its reasonable discretion that (i) any such event actually was unforeseeable by the Program Manager and was beyond the Program Manager's reasonable control and (ii) that such event caused actual and demonstrable delay in the critical path of the Bond Program.

1.2 SCOPE OF SERVICES

The District and Program Manager have endeavored to delineate the scope of the Services to be provided by Program Manager in Article 2, below. Program Manager shall be required to provide any services, whether or not listed in Article 2, that are within the scope of its field of professional practice and that are reasonably inferable by the District as being necessary, or that would be customarily furnished by other providers of professional services of the type and nature provided for in this Agreement.

1.3 PERFORMANCE STANDARDS

1.3.1 Standard of Care. All services performed in connection with this Agreement shall be performed in a manner consistent with the standard of care in California applicable to those who specialize in providing services of the type, scope and complexity of a program manager for a similar building and modernization program as undertaken by the District.

1.3.2 Nature of Relationship. Program Manager acknowledges the relationship of trust and confidence between it and the District and agrees to provide, in its capacity as a fiduciary to the District, professional program management and construction management services in a manner consistent with the District's economic, educational and governmental best interests, the terms and conditions of this Agreement, and consistent with Applicable Laws.

1.4 AUTHORITY OF THE PROGRAM MANAGER

Program Manager's authority to act on behalf of the District is limited to its scope of authority set forth in this Agreement. Notwithstanding anything else stated in this Agreement or any Contract Documents, Program Manager does not have the express or implied authority to obligate the District to any expenditure of money or extension of contractual time periods, including without limitation, any adjustment to the price or time of performance of any contract between the District and its Contractors, Specialty Consultants or Design Consultants.

1.5 KEY PERSONNEL; STAFFING

1.5.1 Performance. Program Manager agrees that the experience and qualifications of the Key Personnel identified by name in **Exhibit A** are of the essence to this Agreement and that the District has a vested interest in allowing only necessary persons to perform Services to control Project Costs. Therefore, Program Manager agrees that Services under this Agreement shall be provided only by Key Personnel, approved personnel identified by name and position on the Staffing Plan, **Exhibit C**, as amended from time to time by the mutual agreement of the parties, or by Subconsultants approved by the District. Program Manager agrees that the District shall have no obligation to pay for, nor any liability in connection with, Services rendered by non-approved persons or invoiced in non-approved positions. For these reasons, Program Manager agrees that a detailed Staffing Plan, properly negotiated and approved by District, for all Services contemplated during the term is of the utmost importance.

1.5.2 Commitment, Cooperation. Recognizing the necessity of a close working relationship with the District and Program Manager, Program Manager's principals and employees shall furnish the best skill, efforts and judgment in the performance of their respective duties and responsibilities under this Agreement, shall provide their knowledge, ideas, experience and abilities relating to the efficient

management of the planning, programming, design and construction of the Bond Program and shall cooperate fully with, and manage as needed, each and every member of the Project Team.

1.5.3 Additions, Removals, Replacements.

.1 Additions. It is contemplated that from time to time individuals will be added to the list of Key Personnel or the Staffing Plan, or will be promoted from one position to another, as necessary and appropriate to the stage of administration, planning, programming, design and construction of the Project. Such additions may be initiated by either Program Manager or the District. The party initiating the addition agrees to submit to the other, no later than seven (7) Days prior to the need therefor, a proposed amendment to the list of Key Personnel and/or Staffing Plan setting forth the proposed changes and the reasons for such changes. The other party shall promptly review the proposed changes and either approve or disapprove. The Program Manager shall not employ any individual to perform any work under this Agreement nor make any changes to the Staffing Plan without the prior written approval of the District, which approval may be granted or withheld in the District's sole discretion.

.2 Removals. The Program Manager shall not, for so long as any person serving as Key Personnel is employed by the Program Manager, remove, substitute or reduce the level of effort of such person without the District's prior written approval. If the District is dissatisfied with the services rendered by any Key Personnel, the District shall notify the Program Manager who shall promptly identify a substitute person. Replacement or withdrawal of any Key Personnel without prior written District approval may, at the District's sole and absolute discretion, constitute a default hereunder.

.3 Replacements. If any Key Personnel ceases employment with the Program Manager or is requested to be removed by the District pursuant to Paragraph 1.5.3.2 above, then the Program Manager shall promptly identify a proposed substitute person of at least equal qualifications to perform the same functions who, if approved by the District at its sole discretion, shall be added to the list of Key Personnel. The Program Manager shall bear, at its own expense and without reimbursement by the District, all costs associated with replacing for any reason any Key Personnel.

1.5.4 Project Representative. The Project Representative has the authority to act on behalf of the Program Manager in respect to all matters that are the subject of this Agreement, including, without limitation, the power and authority to enter into agreements or modifications to agreements that contractually bind the Program Manager.

1.5.5 Program Manager's Employees. All persons employed by the Program Manager shall be the employees of the Program Manager and not of the District. The Program Manager shall be solely responsible for any prevailing wages, workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to said persons.

1.6 SUBCONSULTANTS

The Program Manager may, with prior written approval by the District, enter into written contracts with Subconsultants to perform portions of the Services. The Program Manager's written request for approval for each Subconsultant shall be submitted in a writing that describes the scope of work to be contracted, the name of the proposed Subconsultant, the hourly rates for the Subconsultant's services and identification and explanation of any current or past business relationship (within the past three (3) years) between the Program Manager and proposed Subconsultant, including an identification of each project for which they provided services together. The District shall have absolute discretion in approving or rejecting any Subconsultant and any approval must be in writing to be effective. The District shall use its best efforts to approve or disapprove proposed Subconsultants within ten (10) Days of the Program Manager's request. Subconsultants identified by name in the Staffing Plan agreed to by the District shall be deemed approved by the District. The Program Manager shall remain solely responsible to the District for the quality and performance of all Subconsultants' services. The Program Manager may, upon advance written notice to the District and after written approval from the District, terminate and replace the services of any Subconsultant. Every contract or agreement of any kind entered into between the Program Manager and a Subconsultant shall contain appropriate language whereby the Subconsultant, without creating any contractual obligation on the part of the District to the Subconsultant or anyone working under contract to the Subconsultant, accepts and agrees to be bound by all of the obligations of this Agreement, including, without limitation, those obligations pertaining to indemnification, insurance, accounting records, audit, conflicts, disclosures and ownership of documents, and agrees to include in its contracts with its Subconsultants a contingent assignment of its contract to the District effective only upon written acceptance by the District.

1.7 OWNERSHIP OF DOCUMENTS

All documents that are prepared, reproduced or caused to be prepared in connection with the Project, whether by the Program Manager or a Subconsultant of any Tier, shall be and remain the sole property of the District. Without limitation to the foregoing, the District shall hold, and the Program Manager shall be deemed to have irrevocably assigned to the District in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights to such documents. The District hereby grants to the Program Manager and its Subconsultants a license, revocable at the will of the District, to use, copy and distribute such documents during the term of this Agreement for the sole purpose of

performing the Services hereunder. Upon the earlier of termination of this Agreement or completion of performance of Services, the Program Manager shall deliver all of the originals of such documents to the District, including electronic copies in a format acceptable to the District.

1.8 COMPLIANCE WITH APPLICABLE LAWS

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

1.9 TIME OF ESSENCE

All time limits set forth in this Agreement pertaining to the Program Manager's performance of any obligation to the District or for the benefit of the Project are essential to this Agreement.

ARTICLE 2 SCOPE OF SERVICES

2.1 STATEMENT OF SERVICES

The Statement of Program Management Services is described below on a summary level by scope category, and more specifically by phase of delivery of services in the section that follows:

- 2.1.1 Program Management - General.** Program management services include management, oversight, and coordination of all of the District's consultants, including architects, construction managers, Contractors, Subcontractors, vendors, and suppliers of work or services rendered, in connection with, and in the performance of, the delivery of the Bond Program and such Additional Services as hereafter agreed by the District and Program Manager. Program management services are to include progress reporting, as requested, or as required by the Board of Trustees or the Bond Oversight Committee, in the manner described as follows: preparation of reports (to be provided in writing and electronically) to the District according to an approved format agreed to between the Program Manager and the District. Each such report may include (a) Project Status Reports for each project; (b) a schedule for each element and project constituting the Bond Program including an update of actual performance against the baseline; (c) Budget, Actual, Forecast To Complete, Budget Available Balances; (d) Significant Impacts to Cost/Schedule & Resolution Strategy for each project and the Bond Program ; (e) 12 month Look Ahead Cash Flow; and (f) Safety Report. Program management services will include the necessary coordination of work by Project Team members, and responsible public agencies in connection with the planning and execution of the Bond Program . Additional reporting elements may be required by the District as needed.

2.1.2 Comprehensive Management Plan

- .1 The Comprehensive Management Plan previously developed shall remain in full force and effect.
- .2 The Comprehensive Management Plan shall be updated as necessary to meet changing conditions.

2.1.3 Cost Control. The Program Manager will provide overview cost estimating services during the planning, development and execution of the Bond Program. The cost estimating services to be provided will be rough order of magnitude sufficient to determine the value of proposed construction or development and cost savings of various value-engineering exercises performed, as necessary, in connection with developing the Bond Program and the Long Range Facilities Master Plan. Identification or suggestion of cost savings measures shall be made through completion of the Bond Program or earlier termination of this Agreement, as applicable.

2.1.4 Schedule Management. The Program Manager shall review, oversee and maintain the Master Schedule and provide a Master Summary Schedule for the Bond Program. The Program Manager will follow the "baseline" schedule for the program set forth in the Implementation Plan. Activities anticipated to take more than three days to complete must be included in the Master Schedule. The Program Manager will report progress against the baseline for coordination, tracking, reporting, and recording purposes. The Program Manager will review all schedule submittals produced by the Design Consultants, Contractors or construction managers for billing purposes and overall coordination purposes with concurrent, pre-requisite, and successor tasks related to each element of the Bond Program. The Program Manager will make recommendations for updating the Master Schedule necessary to meet changing circumstances,

2.1.5 Contract Administration. The Program Manager shall oversee and provide work product prepared by Design Consultants, Specialty Consultants, Contractors, Subcontractors, and construction managers to the District for appropriate insertion or inclusion into the various procurement applications, advertisements, bid packages, reports required and other centrally controlled or distributed documents.

2.1.6 Service Management. The Program Manager shall provide Project Managers, as needed, to work with the Project Team members retained by the District for design, construction management, general or multiple prime Contractor services, design build delivery methods and lease-leaseback delivery methods.

2.1.7 Safety Management. The Program Manager will provide designated individuals, as needed, to monitor contract compliance with the Project Safety Guidelines/Standards. The Program Manager will report on safety management practices by each Contractor.

2.1.8 Document Control. The Program Manager shall execute a document control and a master files archives system consistent with the plan developed in the approved Comprehensive Management Plan.

2.2 IMPLEMENTATION PHASE

2.2.1 Program Manager will continue to implement the tasks previously begun under the Joint Venture Agreement, including the following tasks, which may be revised or changed by the mutual agreement of the District and Program Manager:

- As an integral part of the District, implement a “mirror” organization that augments and works side-by-side with District staff in the overall management, coordination and administration of the Bond Program .
- Continue developing the District’s implementation plan containing information for design, pre-construction, construction, post-construction, occupancy, close-out, communication and reporting activities (the “Implementation Plan”).
- Review bond projects with each school to define and confirm a priority list of Projects.
- Continued development and modification of a Master Schedule with activities for design, pre-construction, construction, and other necessary activities.
- Develop and maintain an overall cost and schedule reporting system and work with District staff to expand an operational and financial reporting system that can be used by all units to monitor the Bond Program status.
- Prepare status reports and present same to the school staff, other District staff, the independent citizens’ Bond Oversight Committee and Board of Trustees, as applicable. Status reports may be required in various formats, including a format used for inclusion in the District’s website
- Review current budget information and assist the District in refining its overall Program budget, including fees, permits, etc.
- Assist the District in maintaining all necessary records for the annual bond audit.
- Resolve schedule interface conflicts between Projects within the Bond Program.
- Review design standards and scope, including but not limited to identifying and highlighting potential opportunities for energy efficient or green design, as appropriate.
- Identify design sequencing and phasing approach that accounts for funding deadlines, methodologies, and other activities affecting sequencing.
- Continue development of simplified approval and billing procedures acceptable to the District.
- Provide training to District staff, school staff and contractors on Program related functions and procedures.
- Set up guidelines, policy and procedures for close out and occupancy of the facilities for the District administration staff and school staff with respect to furniture, fixture and equipment.
- Identify and analyze potential Bond Program issues and make recommendations to address these issues.
- Assist the District with the implementation of a Business Outreach Program, with specific strategies to attract and increase participation of Local (“L”), Small (“S”), Emerging (“E”) and Disabled Veterans Business Enterprise (“DVBE”) firms.

- Assist the District in identifying, recruiting, and selecting, architects, and other specialty consultants.
- Set up QA/QC procedures to ascertain standards and quality across the Bond Program .
- Facilitate an internship program for District students.
- Set-up, at no cost to the District, a program to assist District residents interested in working in construction, design or other areas of the Bond Program to obtain access opportunities and learn skills related to those areas.
- Identify and highlight opportunities for alternative/additional funding for the Projects.
- Assist the District with preparing and implementing ground-breaking ceremonies and ribbon cutting ceremonies.
- Set up and implement a comprehensive community and public communications program.

2.2.2 Implementation Plan Deliverables. The Program Manager shall maintain and update (i) the Comprehensive Management Plan; (ii) the project priority list; (iii) the Master Schedule; (iv) the finalized format of cost control and forecasting reports; and (v) the Master Files Archive System planning report.

2.3 DESIGN, CONSTRUCTION AND OCCUPANCY PHASES

The Program Manager will direct, administer and manage the Bond Program in the design, construction and occupancy phases. Such tasks may include but not be limited to the following:

- Sequence and schedule construction projects for each school with school staff, design architects, construction managers and other District staff.
- Management of Bond Program contingency for cost and time. Use standard accounting methods to tabulate, compile and check correctness of all expenditures associated with the Program based on information provided by the District.
- Prepare Bond Program cost reports, including special reports, trends and forecasts and update estimated costs to complete. Prepare periodic summaries of Bond Program expenditures for District review. Maintain current status of all obligations, commitments and expenses against the Bond Program. Maintain current status of revenue available for the Bond Program. Cost load Bond Program Master Schedule with Construction Budgets and cash flow.
- Reconcile costs with the District's financial accounting system.
- Prepare and present status reports to the school staff, other District staff, the independent citizens' Bond Oversight Committee and Board of Trustees, as applicable.
- Draft, in a timely manner, updates and communications to be reviewed and submitted by the District staff to the Board of Trustees.
- Assist the District in revising budgets to reflect actual expenditures and to reallocate available funds as necessary. Modify Bond Program Budget based on approved changes.
- Assist the District in maintaining all necessary records for the annual bond audit.
- Assist the District in validating results of project constructability reviews.
- Monitor and implement the QA/QC plan and prepare lessons learned and proactively improve all policies and procedures.
- Working with District staff, encourage successful Contractors to bid on other projects; and identify/confirm problem Contractors.
- Monitor and update Master Schedule. Provide Bond Program schedule forecasts. Assist the District in resolving any schedule interface conflicts between projects within the Bond Program.

- Assist the District in the management, supervision, oversight, and evaluation of performance of the separately hired construction management services firms, architects, engineers and any other Project Team.
- Regularly report to the District Superintendent and the Assistant Superintendent of Facilities and Operations or designee on progress, issues of concern and recommend solutions to conflicts and problems in accordance with the terms of this Agreement.
- Constructability reviews.
- Packaging of bid documents.
- Move coordination.
- Coordination of architects, inspectors, and general contractors in the timely and cost effective resolution of all issues.
- Monitor the projects' schedule, cost and quality.
- Conduct weekly meetings at each sit to review the general progress, addressing outstanding issues and take corrective measures, if necessary.
- Route and process RFIs and submittals.
- Review and negotiate potential change orders.
- Review and process payment applications.
- Serve as the District's representative on-site.

2.3.1 Design, Construction and Occupancy Deliverables. The Program Manager will deliver to the District copies of reports, documents and information required by the approved Implementation Plan and all other information as required by this Agreement or any additional written reports, schedules, estimates, work plans or other documents that the District and the Program Manager mutually agree upon to further the administration and management of the Bond Program .

2.4 PROJECT TEAM MANAGEMENT

2.4.1 Review of Work Product. The Program Manager shall use its skills and expertise to coordinate the work product and information of the District and each Project Team member. In the event the Program Manager discovers errors or omissions or has a concern regarding same, then the Program Manager shall report its observations to the District together with an appropriate recommendation. Failure by the Program Manager to give such notice shall not relieve any Project Team member of its liability or responsibility therefore but may constitute a default hereunder.

2.4.2 Selection of Project Team and Specialty Consultants. The Program Manager shall consult with the Assistant Superintendent of Facilities and Operations in advance on the appropriate time and schedule for hiring other Project Team members and Specialty Consultants whose services are necessary for the Project, being certain to allow sufficient time in advance for qualification, bidding and selection in accordance with Applicable Laws and the guidelines, practices and procedures of State's facilities program. The Program Manager, at points in time appropriate to the stage and status of the Project, shall create and assist the District with the following, as appropriate: (i) preparation of qualification criteria; (ii) preparation of requests for qualifications or bidding documents; (iii) conduct of pre-award conferences and responses to questions by proposers; (iv) evaluation of proposers; (v)

establishment of a list of prequalified professionals; and (vi) preparation of a definitive scope of service, fees and other terms and conditions of contracts.

2.4.3 Cost Control. In accordance with guidelines and directives developed between the District and the Program Manager, and utilizing software specified by the Program Manager in consultation with, and acceptable to, the District, the Program Manager shall collect cost and budget information from all available sources including the District, the design team and other members of the Project Team, shall evaluate such information for completeness and accuracy and shall use it to implement the Program Manager's cost control system to assist the District in the management and control of Project Costs, Program Budget and the Project Construction Budget. Such cost control system shall include, but not be limited to, the following: (i) monthly reporting on the status of expenditures and projections of Project Costs and each Project Construction Budget through Final Completion of the Project (including all Site Projects); (ii) explanations for any major deviations from initial cost planning and from Program Manager's previous monthly report; and (iii) recommendations to reduce Project Costs and increase the Project Construction Budget to meet or improve initial expectation for the financing of Projects throughout the life of the Bond Program.

2.4.4 Master Schedule and Project Schedules. The Program Manager shall, promptly after execution of this Agreement, in accordance with the terms of this Agreement, prepare and regularly update the Master Schedule integrating Project Schedules with information for each Site Project, groupings of Site Projects and for the Projects overall, integrating the activities of the District, all required agencies and each Project Team member, reflecting the detailed activities necessary to complete the Site Project depicted in each Project Schedule, as updated. The Master Schedule shall, without limitation: (i) coordinate and integrate the major planning, programming, design and construction components and activities in appropriate detail to the District's reasonable satisfaction; (ii) show estimated commencement, duration, school schedules, responsible parties and sequence for planning, programming, design, bidding, construction (by area and task) and occupancy and displacement of operations activities; (iii) establish the staging of construction and overall duration of the Project; (iv) identify a critical path for keeping within the Project Schedule; and (v) show the District's occupancy requirements (indicating those portions of the Project having occupancy and completion priority). Program Manager shall monitor and report the performance of each Design Consultant, Contractor, Subcontractor, Project Manager, and Specialty Consultant with respect to adherence to the Project Schedules. As requested, the Program Manager shall cause the Contractors to update and expand the level of detail as the Project progresses, indicating current status of design, construction and permitting activities, projections of potential completion of major tasks, if significant variance from planned activities occurs, recommendations for recovery plans to the District and, upon obtaining District approval thereto, Program Manager shall modify the Master Schedule and applicable Project Schedules to incorporate any approved recovery plans.

- 2.4.5 Invoices from Project Team Members.** The Program Manager shall on a monthly basis: (i) gather, assemble and review all invoices submitted by members of the Project Team for completeness (including compliance with requirements of the District) and confirm (based on inspection of the work product of the Project Team members or other appropriate method) that the services for which payment is being requested have been performed in accordance with each Project Team member's governing contract or agreement for work or services; (ii) determine that the amount and terms of the payment are in accordance with said instrument; (iii) return, with District approval, any invoice found to be incomplete or deficient to the Project Team member in question along with a detailed explanation of the reason for rejection; and (iv) in accordance with procedures established by the District and the Program Manager, and the respective contracts, forward invoices which the Program Manager recommends and approves for payment to the appropriate District staff for further processing and payment. Program Manager shall make recommendations for any required retention of funds as the work progresses.
- 2.4.6 Communications.** The Program Manager shall establish written procedures for conduct of communications among the Project Team members and to deal with administrative matters relating to the planning, programming, design and construction of the Project. The Program Manager shall monitor compliance by each Project Team members with communication procedures and, after consultation with the District, take action or recommend action to ensure compliance by any non-compliant Project Team member.
- 2.4.7 Meetings.** The Program Manager shall: (i) arrange and attend regularly scheduled meetings with the District and other Project Team members; (ii) coordinate the meeting agendas; (iii) prepare and distribute meeting minutes that contain action lists for tracking outstanding items; (iv) evaluate and respond to request for corrections to minutes; (v) make sure that responsibility for reported issues is assigned for resolution along with a date for resolution; and (vi) track compliance by responsible Project Team members, including, without limitation, providing written notice to appropriate Project Team members to ensure that proper steps are taken to resolve outstanding items.
- 2.4.8 Information Management.** Except as otherwise directed by the District, the Program Manager shall receive, review and take appropriate action with respect to all information, reports, notices, requests and other materials by or from Project Team members, or otherwise relating to the Project, and shall prepare summaries of such materials for presentation to the District together with recommendations and advice with respect to the matters to which such materials relate. The Program Manager may, from time to time, receive information, notices, requests or other materials from the District, which are intended for other Project Team members. The Program Manager shall put such materials into appropriate form for submission to the intended recipients and shall deliver such materials to such recipients in a timely manner as provided under their respective contracts or agreements.

2.4.9 Default by Project Team Member. The Program Manager shall: (i) notify the District if the Program Manager becomes aware that any Project Team member is experiencing financial difficulties that may adversely affect its ability to fulfill its commitments to the Project; and (ii) make recommendations for replacing any Project Team member or other member that fails to perform its contractual obligations to the District in accordance with the terms of each applicable agreement.

2.4.10 Overlapping, Duplicative Services. The Program Manager shall promptly advise the District if there appears to be an overlap or duplication of services being provided by or among Project Team members, including the overlap or duplication of services being provided by the Program Manager, along with the Program Manager's recommendations for eliminating such duplicative or overlapping of services.

2.4.11 The District shall provide central and field offices for the Program Manager.

2.4.12 The Program Manager shall, when requested by the District: (i) arrange for attendance by appropriate Project Team members at meetings of the District; (ii) assist the Superintendent, designee or other District staff chairing the meeting in preparing presentations and responding to questions; and (iii) provide necessary follow-up to ensure that recommendations or directions given by the District at such meetings are appropriately addressed.

2.5 ADDITIONAL SERVICES NOT RELATED TO BOND PROGRAM

From time to time, at the request or with the prior written approval of the Superintendent or Assistant Superintendent of Facilities and Operations, the Program Manager shall provide Additional Services for projects in connection with the Building Program and the Long Range Facilities Master Plan that are not related to the Bond Program. Said Services shall be in compliance with all Applicable Laws and under the same standard of care and responsibility as those Services relating to the Bond Program. Compensation for those Services shall be at the hourly rates established herein. The Program Manager shall maintain clear records of those separate Services and shall assist the District in identifying appropriate sources of funds to ensure that neither bond proceeds nor matching funds for the Bond Program are used in connection with those Projects or Services. To the extent not required in connection with the Bond Program, other Services may include, but not be limited to the following:

- Assist the District in identifying lines of authority, organization and communication to effectively manage the facilities program. Assist the District in evaluating and revising current procedures and developing new procedures as necessary.
- Assist the District in updating the Long Range Facilities Master Plan to reflect and include new construction, capital improvements and deferred maintenance for each facility, as requested by the District.
- Assist the District with District-funded construction co-located at the site with Projects funded by the Bond Program.

2.6 SERVICES NOT EXCLUSIVE

The services identified to be provided pursuant to this Article are not intended to be an all inclusive or exclusive list of services to be provided by the Program Manager. Services may be added or deleted from time to time by the mutual agreement of the District and the Program Manager.

ARTICLE 3 DISTRICT RIGHTS AND RESPONSIBILITIES

3.1 BOND PROGRAM, PROJECT BUDGETS, SCHEDULES

The District, after consultation with its consultants, reserves the right to modify the Bond Program, Program Budget, Master Schedule, Project Schedules or other requirements or designs for the Project, for any reason, by written notice to the Program Manager. The Program Manager shall at all times perform its obligations under this Agreement in a manner that is consistent with the Bond Program, Program Budgets, Master Schedule, Project Schedules and other Project requirements, as modified from time to time by the District. The Program Manager shall be allowed to request adjustment in resources to achieve modified requirements, and approval for such request shall not be unreasonably withheld; provided that such adjustments shall not result in increase to the fee or hourly rates, or changes to the Staffing Plan established in **Exhibit C**, without specific written approval from the District.

3.2 PROJECT INFORMATION

The District shall furnish upon request available information concerning the Project, including surveys, soil reports, subsurface investigations, existing improvements, descriptions of legal limitations, utility plans and other information. The District does not warrant, expressly or impliedly, the accuracy, suitability or completeness of such information or of any data, opinions or recommendations contained therein; however, the Program Manager may reasonably rely on the District provided documents as described herein to the extent that it is consistent with its professional and contractual obligations herein.

3.3 DISTRICT DECISIONS OR APPROVALS – COMMUNICATIONS WITH DISTRICT

All communications between Program Manager and the District shall be directed to the Assistant Superintendent of Facilities and Operations, with copies to the Superintendent when the work is specifically requested by the Superintendent or when Program Manager and the Assistant Superintendent of Facilities and Operations determine such copies to be appropriate. Whenever the District's decision or approval is required hereunder, such decision or approval shall be rendered by the Assistant Superintendent of Facilities and Operations; provided that any matter involving the expenditure of funds in excess of those delegated to the Assistant Superintendent of Facilities and

Operations shall be presented to the Superintendent and/or the Board of Trustees, as appropriate, for consideration. If there is a disagreement that the Program Manager and the Assistant Superintendent of Facilities and Operations are unable to resolve after good faith efforts, the matter shall be submitted first to the Superintendent and then, if still unresolved, to the Board of Trustees.

Failure by the District to render any decision or approval required by the Program Manager shall not excuse any failure of the Program Manager to complete timely performance under this Agreement unless the Program Manager has notified the District in writing, no later than fifteen (15) Days in advance of the date the decision or approval is required, that it is unable to proceed without District approval and stating: (i) a description of the decision or approval required; (ii) a date by which such decision or approval is required so as to not delay the Project Schedule; and (iii) a specific statement that the Project Schedule will or may be delayed if the decision or approval is not received by the stated date. Notwithstanding the foregoing, it is agreed and understood that any decision or approval requiring action by the Board of Trustees may take up to sixty (60) days from the date notice is given to the Assistant Superintendent of Facilities and Operations of the need for such decision or approval.

3.4 AUTHORITY OF PROGRAM MANAGER

Notwithstanding anything to the contrary in this Agreement or any of the Contract Documents, the Program Manager shall not have the authority to contractually bind the District to any payment of money nor to bind the District to any modification of the District's contractual obligations or any other obligations. Without limiting the generality of the foregoing, the Program Manager shall not take action with respect to the following matters, under any District contract, unless and until it receives written evidence of the District's determination with respect to same, which determination: (i) shall be made in the District's sole discretion and (ii) shall be made by the District without any assumption by the District of any responsibility for planning, design and construction of the Project:

- Change orders.
- Form and substance of payment and performance bonds.
- Commencement of Construction.
- Determination of Unavoidable Delay.
- Replacement of key personnel.
- Acceptance of the work, or applications for Payment.
- Stop work orders; or
- Termination or amendment of applicable agreement or any portion of the work or settlement or ratification of outstanding liabilities and claims with respect to same.

3.5 RESTRICTION ON HIRING DISTRICT/PROGRAM PERSONNEL

All parties acknowledge that the representatives of the District and the Program Manager are of unique value to their respective organizations and possess in many instances special skills and knowledge that will be relied upon in the performance of the Services required for the Building

Program. As such, under no circumstance shall either the Program Manager or the District solicit for employment individuals under employment with the Program Manager or the District as of the date of the Program Manager's original response to the District's RFQ for Project Management Services. Violation of this provision shall be considered a breach of this Agreement and cause for termination under Section 7.1.1 herein.

ARTICLE 4

COMPENSATION, TIME OF PERFORMANCE

4.1 COMPENSATION

For services rendered by or on behalf of the Program Manager, whether described herein or otherwise performed by the Program Manager at the request of the District, the District shall pay the Program Manager fees billed by the Program Manager in accordance with the hourly rates set forth on **Exhibit B**, as adjusted in accordance with Section 4.2.1 below.

4.1.1 The total fee for services paid to the Program Manager, excluding Additional Services, shall not exceed eight and six tenths percent (8.6%) of the total Project Budget as set forth on **Exhibit F** hereto, as such may be adjusted from time to time.

4.1.2 Aggregate fees for Additional Services shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

4.2 RATES

4.2.1 The Program Manager will earn incremental payment of its fee for Services provided to the District on an hourly basis; provided that Program Manager shall be responsible for ensuring that its employees and Subcontractors do not exceed any applicable work-hour limitations under the law, and further provided that the District shall not be responsible for, and invoices may not include, any overtime, special pay or other such arrangements. The hourly rates to be billed per approved position are set forth on **Exhibit B** hereto. Such rates shall remain fixed as shown on **Exhibit B** until July 2012. On or after July 2012, hourly rates shall be increased as indicated on **Exhibit B**, provided that no such increase shall take effect until such time as the salaries of District management personnel shall have been increased. Program Manager may not invoice a person approved to work on a particular position at a higher rate for a higher-ranked approved position without prior written consent from the District.

4.2.2 Billing Statement. The Program Manager shall provide Services hereunder in a phased approach as outlined in Article 2 herein. Prior to the submission of its first Application for Payment, Program Manager shall prepare a billing statement reflecting the Services it provided, indicating tasks and

subtasks by phase of work and amount of time spent by position in a format acceptable to the District identifying and allocating time (services) and fee to applicable tasks and subtasks identified. The work billed (tasks) and the classification of the position performing the tasks shall be approved by the Assistant Superintendent of Facilities and Operations or designee for payment.

4.3 REIMBURSABLE EXPENSES

4.3.1 Reimbursable Expenses. The District agrees to, in addition to its compensation for services, reimburse certain costs, approved by the District and incurred by Program Manager in leasing adequate space, supplies and equipment in furtherance of performance of its obligations under this Agreement. These items are commonly referred to as reimbursable items and will be provided only to the extent that such needs are generated in connection with the Services. These items include: (i) office space; (ii) outside printing; (iii) reproduction and reprographic costs; (iv) overnight mail, postage, messenger, courier, and/or delivery services (but not including company or corporate required communications or reports, such as, but not limited to, time sheets, expense reports, interoffice memoranda, newsletters, etc.); (v) telephone calls (land line) and cellular phones (with two way radio capacity) used exclusively for the Project and approved in advance in writing by the District; (vi) mileage for business travel (excluding travel from residence to the District or Program Manager's home or branch offices) at the rate established by Internal Revenue Service and related parking and/or toll; (vii) out of town travel as approved in advance in writing by the District; (viii) fees of Subconsultants providing services on Proposition O pursuant to contracts approved by the District prior to commencement of any services thereunder (excluding any Subconsultant fees for services that are included in the Program Manager services and for which Program Manager is responsible); (ix) computer equipment, software, software upgrades, diskettes and peripherals; (x) facsimile and printer and product supplies (toner, ink cartridges); (xi) calculators, digital camera and supplies used exclusively for the Project; (xiii) materials and consumables used in conjunction with outreach presentations and Proposition O related events; and (xii) other equipment necessary for the performance of this Agreement if, and to the extent, approved in advance by the District, in writing, which approval may be granted or withheld in the reasonable discretion of the District.

4.3.2 Exclusive List. The list of the District provided items set forth in Paragraph 4.3.1 is the sole and exclusive list of Reimbursable Expenses for which Program Manager is entitled to reimbursement if not supplied by the District or unless otherwise agreed in writing by the District Superintendent and Assistant Superintendent of Facilities and Operations or designee.

4.3.3 Property. All materials or equipment, other than consumables, purchased for the Project by the District or reimbursed by the District as a Reimbursable Expense shall become property of the District, be labeled, tagged and inventoried as property of the District and delivered to the District upon

termination of this Agreement. Program Manager shall ensure that Project Team members comply with this requirement.

4.3.4 Approval Limitations. Any Reimbursable Expenses wherein a single item exceeds \$500.00 in value, whether leased or purchased, must be approved in writing in advance by the District. Failure to obtain such approval shall result in the cost of such item being borne by Program Manager without reimbursement by the District.

4.3.5 Markup / Multiplier. Any reimbursement provided for in this Agreement shall include an administrative charge, multiplier or other markup by the Program Manager, consisting of a five percent (5%) markup on all reimbursements and a ten percent (10%) markup on all subconsultants used on the Program.

4.3.6 Records of Reimbursables. Accurate and detailed records of Reimbursable Expenses pertaining to the Project shall be maintained in an orderly manner on the base of generally accepted accounting practices and shall be available at the District for inspection, auditing, and/or copying by The District or a designee or agent.

4.3.7 Limitation on Reimbursable Expenses. Reimbursable expenses under this Section 4.3 shall not exceed eight percent (8%) of the fees paid to the Program Manager pursuant to Section 4.1 hereof.

4.4 ADDITIONAL SERVICES

4.4.1 Compensation. The Program Manager's compensation for Additional Services shall be at the hourly rates identified in **Exhibit B**.

4.4.2 Notice. The Program Manager shall notify District Superintendent and Assistant Superintendent of Facilities and Operations or designee in writing within five (5) days after it receives any direction or request that the Program Manager believes constitutes a request for the performance of additional services. The Program Manager shall not perform any services it believes to be additional services until either it has received written confirmation from the District that such services are additional services, or until the District has directed it in writing to perform such services. Additional Services must be clearly identified either as Bond Program services or other Building Program or Long Range Facilities Master Plan services.

4.4.3 Disputes as to Classification. If a dispute arises as to whether any service required constitutes an additional service or a basic service under the terms of this Agreement, the Program Manager will nevertheless promptly perform such Service, if directed to do so by the District in writing. Neither the District's request nor the Program Manager's performance, nor the acceptance of such disputed

Service by the District, will constitute or be deemed to be a waiver on the part of the District of its rights with respect to appropriate classification of the Service.

4.5 TIMELY PERFORMANCE

If the District determines that the Program Manager is failing, for reasons other than force majeure, to maintain sufficient progress to meet the requirements of this Agreement, the Program Manager shall, at its cost and expense, increase its staffing to mitigate the effects of any delay and to meet the requirements of the Bond Program and this Agreement. If the Program Manager disputes in writing the District's determination that the delay is due to the Program Manager's action or inaction or claims a right to an adjustment to the Bond Program schedule or Master Schedule, the Program Manager shall nevertheless provide additional staffing or working hours to mitigate the delay, reserving to itself the right to submit a claim therefor.

4.6 TERM

4.6.1 Basic Term. The basic term of this Agreement shall expire on June 30, 2013.

4.6.2 Optional Term. The Program Manager grants to the District an irrevocable option, to be exercised at the District's sole discretion, to extend the Basic Term for four (4) additional two (2) year terms (each, an "Optional Term"), with the first Optional Term to commence on July 1, 2013. All terms and conditions of this Agreement shall remain in effect in the event the District exercises its option to extend this Agreement. The District shall advise Program Manager of its decision to exercise the option to extend not less than sixty (60) days before the expiration of the Basic Term and any extensions thereof.

ARTICLE 5 PAYMENTS

5.1 APPLICATIONS FOR PAYMENT

5.1.1 Application for Payment. The Program Manager shall deliver to the District a monthly itemized Application for Payment setting forth the Program Manager's calculation of the amounts payable for Services rendered and costs incurred. Each Application for Payment shall be in accordance with the Master Schedule and shall be submitted no later than twenty (20) Days after the last day of the month during which the Services were rendered and costs were incurred. Each Application for Payment shall include: (i) invoiced amount for Services conducted during the billing period for which the District is responsible, including copies of individual time sheets which shall not include any entries reflecting overtime or holiday rates; (ii) a list of Subconsultants for whom payment is being sought, if any; (iii) a detailed description of the Services invoiced on behalf of any Subconsultant; (iv) a cost breakdown

derived from the Schedule in a format acceptable to the District which identifies and allocates time (services) and costs to applicable tasks and subtasks, or to other sources if the Services are Additional Services not part of the Bond Program; (v) a funding status report detailing the budgeted amount for each invoiced task, the cumulative amount of all previous Applications for Payment with respect to such task, the value of the current Application for Payment minus any applicable retention; (vi) the Program Manager's determination of the percentage of each task; (viii) a certification that the invoice does not include disputed amounts or disputed Services or amounts for which payment was previously made; and (ix) written waivers and releases of all claims (conditional as to present payment only) against the District by the Program Manager and each Subcontractor for whom payment is sought in the form provided by the District and California Civil Code Section 3262, if applicable. The Program Manager shall not include in any Application for Payment amounts that the Program Manager does not intend to pay to a Subconsultant because of a dispute or other reason or amounts that relate to Services disputed by the District for which an agreement has not been reached by the District and the Program Manager.

5.1.2 Representation and Warranty. The Application for Payment shall constitute a representation by the Program Manager to the District that to the best of the Program Manager's knowledge, information and belief: (i) the Services covered by the Application for Payment have been performed; (ii) the Services covered by the Application for Payment are in conformity with this Agreement, Applicable Laws and with generally accepted industry standards, practices and principles applicable to said Services; (iii) any costs for which reimbursement is being sought were incurred in accordance with applicable requirements of this Agreement; and (iv) the Program Manager is entitled to payment from the District of the amount requested.

5.1.3 Accompanying Verification. Applications for Payment shall be accompanied by: (i) detailed time summaries for Services and Additional Services (segregated according to hours expended on Services and Additional Services) that are broken down by time keeper, description of task and time expended (block billings are not permitted) and copies of time sheets; and (ii) invoices, receipts and other documentation reasonably requested verifying the amounts of Reimbursable Expenses for which reimbursement is requested.

5.2 PAYMENT BY DISTRICT

5.2.1 Undisputed Amounts. Payments of undisputed sums due shall be made by the District monthly within forty-five (45) Days after approval by the District of a proper and timely Application for Payment.

5.2.2 No Obligation with Respect to Subcontractor. The District shall have no obligation to pay or to be responsible in any way for payment to a Subcontractor of any lower tier, except as may otherwise be required by Governmental Regulation or pursuant to a contract between the District and the

Subcontractor or unless the District has agreed in writing to make direct payment for particular Services.

5.3 PAYMENT DISPUTES

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by the District to the Program Manager under this Agreement, the District shall have the right to do either of the following: (i) make all or part of such disputed payment to the Program Manager without prejudice to the District's right to contest the amount so paid; or (ii) withhold all or a portion of such disputed payment. Should the District withhold all or a portion of any payment invoiced by the Program Manager, the District shall so notify the Program Manager in writing of the reasons therefor. From and after the Program Manager's receipt of such notice, the District and the Program Manager shall use their good faith efforts to resolve their dispute as quickly as practicable under the circumstances. If the District has given such notice, the Program Manager shall not be entitled to terminate this Agreement or suspend its services hereunder on account of such nonpayment, provided the District makes payment for all undisputed sums. If the District chooses to withhold payments under Clause (ii) of this Section 5.3 and if it is subsequently determined that the District owes an additional payment to the Program Manager, the District shall pay such amount to the Program Manager. If the District chooses to proceed under Clause (i) of this Section 5.3 and it is subsequently determined that the District overpaid the Program Manager, the Program Manager shall refund to the District the amount of such payment plus accrued interest computed at the maximum legal rate from the date of such overpayment until refunded.

ARTICLE 6 BOOKS AND RECORDS

6.1 MAINTENANCE OF BOOKS AND RECORDS

The Program Manager shall maintain complete and accurate books and records with respect to this Agreement and all Services, including without limitation management activities with respect to Project Team, costs, expenses, receipts and other information required by the District to verify the scope or charges for any Services provided under this Agreement. Such records shall be maintained within the County of San Diego and shall be prepared and maintained in sufficient detail to permit the District, the District's independent auditors or a designee of the District to thoroughly evaluate and verify the nature, scope, value and charges for Services. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Such records shall be kept separate from other documents and records unrelated to the Project for a period of four (4) years after the later of termination of this Agreement or final payment to

the Program Manager.

6.2 AUDIT OF RECORDS

The District, the District's independent auditors or their respective designee shall have the right to examine and to audit any and all books and records concerning this Agreement or Services rendered by the Program Manager or a Subconsultant, including without limitation the time spent by personnel in the performance of services on the Project. Such right to audit shall include inspection at all reasonable times at the Program Manager's offices or facilities or other location where records are reasonably kept, which shall be within the County of San Diego. In addition, the Program Manager shall, at no cost or expense to the District, furnish facilities and cooperate fully with the audit. Upon request, the Program Manager shall provide reproducible copies of books, records and other documents that are applicable to this Agreement for reproduction by the District or a designee.

6.3 AUDIT REIMBURSEMENT

To the extent that an audit by the District, the District's independent auditors or any other party identifies costs, charges or expenses inaccurately or improperly attributed to the Bond Program by the Program Manager, the Program Manager agrees to remit the amount of the overpayment to the District upon demand. If such audit discloses an overcharge of five percent (5%) or more of the total amount invoiced to the District for any year audited, and such audit is correct, the Program Manager shall also pay the actual cost of such audit, which cost shall include fees and costs of attorneys or other professionals involved in the audit and, in the case of audits conducted by the District, shall include staff costs computed on the basis of two (2) times the direct payroll of the audit staff. If such audit identifies an underpayment to the Program Manager with respect to disputed or miscalculated amounts, the District shall promptly remit the amount of the underpayment to the Program Manager.

6.4 FINGERPRINTING

It shall be the Program Manager's responsibility to comply with the fingerprinting provisions of the Education Code, to provide Fingerprinting Certificates, in the form attached hereto as **Exhibit D**, to the District covering all personnel assigned to perform services at any District site, and to ensure that all agents, Contractors, subcontractors or any other persons entering District facilities in connection with the construction or design of the Site Projects comply with such fingerprinting requirements, to the extent applicable.

The Program Manager shall create a Fingerprinting File, in a format acceptable to the District, and shall maintain copies of all fingerprinting certificates collected by the Program Manager for its own personnel and for the personnel of each member of the Project Team. The file shall be made available to the District upon request and shall be provided to the District upon termination of this Agreement.

ARTICLE 7
TERMINATION OF AGREEMENT

7.1 TERMINATION BY DISTRICT

7.1.1 For Cause. If the District determines that the Program Manager has failed to perform in accordance with the terms and conditions of this Agreement or a Program Manager Default (as defined in Section 7.1.2 hereof) has occurred, the District may terminate all or part of the Agreement for cause.

.1 This termination shall be effective if the Program Manager does not cure its failure to perform within fifteen (15) Days or, if the failure to perform cannot be cured within that period, if the Program Manager does not commence to cure within fifteen (15) Days (or longer, if authorized in writing by the District) after notice of intention to terminate is given by the District. Such notice shall specify the failure in performance.

.2 If a termination for cause occurs, the District will have the right to withhold monies otherwise payable to the Program Manager until acceptance of all the services being provided at the time of termination or until acceptance of the Site Projects being constructed at the time of termination, as applicable. If after termination, the District incurs additional costs, expenses or other damages in connection with the Services for which payment was withheld, such costs, expenses or other damages shall be deducted from the amounts withheld. If after completion of the Site Projects, or the services, to the satisfaction of the District, the amounts withheld exceed cost incurred by the District to complete the Site Projects or services, the balance will be paid to the Program Manager. If the costs, expenses or other damages incurred by the District exceed the amounts withheld, the Program Manager shall be liable to the District for the difference. The provisions of this Paragraph 7.1.1 are in addition to, and not a limitation upon, any other rights and remedies of the District under law or in equity.

7.1.2 Program Manager Default. The occurrence of any one or more of the following events at any time while this Agreement is in effect shall constitute a "Program Manager Default" under this Contract:

.1 the Project Manager is unable to pay its debts in the ordinary course of business as they come due unless said failure to pay is due to the District's failure to pay the Program Manager for reasons not the fault of the Program Manager; or

.2 an assignment for the benefit of creditors is made by, or any bankruptcy, reorganization (in connection with a debtor relief proceeding), receivership, moratorium or other debtor relief proceedings are commenced by or against the Program Manager, and the same is not discharged in sixty (60) Days; or

- .3 any material representation or warranty made by the Program Manager in this Agreement proves to be false or misleading in any material respect and the same is not cured within thirty (30) Days after written notice thereof from the District; or
- .4 due to wrongful acts or omissions of the Program Manager, the Services to be performed under this Agreement are abandoned and such acts or omissions are not cured within fifteen (15) Days after written notice from the District; or
- .5 by its wrongful acts or omissions, the Program Manager causes an interruption in the Bond Program for a period of fifteen (15) consecutive Days or more; or
- .6 the Program Manager fails to commence and continue with diligence and promptness to correct defective Services within fifteen (15) Days after written notice from the District setting forth such defective Services; or
- .7 the Program Manager is in default under or fails to perform its obligations under this Agreement (including, without limitation, failure to supply sufficient skilled personnel or suitable materials or equipment or failure to adhere to the Bond Program Schedule as may be adjusted from time to time in accordance herewith), and with respect to any monetary default fails to cure such default within fifteen (15) Business Days following issuance of written notice thereof by the District and with respect to any non-monetary default for which no time period for cure is otherwise specified herein, fails to cure such default within thirty (30) Days following issuance of written notice thereof by the District, or if the cure by its nature takes longer, fails to commence such cure to the District's satisfaction within thirty (30) Days from the date of issuance of the notice or fails to diligently prosecute such cure to completion; or
- .8 the Program Manager attempts to assign this Agreement or any portion of the Services other than as herein specified or permitted; or
- .9 at any time the District determines, after due investigation, that the Program Manager is (a) unnecessarily or unreasonably delaying performance of any Services, (b) willfully violating any of the conditions or covenants of this Agreement, or (c) executing the Services in bad faith or not in accordance with terms hereof; or
- .10 the Program Manager violates any Applicable Laws or Governmental Regulations in connection with this Agreement or any Services; or
- .11 the Program Manager disregards the authority of the District.

- 7.1.3 General Remedies.** If a Project Manager Default occurs under this Agreement, the District may exercise any right or remedy which it has under this Agreement, or which is otherwise available at law or in equity, and all of the District's rights and remedies shall be cumulative. If the District terminates this Agreement or any portion of the services, or chooses to complete or carry out services independent of the Program Manager, the District shall not thereby assume any liability to the Program Manager or any Subconsultant for completing such services, nor for the manner or quality of the performance of the services except for those services undertaken at the direction of the District post termination. The District's exercise of any of the rights or remedies provided in this Agreement (or otherwise available at law or in equity) shall not make the District, nor cause the District to be deemed to be, a partner or joint venturer of the Program Manager. If a Program Manager Default occurs, the District's obligation to disburse further funds to the Program Manager pursuant to this Agreement may be terminated or suspended by the District, in its sole discretion, and the District may withhold any one or more disbursements under this Agreement.
- 7.1.4 Stop Work.** If there is a Program Manager Default, in lieu of terminating this Agreement, the District may order the Program Manager to stop its work, or any portion thereof, by written order. The stop work order shall remain in effect until the cause for such order has been corrected, but the District shall not be obligated to extend any time for performance under the Master Schedule due to the issuance of the stop work order nor shall Program Manager be entitled to payment for any Services performed to correct the defects or to expedite Services to prevent delays under the Master Schedule. The District's right to stop the work shall not give rise to a duty on the part of the District to exercise this option for benefit of the Program Manager or other persons or entities.
- 7.1.5 Self-Help.** If there is a Program Manager Default, the District may, without prejudice to other remedies, correct such deficiencies, but shall have no obligation to do so. In such case, the District may deduct the District's costs of correcting such deficiencies, including, without limitation, compensation for additional services and expenses of a supplemental or replacement program manager, design or engineering consultants and other consultants made necessary by such defaults, including services of legal counsel, from payments then or thereafter due to the Program Manager. If the payments then or thereafter due to the Program Manager are not sufficient to cover the amount of the deduction, the Program Manager shall pay the difference to the District.
- 7.1.6 Set-Off.** The District reserves the right to deduct, set-off or withhold against sums due to the Program Manager from the District, any amounts which the District determines to be due and owing to it by the Program Manager, including, without limitation, payment of expenses, Losses, actual legal fees or damages incurred by the District for which the Program Manager is liable pursuant to this Agreement.

7.1.7 Contract Assignment as Condition Subsequent to Program Manager Default. Upon the occurrence of any Program Manager Default, this Section 7.1.7 shall act as a condition subsequent. The Program Manager agrees that as security for the performance by the Program Manager of its obligations set forth in this Agreement and upon occurrence of any Program Manager Default, all right, title and interest of the Program Manager in and to this Agreement and any agreement between Program Manager and any Subconsultant (hereafter Program Management Contracts) shall be vested in the District. Neither the occurrence of this condition subsequent nor any action or actions on the part of the District shall constitute a voluntary assumption by the District of any obligations of the Program Manager under the Program Management Contracts and the Program Manager shall continue to be liable for all obligations thereunder. The District may at its option, but shall not be required to, perform or discharge any obligation of the Program Manager under some or all of the Program Manager Contracts. Upon occurrence of a Program Manager Default, if requested by the District, the Program Manager shall deliver to the District each Program Management Contract affected thereby and shall cooperate with the District in executing any specific assignments of such Program Management Contracts which may be requested by the District from time to time.

7.1.8 For Convenience. The District may terminate or suspend performance of this Agreement for convenience and without cause at any time upon thirty (30) Days written notice to Program Manager, in which case the District will pay Program Manager as provided in Article 5 for all Services and authorized Additional Services actually performed, and all authorized Reimbursable Expenses actually incurred and paid by Program Manager, under and in accordance with this Agreement up to and including the date of termination, as well as reasonable costs of termination and demobilization as approved by the the District. Such payment shall be Program Manager's sole and exclusive compensation and the District shall have no liability to Program Manager for any other compensation or damages, including without limitation, anticipated profit, Losses, legal fees or costs associated with legal representation or consequential damages, of any kind.

7.1.9 Termination Claim. After receipt or issuance of a notice of termination, the Program Manager shall submit to the District its termination claim, in the form and with certifications prescribed by the District. Such claim shall be submitted promptly, but in no event later than forty (40) Days after the termination date specified on the notice.

7.2 TERMINATION BY PROGRAM MANAGER

7.2.1 Termination of the Agreement. The Program Manager may terminate this Agreement:

- .1 If the District fails to make any undisputed payment to the Program Manager when due in accordance with this Agreement and such failure remains uncured for ninety (90) Days after written notice to the District of such default and of the Program Manager's intent to terminate; or

.2 If the District ceases work on all Projects or suspends performance of this Agreement for more than ninety (90) consecutive Days, the Program Manager may terminate this Agreement upon thirty (30) Days' notice to the District, provided the District does not reactivate the Project within such thirty (30) Day period. If the Project is reactivated and this Agreement is still in full force and effect, the Program Manager's compensation shall be equitably adjusted to provide for reasonable expenses incurred by the Program Manager which are directly attributable to the interruption and resumption of service.

7.2.2 Payment for Services. In the event of a termination of this Agreement by the Program Manager in accordance with Section 7.2.1, the District shall pay the Program Manager an amount for its Services, Additional Services and Reimbursable Expenses calculated in accordance with Paragraph 7.1.8 of this Agreement.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 INDEMNIFICATION

To the fullest extent permitted by law, the Program Manager agrees to indemnify, defend and hold harmless, the District, its Board of Trustees, and each of its members, officers, employees, agents, attorneys, insurers and volunteers (each an "Indemnitee"), through legal counsel reasonably acceptable to the District, from any and all Losses and actual attorneys' fees, costs, costs of consultants and experts, to the extent arising out of or relating to any of the following: (i) negligent performance or nonperformance of this Agreement by the Program Manager or its Subconsultants; (ii) negligent activities or willful misconduct of the Program Manager or its Subconsultants on the Site; (iii) the payment or nonpayment by the Program Manager of anyone with whom the Program Manager has entered into a contract to furnish services for the Project; (iv) any claim arising in connection with the Program Manager's obligations pursuant to Section 1.5.5 hereof; or (iv) any personal injury or property damage to third persons associated with the negligent performance or nonperformance by the Program Manager or its Subconsultants; provided however, that nothing contained herein shall be construed as obligating the Program Manager to indemnify any Indemnitee for losses resulting from the Indemnitee's sole or active negligence or willful misconduct. Nothing set forth in the Contract Documents shall be construed to give rise to any expressed or implied right in favor of the Program Manager for indemnity or contribution from the District.

8.1.1 Assertions Not Binding. The Program Manager's obligations to indemnify and defend as provided herein shall not be affected by an assertion of a third party that the District or its directors, board members, officers, agents, employees or consultants may have been actively or solely negligent.

8.1.2 Negligence. The indemnification obligations of the Program Manager under this Article 8 shall not be affected or in any way diminished by the fact that the District or its directors, officers, board members, agents, employees or consultants, may have jointly caused or contributed to the liability or claim by their acts, omissions, conduct or negligence; provided, however, that nothing herein shall require the Program Manager to indemnify the District or its directors, board members, officers, agents, employees or consultants for liability resulting from such party's active negligence.

8.1.3 Survival of Indemnities. The provisions of this Article 8 shall survive the termination of this Contract.

8.2 INSURANCE

8.2.1 Basic Insurance Requirements. Prior to commencing Work, the Program Manager and each of its Subconsultants shall procure and maintain insurance at the Program Manager's own cost and expense for the duration of the Basic Term against Claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or services hereunder by the Program Manager, its joint venture partner or constituents, agents, representatives, employees, or Subcontractors.

- .1 Without in any way affecting the indemnity provided in or by Section 8.1, the Program Manager shall secure before commencement of the Work and throughout the time of performance of this Agreement the types and amounts of insurance specified in this Section 8.2.
- .2 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:6 unless otherwise approved by the District.
- .3 Each insurance required by this Section 8.2 shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District in accordance with the notice provisions of this Agreement.

8.2.2 Minimum Limits of Insurance. The Program Manager and each of its Subconsultants shall obtain insurance of the types described below. The Program Manager shall obtain such insurance in the amounts described below:

- .1 Commercial General Liability Insurance (CGL) with a limit of not less than \$2,000,000 each occurrence/\$2,000,000 in the annual aggregate.
- .2 Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident, \$2,000,000 in the annual aggregate.

- .3 Professional Liability (Errors and Omissions) Insurance with a limit not less than \$2,000,000 each occurrence/\$2,000,000 in the annual aggregate.
- .4 Workers' Compensation Insurance as required by the State of California.
- .5 Employer's Liability Insurance in the amount of \$5,000,000 per accident for bodily injury or disease.

The minimum amounts of such insurance to be obtained by each Subconsultant shall comply with the schedule of minimum limits of insurance set by the District's Director of Risk Management.

8.2.3 Minimum Scope of Insurance.

- .1 CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.
- .2 Business Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles). Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- .3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three (3) years after Final Completion of the Project. The "retro date" must be shown and must be before the date of this Agreement or before the date of issuance of the Authorization to Proceed, whichever date is earlier.

8.2.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions by the Program Manager in excess of \$250,000 must be declared to and approved by the District. The Program Manager shall provide evidence of insurance or a financial guarantee satisfactory to the District guaranteeing payment of Losses and related investigation, claim administration and defense expenses.

8.2.5 Other Insurance Provisions. The Commercial General Liability and Business Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

- .1 The District, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured, and with respect to liability arising out of services or operations performed by or on behalf of the Program Manager including materials, parts or equipment furnished in connection with such Work or operations, under the CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 26 or a substitute providing equivalent coverage. The District and other additional insureds mentioned in the Paragraph shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.
- .2 For any claims related to this Project, insurance coverage shall be primary as to the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.
- .3 Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

8.2.6 Waiver of Subrogation. For Commercial General Liability, Workers' Compensation, and Employer's Liability insurance, the insurer shall agree to waive all rights of subrogation against the District, its officers, officials, employees, and volunteers for Losses arising from activities and operations of insured in the performance of services under this Agreement.

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

8.2.8 Verification of Insurance. The Program Manager shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this Section 8.2. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on District approved forms. All certificates and endorsements are to be received and approved by the District before Work commences. The District reserves the right to review complete original or certified copies of all required insurance policies at any time, including endorsements affecting the coverage required by these specifications.

8.2.9 Subconsultants. The Program Manager shall include all of its Subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each Subconsultant. All coverages for Subconsultants shall be subject to all of the requirements stated herein.

ARTICLE 9 DISPUTE RESOLUTION

9.1 RESOLUTION OF CLAIMS

Claims shall be resolved by the parties in accordance with the provisions of this Article 9. All Claims shall be subject to the Claims Resolution Process set forth in this Article 9, which shall be the exclusive recourse of the Program Manager and the District for determination and resolution of Claims.

9.2 RESOLUTION OF OTHER DISPUTES

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

9.3 SUBMISSION OF CLAIM

9.3.1 By Program Manager. The Program Manager's right to commence the Claims Dispute Resolution Process shall arise upon the District's written response denying all or part of a Claim. The Program Manager shall submit a written Statement of Dispute to the District within twenty-one (21) Days after the District rejects all or a portion of Program Manager's Claim. Failure by the Program Manager to timely submit its Statement of Dispute shall result in the decision by the District on the Claim becoming final and binding. The Program Manager's Statement of Dispute shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence and the asserted effect, if any, on the compensation due or time of performance obligations of the Program Manager under this Agreement. Such Statement of Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claims relating to an adjustment of the Program Manager's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each Delay on the Program Manager's time for performance. Adequate supporting data to a Statement of Dispute submitted by the Program Manager involving the Program Manager's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.

9.3.2 By The District. The District's right to commence the Claims Dispute Resolution Process shall arise at any time following the District's actual discovery of the circumstances giving rise to the Claim. Nothing contained herein shall preclude the District from asserting Claims in response to a Claim asserted by the Program Manager. A Statement of Claim submitted by the District shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by the District as a result of such events. Notwithstanding the foregoing, the District shall not be able to commence or assert a claim beyond the applicable statute of limitations.

9.4 CLAIMS DISPUTE RESOLUTION PROCESS

The parties shall utilize each of the following steps in the Claims Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Claims Dispute Resolution Process, which good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the Claims Dispute Resolution Process.

9.4.1 Direct Negotiations. Designated representatives of the District and the Program Manager shall meet as soon as possible (but not later than forty-five (45) Days after receipt of the Statement of Dispute) in a good faith effort to negotiate a resolution to the Claim. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claim or defenses being asserted by such party, and with full authority to resolve such Claim then and there, subject only to the District's right and obligation to obtain Board of Trustees approval of any agreed settlement or resolution. If the Claim involves the assertion of a right or claim by a Subconsultant against the Program Manager that is in turn being asserted by the Program Manager against the District, then such Subconsultant shall also have a representative attend such negotiations, with the same authority and knowledge as just described. Upon completion of the meeting, if the Claim is not resolved, the parties may either continue the negotiations or either party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

9.4.2 Deferral of Contract Disputes. Following the completion of the negotiations required by the preceding paragraph, all unresolved Claims shall proceed to Mediation as set forth in the succeeding paragraph entitled "Mediation." The Parties hereto may mutually agree to postpone continuing the Claims Dispute Resolution until the earlier of: (i) the completion of the Scope of Services hereunder or, (ii) the termination of the services. In the event claims are deferred, the claims shall be consolidated within a reasonable period of time after completion of the Scope of Services herein and pursued to resolution through the Claims Dispute Resolution Process. Pending final resolution of any claim, the Program Manager shall proceed diligently with the performance of its Scope of Services

and the District shall continue to make payments for those services that are not part of the Claim set forth herein in accordance with the terms of this Agreement.

9.4.3 Mediation. If the Claim remains unresolved after direct negotiations pursuant to Paragraph 9.4.1, the parties agree to submit the Claim to non-binding mediation before a mutually acceptable third party mediator.

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

.2 Submission to Mediation and Selection of Mediator. The party initiating mediation of a Claim shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within ninety (90) Days after the receipt of such written notice, then the parties shall submit the matter to the Superior Court of the County of San Diego to select a mediator in accordance with the qualifications herein and the applicable law.

.3 Mediation Process. The location of the mediation shall be at the offices of the District, or otherwise mutually agreed. The costs of mediation shall be shared equally among all parties participating. All discussions that occur during the mediation and all document presentations prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

9.5 NON-WAIVER

Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of either party.

**ARTICLE 10
NON-DISCRIMINATION**

10.1 NON-DISCRIMINATION IN SERVICES

10.1.1 The Program Manager shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws. For the purpose of this Section 10.1, discrimination in the provision of services may include, but is not limited to the following:

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

- .2 Providing any service or benefit to any person which is not equivalent, or in a non-equivalent manner or at a non-equivalent time, from that provided to others.
- .3 Subjecting any person to segregation or separate treatment in any manner related to the receipt of any service.
- .4 Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
- .5 Treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

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

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

10.2 NON-DISCRIMINATION IN EMPLOYMENT

10.2.1 The Program Manager may not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with requirements of Applicable Laws. The Program Manager shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following: (i) Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; or (ii) selection for training, including apprenticeship.

10.2.2 The Program Manager agrees to post in conspicuous places in each of the Program Manager's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this Section 10.2.

- 10.2.3** The Program Manager shall, in all solicitations or advertisements for employees placed by or on behalf of the Program Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws.
- 10.2.4** The Program Manager shall send to each labor union or representative co-workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Program Manager's commitments under this Section 10.2.
- 10.2.5** The Program Manager certifies and agrees that it will deal with its Subconsultants, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of Applicable Laws.
- 10.2.6** In accordance with Applicable Laws, the Program Manager shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of this Section 10.2. The Program Manager shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of this Section 10.2.
- 10.2.7** If the District finds that any of the provisions of this Section have been violated, such violation shall constitute a material breach of this Agreement upon which the District may cancel, terminate or suspend this Agreement. While the District reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Program Manager has violated State or Federal anti-discrimination laws shall constitute a finding by the District that the Program Manager has violated the provisions of this Section.
- 10.2.8** The parties agree that in the event the Program Manager violates any of the provisions of this Section, the District shall be entitled, at its option, to the sum of five hundred dollars (\$500) pursuant to Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement.
- 10.2.9** The Program Manager hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by applicable Federal Regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Program Manager receiving Federal Financial Assistance.

ARTICLE 11
NOTICES

11.1 NOTICE FORM AND DELIVERY

All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when given in any of the following ways: (i) on the date delivered if delivered personally; (ii) on the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided; (iii) on the date sent if sent by facsimile transmission and confirmation of transmission is received; and (iv) on the date accepted or rejected if sent by certified mail, at the address as follows:

To District at: 1130 Fifth Avenue
Chula Vista, California 91911
Facsimile: 619-420-0339
Attention: Assistant Superintendent of Facilities and Operations

To Program Manager at: 199 South Hudson Avenue
Pasadena, California 91101
Facsimile: 626-395-9494
Attention: Jaime Ortiz

Notices may be personally delivered to the Program Manager by delivery to Jaime Ortiz at the offices provided for in Section 2.4.11 hereof.

ARTICLE 12
GOVERNING LAW AND VENUE

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

ARTICLE 13
HAZARDOUS SUBSTANCES

If the Program Manager becomes aware that a Hazardous Substance is on campus related to the Project, the Program Manager shall immediately notify the District.

ARTICLE 14

WAIVER

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

ARTICLE 15

CONFIDENTIALITY

The Program Manager shall treat all information and data furnished to it by the District, or any other Project Team member or otherwise obtained or prepared by the Program Manager concerning the Project, as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with the Program Manager's performance of this Agreement or any governmental filings or applications. The Program Manager's obligations of confidentiality shall not apply to: (a) information which was in or subsequently enters the public domain through no fault of the Program Manager; (b) information that was in the possession of the Program Manager prior to disclosure by the District; or (c) information that is disclosed to the Program Manager by a third party under no obligation of confidentiality to the District. The Program Manager shall not engage in or permit any public references or statements to the Project, the District, the Program Manager's services hereunder, including, without limitation, referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of the District, which may be granted or withheld in the sole discretion of the District. The Program Manager shall instruct all of its employees of this obligation and shall use its best efforts to ensure full compliance in compliance with this Article 15. The provisions of this Article 15 shall survive any termination of this Agreement.

ARTICLE 16

INDEPENDENT CONTRACTOR

The Program Manager is and shall at all times remain as to the District a wholly independent contractor. The Program Manager will have no power or authority to assume or create any obligation on behalf of the District.

ARTICLE 17
FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS

In the performance of this Agreement, the Program Manager shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S. C. 200e - 217), whichever is more restrictive. This specific requirement does not in any manner limit or modify the Program Manager's obligation to comply with all Applicable Laws in connection with this Agreement.

ARTICLE 18
PERMITS AND LICENSES

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

ARTICLE 19
CONFLICTS OF INTEREST

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

ARTICLE 20
NUISANCE

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

ARTICLE 21
EMERGENCIES

In an emergency affecting the safety of life, the work or adjacent property, the Program Manager shall notify the District immediately that an emergency exists. In the meantime, without special instruction from the District as to the manner of dealing with the emergency, the Program Manager shall act using its own discretion to prevent threatened loss or injury. As emergency work proceeds, the District may issue instructions that the Program Manager shall follow.

ARTICLE 22
EXTENT OF AGREEMENT; CONSTRUCTION

22.1 ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the District and the Program Manager for furnishing of program management services and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instrument signed by both the District and the Program Manager, and formally approved or ratified by the Board of Trustees.

22.2 ASSIGNMENT FORBIDDEN

Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any Claim hereunder, may be assigned by the Program Manager without the prior written consent and approval of the District, which may be granted or withheld in the District's sole discretion. If the Program Manager attempts to take any such action without prior consent by the District, such action shall be null and void and transferee shall have no rights or claims against the District. In addition, this Agreement may, at the option of the District, be immediately terminated and any such termination shall be deemed a Termination for Cause by the District and the District shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the Program Manager, and to its assignee or transferee.

22.3 HEADINGS AND SECTIONS; TABLE OF CONTENTS

The table of contents and the headings of Articles and Sections are for convenience only and shall not modify rights and obligations created by this Agreement. Unless otherwise indicated, all references to Articles, Sections and subsections are to this Agreement.

22.4 INCORPORATION OF RECITALS AND EXHIBITS

All exhibits referred to in this Agreement are considered attached and fully incorporated by this reference as if fully set forth herein.

22.5 CONTEXTUAL INTERPRETATION

Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa.

22.6 CONSTRUCTION

Both parties have participated in the drafting of this Agreement and, accordingly, this Agreement shall not be construed as if it had been prepared by the District or the Program Manager, but rather as if the District and the Program Manager had together prepared the same.

22.7 LATEST REFERENCES

Reference to standards, specifications, manuals, or codes of any technical society, organization or association, or to the Governmental Regulations of any Governmental Authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Governmental Regulation in effect, except as may be otherwise specifically stated in the Contract Documents.

22.8 BINDING AGREEMENT

This Agreement shall be binding upon the District and the Program Manager and their respective successors and assigns. In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.

22.9 NO THIRD PARTY RIGHTS

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

22.10 AUTHORITY

Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

22.11 SEVERABILITY

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted and the parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this Agreement.

22.12 EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

22.13 PROVISIONS REQUIRED BY LAW.

Each and every provision of law and clause required to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were

included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

**ARTICLE 23
DISCLAIMER**

Except as otherwise expressly stated herein, the services to be performed by the Program Manager under this Agreement shall not impose upon it any obligation to assume any responsibilities, duties, services, or activities assumed or required to be rendered or performed by any Architect, Engineer, or construction Contractor employed by or associated with the District in relation to this Project. In performing constructability review, value engineering or any other review involving the drawings and/or specifications for the project, the Program Manager does not undertake to perform any design work nor does it accept responsibility for any of the design features or design of the project, which shall remain the sole responsibility of the Design Professional. The Program Manager shall have no responsibility for construction means, methods, sequences, techniques or health and safety precautions and programs of the construction Contractor, including construction site safety, all of which shall remain the sole responsibility of the construction Contractor. If the Program Manager is required to monitor construction Contractor work for compliance with the contract documents, which includes the plans, drawings and specifications, the Program Manager shall have no responsibility to monitor the construction Contractor work in regard to any federal, state or local laws, rules and regulations pertaining to health and safety, which includes federal and/or state OSHA rules and regulations. The Program Manager shall be responsible for safety of the Program Manager's employees and the employees of the Program Manager's subconsultants only. The Program Manager is not responsible for the safety of any other person working on this Project.

**ARTICLE 24
EXHIBITS**

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

<u>Exhibit A</u>	Key Personnel
<u>Exhibit B</u>	Summary Detailed Hourly Rates
<u>Exhibit C</u>	Classifications and Staffing Plan
<u>Exhibit D</u>	Fingerprinting Certificate
<u>Exhibit E</u>	Master Schedule
<u>Exhibit F</u>	Estimated Project Budgets As Of June 1, 2010

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, on the day and year first above written.

SWEETWATER UNION HIGH SCHOOL DISTRICT

By: _____
R. Karl Bradley, Assistant Superintendent of Facilities and Operations

THE SEVILLE GROUP

By: _____
Title: _____

EXHIBIT A

PROGRAM MANAGER KEY PERSONNEL

NAME	POSITION
Jaime Ortiz, AIA, LEED	Program Manager
Bradley Johnson	Program Controls Manager

EXHIBIT B

SUMMARY DETAILED HOURLY RATES

Core Team	Current Hourly Rates	2012 Hourly Rates
Principal-In-Charge	\$195.00	\$203.00
Program Manager	\$184.00	\$191.00
Deputy Program Manager	\$170.00	\$177.00
Sr. Project Manager	\$162.00	\$168.00
Program Planning/Design Manager	\$162.00	\$168.00
Program Controls Manager	\$157.00	\$163.00
Project Manager	\$146.00	\$152.00
Assistant Project Manager	\$128.00	\$133.00
Controls Engineer	\$108.00	\$112.00
Communication Specialist	\$104.00	\$108.00
Program Quality Manager	\$ 92.00	\$ 96.00
Office Manager	\$ 81.00	\$ 84.00
Document Control Engineer	\$ 81.00	\$ 84.00
Safety Engineer	\$146.00	\$152.00
Support Staff (As Needed)		
Outreach Manager	\$119.00	\$124.00
Constructability Reviewer	\$146.00	\$152.00
Estimating	\$130.00	\$135.00
Senior Scheduler	\$141.00	\$147.00

**EXHIBIT C
CLASSIFICATIONS AND STAFFING PLAN**

Staffing Plan Labor Cost \$15,237,149
 8% Reimbursable \$ 1,218,972
 Staffing Plan Value 16,456,121

HOURS

Core Team	FT/PT	2010	2011	2012	2013
		1976 hours	1976 hours	1976 hours	1976 hours
Core Team		Hours	Hours	Hours	Hours
Principal in Charge	PT				
Program Manager	FT	1,037.40	1,778.40	1,778.40	205.83
Deputy Program Manager for Construction	FT	1,087.33	1,976.00	1,976.00	452.83
Program Planning/Design Manager	FT	1087.33	1,976.00	1,399.67	
Program Controls Manager	FT	1,153.67	1,976.00	1,976.00	576.33
Project Manager	FT	1,153.67	1,976.00	1,811.33	
Project Manager		1,153.67	1,976.00		
Project Manager	FT	1,153.67	1,976.00	1,976.00	617.50
Project Manager	FT	1,153.67	1,811.33		
Project Manager		1,153.67	1,976.00	1,976.00	617.50
Project Manager		1,153.67	1,646.67		
Project Manager		1,153.67	1,976.00	1,976.00	617.50
Assistant Project Manager	PT	1,153.67	1,976.00		
Assistant Project Manager		1,153.67	1,976.00	1,976.00	617.50
Assistant Project Manager		1,153.67	1,976.00	1,976.00	617.50
Assistant Project Manager	FT	1,153.67	1,976.00	1,976.00	617.50
Assistant Project Manager	FT	1,153.67	1,811.33		
Controls Engineer	FT	1,153.67	123.50		
Controls Engineer	FT	1,153.67	1,976.00	1,770.17	
Communication Specialist	PT	576.33	988.00	988.00	98.80

Program Reporting/DB Specialist (QM)	FT	1,153.67	1,976.00	1,976.00	658.67
Office Manager	FT	1,153.67	1,976.00	1,976.00	905.67
Document Control Engineer	FT	1,153.67	1,976.00	1,976.00	905.67
Safety Engineer		1,153.67	988.00		
Support Staff (As Needed)					
Outreach Manager	FT	1,153.67	1,976	1,976.00	161.37
Communication Specialist	FT	576.33	988.00		
Constructability Reviewer					
Estimating					
Senior Scheduler	PT	1,153.67	1,646.67	1,284.40	
		28,570.73	45,373.90	32,743.97	7,670.17

FEES

Core Team	FT/PT	2010	2011	2012	2013
		1976 hours	1976 hours	1976 hours	1976 hours
Principal in Charge	PT	--	--	--	--
Program Manager	FT	190,882	327,226	335,525	39,644
Deputy Program Manager for Construction	FT	184,847	335,920	345,141	81,016
Program Planning/Design Manager	FT	176,148	320,112	231,192	--
Program Controls Manager	FT	180,969	310,232	318,136	94,807
Project Manager	FT	168,289	288,496	271,371	--
Project Manager	FT	168,289	288,496	--	--
Project Manager	FT	168,289	288,496	296,400	94,601
Project Manager	FT	168,289	264,455	--	--
Project Manager	FT	168,289	288,496	296,400	94,601

Project Manager	FT	168,289	240,413	--	--
Project Manager	FT	168,289	288,496	296,400	94,601
Assistant Project Manager	FT	147,541	252,928	--	--
Assistant Project Manager	FT	147,541	252,928	259,515	82,745
Assistant Project Manager	FT	147,541	252,928	259,515	82,745
Assistant Project Manager	FT	147,541	252,928	259,515	82,745
Assistant Project Manager	FT	147,541	231,851	--	--
Controls Engineer	FT	124,488	13,338	--	--
Controls Engineer	FT	124,488	213,408	195,624	--
Communication Specialist	PT	59,939	102,752	105,387	10,802
Program Reporting/DB Specialist (QM)	FT	106,045	181,792	187,061	63,891
Office Manager	FT	93,366	160,056	164,008	76,817
Document Control Engineer	FT	93,366	160,056	164,008	76,817
Safety Engineer		168,289	144,248	--	--
Support Staff (As Needed)					
Outreach Manager	FT	137,167	235,144	241,731	20,010
Communication Specialist	FT	59,939	102,572	--	--
Constructability Reviewer	PT	--	--	--	--
Estimating	PT	--	--	--	--
Senior Scheduler	PT	168,289	240,413	192,067	--
TOTAL		\$3,783,954	\$6,038,360	\$4,418,995	\$995,841
CUMULATIVE TOTAL		\$3,783,954	\$9,822,313	\$14,241,308	\$15,237,149

NOTES:

1. This staffing plan assumes a monthly average of 164.67 hours for planning purposes. Actual hours will be invoiced.

EXHIBIT D

FORM OF FINGERPRINTING CERTIFICATE

**PROGRAM MANAGER
FINGERPRINTING CERTIFICATE**

With respect to the Agreement dated _____, 2010 by and between the Sweetwater Union High School District (the "DISTRICT") and the Seville Group, Inc. ("PROGRAM MANAGER") for the provision of program/project management services with respect to the Proposition O Program, PROGRAM MANAGER hereby certifies to the DISTRICT'S governing board that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees or subcontractors that may come in contact with DISTRICT pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c). PROGRAM MANAGER will provide copies of the fingerprinting reports to the District.

Program Manager's Representative

Date

**EXHIBIT E
MASTER SCHEDULE**

[TO BE INSERTED]

EXHIBIT F

ESTIMATED PROJECT BUDGETS as of June 1, 2010

Site	Project	Scope	Estimated Current Budget	Estimated Cost thru 5/31/10	Estimated Project Budget
BVH	Bleachers	closeout	\$451,291	\$309,200	\$142,091
CPH	CPH Proj 1 Design	new project	\$2,422,165	\$0	\$2,422,165
CVH	Mod Proj 1	complete construction	\$29,524,520	\$17,297,100	\$12,227,420
CVH	Fire Alarm Upgrade	new project	\$520,000	\$0	\$520,000
CVH	CVH Proj 2 Design	new project	\$1,460,330	\$0	\$1,460,330
CVM	Mod Proj 1	complete construction	\$11,083,765	\$6,105,500	\$4,978,265
CVM	Move Portables	continue project	\$1,000,000	\$0	\$1,000,000
CVM	400 Building	continue project	\$1,000,000	\$0	\$1,000,000
CVM	Fire Alarm Upgrade	new project	\$780,000	\$0	\$780,000
GJH	Health Clinic	closeout	\$316,997	\$207,700	\$109,297
HTH	Mod Proj 1	complete construction	\$21,434,586	\$9,975,700	\$11,458,886
HTH	Fire Alarm Upgrade	new project	\$910,000	\$0	\$910,000
HTH	HTH Proj 2 Design	new project	\$1,175,758	\$0	\$1,175,758
HTM	Mod Proj 1 Design	new project	\$1,565,519	\$0	\$1,565,519
HTM	Mod Proj 1A	new project	\$8,654,234	\$0	\$8,654,234
MOH	Mod Proj 1	complete construction	\$18,671,967	\$10,055,500	\$8,616,467
MOH	Fire Alarm Upgrade	new project	\$585,000	\$0	\$585,000
MOH	MOH Proj 2 Design	new project	\$1,245,597	\$0	\$1,245,597
MOH	Bleachers/Gym mod	new project	\$1,500,000	\$0	\$1,500,000

MOM	Mod Proj 1 Design	continue project	\$3,000,000	\$1,389,600	\$1,610,400
MOM	Mod Proj 1	new project	\$20,000,000	\$0	\$20,000,000
MOM	Fire Alarm Upgrade	new project	\$157,763	\$0	\$157,763
MVH	Mod Proj 1	complete construction	\$7,977,325	\$4,293,000	\$3,684,325
MVH	Electrical Grounding	new project	\$500,000	\$0	\$500,000
MVH	Fire Alarm Upgrade	new project	\$505,556	\$0	\$505,556
MVH	MVH Proj 2 Design	new project	\$620,470	\$0	\$620,470
MVH	MVH Proj 2A	new project	\$1,000,000	\$0	\$1,000,000
NCM	Mod Proj 1	complete construction	\$12,806,967	\$4,832,200	\$7,974,767
NCM	18th St street widening	continue project	\$500,000	\$0	\$500,000
NCM	Fire Alarm Upgrade	new project	\$447,200	\$0	\$447,200
NCM	Mod Proj 2	continue project	\$16,012,929	\$835,400	\$15,177,529
SOH	Mod Proj 1	complete construction	\$16,768,124	\$6,306,900	\$10,461,224
SOH	Café Canope Demo	continue project	\$50,000	\$0	\$50,000
SOH	Café Mod	continue project	\$2,000,000	\$0	\$2,000,000
SOH	Security Prototype	continue project	\$100,000	\$0	\$100,000
SOH	Fire Alarm Upgrade	new project	\$505,556	\$0	\$505,556
SOH	SOH Proj 2 Design	new project	\$1,462,654	\$0	\$1,462,654
SOM	Mod Proj 1	complete construction	\$12,165,947	\$5,821,000	\$6,344,947
SOM	Mod Proj 1A	continue project	\$4,217,000	\$0	\$4,217,000
SOM	Fire Alarm Upgrade	new project	\$124,800	\$0	\$124,800
SUH	Mod Proj 1	complete construction	\$44,691,483	\$13,995,300	\$30,696,183
SUH	Welding Building	continue project	\$3,035,821	\$0	\$3,035,821

SUH	Fire Alarm Upgrade	new project	\$2,275,000	\$0	\$2,275,000
SUH	SUH Proj 2 Design	new project	\$1,374,093	\$0	\$1,374,093
SUH	SUH Proj 2A	new project	\$2,000,000	\$0	\$2,000,000
ESTIMATED BUDGET TOTALS			\$258,600,416	\$81,424,100	\$177,176,316
TOTAL PROGRAM BUDGET (Program Management Fee Basis)					\$177,716,318
Planning and Operations				\$1,879,724	\$644,874
Construction Program Totals				\$260,480,140	\$354,997,506

Scope Definitions

closeout - project is complete, need to process DSA, RWCB, and OPSC closeout

new project - staff has not authorized proceeding to construction; design phase may have started
 complete construction - project is under construction

continue project - construction funding has been approved but construction has not begun.